

WACONIA CITY COUNCIL MEETING AGENDA



Tuesday, January 18, 2022
6:00 PM

VISION STATEMENT

A thriving, connected community with deep roots: a great place to live for a lifetime.

MISSION STATEMENT

A city that leads, serves, and governs to enhance the quality of life for all community members.

MAYOR:	KENT BLOUDEK
COUNCILMEMBER, WARD I:	RANDALL SORENSEN
COUNCILMEMBER, WARD I:	NICOLE WALDRON
COUNCILMEMBER, WARD II:	CARL PIERSON
COUNCILMEMBER, WARD II:	PETER LEO

NOTE: TO ENSURE THAT YOU ARE PRESENT FOR ITEMS OF INTEREST, PLEASE BE PRESENT AT 6:00 P.M.

Those with items on the agenda should reach out to their staff contact. Others who wish to participate in the meeting, please contact the City Administrator at 952-442-3100 or sfineran@waconia.org to make certain that you are called upon during the meeting.

1. **CALL MEETING TO ORDER AND ROLL CALL**
2. **PLEDGE OF ALLEGIANCE**
3. **ADOPT AGENDA**
4. **VISITOR'S PRESENTATIONS, PETITIONS, CORRESPONDENCE**
5. **ADOPT CONSENT AGENDA**

The items listed on the Consent Agenda are considered routine and non-controversial by the Council and will be approved by one motion. There will be no separate discussion of these items unless a Councilmember, City Staff, or Citizen so requests; in which case, the item will be removed from the Consent Agenda and considered at the end of the Regular Agenda.

- 1) [January 3, 2022 City Council Meeting Minutes](#)
Motion to Approve January 3, 2022 City Council Meeting Minutes
- 2) [January 18, 2022 Expenditures](#)
Payment of January 18, 2022 Expenditures
- 3) [Rink Management Services Corporation Waconia Ice Arena Expenditures Incurred December 2021](#)
Motion to Approve Rink Management Corporation Expenditures for Waconia Ice Arena Incurred in December 2021
- 4) [Rink Management Services Corporation Safari Island Community Center Expenditures Incurred December 2021](#)
Motion to Approve Rink Management Corporation Expenditures for Safari Island Community Center

Incurred in December 2021

- 5) [Amusement Machine Permits](#)
Adopt Resolution 2022-26, Approving Amusement Machine Permits
- 6) [Gift Card Donations](#)
Adopt Resolution 2022-27, Accepting Donation and Directing Use
- 7) [Return to Work for Firefighter Robbie Clark](#)
Adopt Resolution 2022-28 Authorizing Firefighter Return to Work
- 8) [Hire of Office Assistant - Flex Position](#)
Adopt Resolution 2022-29, Authorize Hire of Office Assistant - Flex Position
- 9) [Recruitment Authorization - Accountant](#)
Authorize Recruitment for Accountant Position
- 10) [Call Public Hearing - Establishment of TIF District No. 5](#)
Adopt Resolution 2022-30, Calling a public hearing to the development program for the Waconia development district, the proposed establishment of tax increment financing district no. 5 therein and the proposed adoption of a tax increment financing plan therefor.
- 11) [Community Growth Partnership Initiative Grant](#)
Adopt Resolution 2022-31, Carver County CDA 2022 Community Growth Partnership Initiative Community Development Grant Application.
- 12) [Authorize Acquisition of Excessive Slope Mower](#)
Adopt Resolution 2022-32; Authorizing Acquisition of Excessive Slope Mower from Trenchers Plus in the Amount of \$53,950.00 and Appurtenant Safety Equipment, CIP Project 658
- 13) [Site Plan Amendment - 96 8th Street](#)
Adopt Resolution 2022-33, Approving the proposed Site Plan Amendment to expand the footprint of the remaining unbuilt building at 96 8th Street.
- 14) [Authorize City Staff to Obtain Pricing for ATV and Trailer](#)
Resolution 2021-36 Authorizing City Staff to Obtain Pricing for ATV and Trailer Replacement, CIP Adopt Project #336

6. COUNCIL BUSINESS

- 1) [Fire Station Project - Construction Manager Selection](#)
Adopt Resolution 2022-34, Approving Contract with Kraus-Anderson for Construction Management Advisor Services
- 2) [Fire Station Project - Architect Services](#)
Adopt Resolution 2022-35, Approving Contract with BKV Group Inc. for Architect Services

7. ITEMS REMOVED FROM CONSENT AGENDA

8. STAFF REPORTS

9. BOARD REPORTS

- 1) Councilmember Waldron
- 2) Councilmember Sorensen
- 3) Councilmember Leo
- 4) Councilmember Pierson
- 5) Mayor Bloudek

10. ANNOUNCEMENTS

11. ADJOURN REGULAR MEETINGOFFICE OF THE CITY ADMINISTRATOR

Shane Fineran

Work Session: ADA Transition Plan, Island View Marina Concept, Downtown Parking

UPCOMING CALENDAR OF EVENTS/MEETINGS:

Park Commission - January 20th at 6:00 p.m.

City Council Strategic Planning Sessions - January 21 at 4:00 p.m and January 22nd at 8:00 a.m.



REQUEST FOR CITY COUNCIL ACTION

Meeting Date:		January 18, 2022					
Item Name:		January 3, 2022 City Council Meeting Minutes					
Originating Department:		Administration					
Presented by:		Ann Meyerhoff					
Previous Council Action (if any):							
Item Type (X only one):		Consent	X	Regular Session		Discussion Session	
RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED <i>(Include motion in proper format.)</i>							
Motion to Approve January 3, 2022 City Council Meeting Minutes							
EXPLANATION OF AGENDA ITEM <i>(Include a description of background, benefits, and recommendations.)</i>							
Attachments:							
1. January 3, 2022 Minutes.docx							
FINANCIAL IMPLICATIONS:				ADVISORY BOARD RECOMMENDATIONS:			
Funding Sources & Uses:							
Budget Information:				Planning Commission			
_____ Budgeted				Parks and Recreation Board			
_____ Non Budgeted				Safari Island Advisory Board			
_____ Amendment Required				Other			

CITY OF WACONIA
January 3, 2022

1) **CALL MEETING TO ORDER AND ROLL CALL**

Pursuant to due call and notice thereof, the regular meeting of the City Council of the City of Waconia was called to order by Mayor Bloudek at 6:00 p.m.

The following members were present: Kent Bloudek, Randy Sorensen, Pete Leo, Carl Pierson

Staff Present: Shane Fineran, Jackie Schulze, Lane Braaten, Nicole Meyer, Ann Meyerhoff, Justin Sorensen, Mike Melchert, Deanna Laplant, Doug Bode

2) **PLEDGE OF ALLEGIANCE**

3) **ADOPT AGENDA**

Motion by Pete Leo, seconded by Carl Pierson 3) ADOPT AGENDA
MOTION carried

4) **VISITOR'S PRESENTATIONS, PETITIONS, CORRESPONDENCE**

5) **ADOPT CONSENT AGENDA**

5.1 December 20, 2021 Special Meeting Minutes

[2021-12-20 special meeting minutes.doc](#)

5.2 December 20, 2021 City Council Meeting Minutes

[2021-12-20 minutes.doc](#)

5.3 Council List - Expenditures

[Council List-Expenditures 01.03.2022.pdf](#)

5.4 Contractor Pay Request #2 - Everson New Storage Shed

[Contractor Pay Request Everson New Storage Shed_Attach.pdf](#)

5.5 Appointing Acting Mayor

[2201res acting mayor.doc](#)

5.6 Designate Official Newspaper

[2202res newspaper.doc](#)

- 5.7 Designate Official Depositories
[2203res depositories.doc](#)
- 5.8 Appointment of City Attorney
[2204res attorney.doc](#)
[City Attorney Attachment.pdf](#)
- 5.9 Appointment of Consulting Engineer
[2205res engineer.doc](#)
[Bolton & Menk Attachment.pdf](#)
- 5.10 Appoint Bond Counsel
[2206res bond counsel.doc](#)
- 5.11 Appoint Fiscal Advisor
[2207res fiscal advisor.doc](#)
- 5.12 Appoint City Insurance Agent
[2208res insurance agent.doc](#)
- 5.13 Administration of the Wetland Conservation Act
[2209res wetland conservation act.doc](#)
- 5.14 Council Liaison Appointments
[2212res council liaison appointments.doc](#)
- 5.15 Appoint Council Representative to Advisory Boards
[2210res advisory board council reps.doc](#)
- 5.16 Council Committee Appointments
[2211res council committees.doc](#)
- 5.17 License Renewals
[2213res liquor.doc](#)

- [2214res permits.doc](#)
- [List of Licenses 2022.doc](#)
- [2022 cig holders.doc](#)
- [2022 general corporate licenses.doc](#)
- 5.18 City Administrator Performance Review Summary
 - [2215res City Admin Performance Review.docx](#)
- 5.19 Donation Acceptance - Cash Donations for Adaptive Playground Equipment
 - [2216res Donations Received_Donations for Playground 01.03.22_Res.doc](#)
- 5.20 Authorize Siren Equipment Order
 - [2217res CD Siren Equipment Res.doc](#)
 - [CD Siren Equipment Att.pdf](#)
- 5.21 Trade of T12DT Trailer and Acquisition of Replacement
 - [2218res Trailer Trade and Acquire Res.doc](#)
 - [Trailer Trade and Acquire Att I.pdf](#)
 - [Trailer Trade and Acquire Att II.pdf](#)
- 5.22 Authorize Reclaim Pump Order with Electric Pump
 - [2219res WACONIA WTP Reclaim Pumps Res.doc](#)
 - [WACONIA WTP Reclaim Pumps Att.pdf](#)
- 5.23 Authorize Hire for Public Services Technician.
 - [2220res Public_Services_Tech_-_Resolution.docx](#)
- 5.24 Temporary Liquor License
 - [2221res Temp On Sale Waconia Lions.doc](#)
- 5.25 EAB Management Plan
 - [2222res EAB Mgt Plan and Grant App Res.doc](#)

[EAB Mgt Plan and Grant App Att I.pdf](#)

[EAB Mgt Plan and Grant App Att II.pdf](#)

[EAB Mgt Plan and Grant App Att III.pdf](#)

5.26 Authorize Hire for Office Assistant - Planning.

[2223res Office_Assistant_Planning_-_Resolution \(2\).docx](#)

5.27 Replacement of Network Firewall

[2224res Network_Firewall_Resolution.docx](#)

[Firewall replacement.pdf](#)

5.28 2022 Fee Schedule Ordinance Amendment

[Ord 744 Master Form Fee Schedule Changes_Res.doc](#)

Motion by Carl Pierson, seconded by Pete Leo 5) ADOPT CONSENT AGENDA

MOTION carried

6) COUNCIL BUSINESS

6.1 Winter Parking Towing Charge

[2225res 2022 Winter Parking Res.docx](#)

Shane Fineran stated that the city's winter parking regulations prohibit parking on city streets and parking lots between the hours of 2:00 a.m. and 6:00 a.m. in the downtown core. Violations of this ordinance are subject to ticketing and/or towing. An 2008 Audi A4 registered to John Diekman was towed from the zero block of Vine Street, adjacent to WaCo Repair, at approximately 2:30 a.m. on December 27th in violation of this ordinance.

Mr. Diekman is seeking reimbursement of the towing and impound charge of \$245. Staff reviewed the ordinance with the individual and would not authorize waiver or otherwise issue a refund as the vehicle was legally towed and ticketed for violation of the winter parking regulations and the city was engaged in snow removal operations at the time. Parking citations are payable to Carver County.

The tow and impound charge is as \$100 towing fee, \$35 Colony Administrative Fee, \$65 City Administration fee and \$45 daily storage fee. All fees are collected by Colony Plaza at the time the vehicle is retrieved at Colony Plaza by the vehicle owner with the city then invoicing Colony Plaza for the administration fee. If any relief from this fee is approved

by the City Council the refund will be issued to the vehicle owner. The city would not be eligible to recoup any of the fees collected by Colony Plaza and the refund would be issued from the city general fund.

Mayor Bloudek stated that in his years on Council this has never been recommended. There was an active snow event going on.

Motion by Pete Leo, seconded by Randal Sorensen 6) ADOPT RESOLUTION 2022-25, DENYING TOWING CHARGES REFUND. **MOTION carried**

7) ITEMS REMOVED FROM CONSENT AGENDA

8) STAFF REPORTS

Live broadcast of Council Meetings now on City website. Working on connecting to Facebook live as well.

Recruiting for park board.

9) BOARD REPORTS

10) ANNOUNCEMENTS

11) ADJOURN REGULAR MEETING

Motion by Randal Sorensen, seconded by Carl Pierson 11) ADJOURN REGULAR MEETING AT 6:09 p.m.

MOTION carried

Work Session: Redistricting, Optional Plan B Form discussion.

UPCOMING CALENDAR OF EVENTS/MEETINGS:

Kent Bloudek, Mayor

ATTEST: _____

Ann Meyerhoff, Office Assistant



REQUEST FOR CITY COUNCIL ACTION

Meeting Date:		January 18, 2022					
Item Name:		January 18, 2022 Expenditures					
Originating Department:		Finance					
Presented by:		Nicole Meyer					
Previous Council Action (if any):							
Item Type (X only one):		Consent	X	Regular Session		Discussion Session	
RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED <i>(Include motion in proper format.)</i>							
Payment of January 18, 2022 Expenditures							
EXPLANATION OF AGENDA ITEM <i>(Include a description of background, benefits, and recommendations.)</i>							
Attachments:							
1. Council List-Expenditures 01.18.2022.pdf							
FINANCIAL IMPLICATIONS:				ADVISORY BOARD RECOMMENDATIONS:			
Funding Sources & Uses:							
Budget Information:				Planning Commission			
_____ Budgeted				Parks and Recreation Board			
_____ Non Budgeted				Safari Island Advisory Board			
_____ Amendment Required				Other			

I have reviewed the list of claims for council approval and recommend payment.

Nicole Meyer, Finance Director

CITY OF WACONIA
Council List-Expenditures
Meeting: January 18, 2022

VENDOR NAME	DESCRIPTION	AMOUNT	FUND / DEPARTMENT
AMAZON.COM	Chest Waders	\$239.96	Parks
AMAZON.COM	Computer Keyboard	\$32.61	Technology
AMAZON.COM	Driveway Markers	\$150.97	Streets
AMAZON.COM	Forest Helmet	\$43.95	Parks
AMAZON.COM	Thermal Paper	\$105.00	Technology
AMERICAN MAILING MACHINES	Postage Machine Fill 12.10.21	\$500.00	Administration
AMERICAN MAILING MACHINES	Postage Machine Lease Q4-2021	\$75.00	Water Utility Fund
AMERICAN MAILING MACHINES	Postage Machine Lease Q4-2021	\$75.00	Sewer Utility Fund
ASPEN MILLS INCORPORATED	Chief Daily Uniforms	\$827.14	Fire
ASSURITY LIFE INSURANCE COMPANY	Premiums 11.2021	\$584.22	Personnel Liabilities
BIFFS, INC.	Portable Sanitation 11.2021	\$919.73	Parks
BOLTON & MENK, INC	2021 Infrastructure Improvement	\$2,121.05	PIR Fund
BOLTON & MENK, INC	2021 Infrastructure Improvement	\$1,473.95	Storm Water Utility Fund
BOLTON & MENK, INC	2022 Improvement Project	\$7,173.60	PIR Fund
BOLTON & MENK, INC	2022 Improvement Project	\$3,586.80	Water Utility Fund
BOLTON & MENK, INC	2022 Improvement Project	\$3,586.80	Sewer Utility Fund
BOLTON & MENK, INC	2022 Improvement Project	\$3,586.80	Storm Water Utility Fund
BOLTON & MENK, INC	East Frontage Road Extension	\$9,757.29	PIR Fund
BOLTON & MENK, INC	East Frontage Road Extension	\$1,414.10	Water Utility Fund
BOLTON & MENK, INC	East Frontage Road Extension	\$565.64	Sewer Utility Fund
BOLTON & MENK, INC	East Frontage Road Extension	\$2,403.97	Storm Water Utility Fund
BOLTON & MENK, INC	East Frontage Road Parking Lot	\$1,523.00	PIR Fund
BOLTON & MENK, INC	Fields of Waconia Development	\$188.00	PIR Fund
BOLTON & MENK, INC	L-52 Lift Station Upgrade	\$22,054.50	Sewer Utility Fund
BOLTON & MENK, INC	Met Council I & I Surcharge	\$408.00	Sewer Utility Fund
BOLTON & MENK, INC	Miscellaneous Engineering	\$210.00	Planning
BOLTON & MENK, INC	Miscellaneous Engineering	\$180.00	Streets
BOLTON & MENK, INC	Miscellaneous Engineering	\$60.00	Storm Water Utility Fund
BOLTON & MENK, INC	Orchard Park Development	\$66.00	PIR Fund
BOLTON & MENK, INC	Sandy Shores Development	\$94.00	PIR Fund
BOLTON & MENK, INC	Siegle Property Development	\$888.00	PIR Fund
BOLTON & MENK, INC	Stormwater Funding	\$989.00	Storm Water Utility Fund
BOLTON & MENK, INC	Tidal Wave Auto Spa	\$94.00	PIR Fund
BOLTON & MENK, INC	Trails Edge South Apartments	\$330.00	PIR Fund
BOLTON & MENK, INC	Waconia MS4 Permit Admin	\$94.00	Storm Water Utility Fund
BOLTON & MENK, INC	Waconia Parkway North Trail	\$675.00	Storm Water Utility Fund
BOLTON & MENK, INC	Waconia Parkway South Improvement Project	\$2,053.60	PIR Fund
BOLTON & MENK, INC	Waconia Parkway South Improvement Project	\$359.38	Water Utility Fund
BOLTON & MENK, INC	Waconia Parkway South Improvement Project	\$154.02	Storm Water Utility Fund
BOLTON & MENK, INC	Waterford Park	\$1,240.00	PIR Fund
BOLTON & MENK, INC	Woodland Creek	\$1,317.00	PIR Fund

CITY OF WACONIA
Council List-Expenditures
Meeting: January 18, 2022

VENDOR NAME	DESCRIPTION	AMOUNT	FUND / DEPARTMENT
BOND TRUST SERVICES CORPORATION	2014A Bond Admin Fee	\$118.75	2014A Bond
BOND TRUST SERVICES CORPORATION	2014A Bond Admin Fee	\$118.75	Water Utility Fund
BOND TRUST SERVICES CORPORATION	2014A Bond Admin Fee	\$118.75	Sewer Utility Fund
BOND TRUST SERVICES CORPORATION	2014A Bond Admin Fee	\$118.75	Storm Water Utility Fund
BOND TRUST SERVICES CORPORATION	2015A Bond Admin Fee	\$118.75	2015A Bond
BOND TRUST SERVICES CORPORATION	2015A Bond Admin Fee	\$118.75	Water Utility Fund
BOND TRUST SERVICES CORPORATION	2015A Bond Admin Fee	\$118.75	Sewer Utility Fund
BOND TRUST SERVICES CORPORATION	2015A Bond Admin Fee	\$118.75	Storm Water Utility Fund
BOND TRUST SERVICES CORPORATION	2015C Bond Admin Fee	\$475.00	2015C Bond
BOND TRUST SERVICES CORPORATION	2016A Bond Admin Fee	\$475.00	2016A Bond
BOYD WELCH	#42 - Plow Oil	\$124.15	Streets
BROADWAY PARTY RENTAL	Santa Chair Rental	\$80.00	Fire
BROADWAY PARTY RENTAL	Santa Chair Rental Return	-\$65.00	Fire
BROCK WHITE CO	Paved Drain Extractor	\$550.00	Streets
CADY BUILDING MAINTENANCE, INC.	City Facility Cleaning 01.2022	\$3,195.00	Central Facilities
CADY BUILDING MAINTENANCE, INC.	Supplies	\$126.80	Central Facilities
CAR-CO AUTO PARTS CO.	#165/#183 Anti-Freeze	\$35.94	Streets
CAR-CO AUTO PARTS CO.	#41 Filters	\$141.59	Sewer Utility Fund
CAR-CO AUTO PARTS CO.	#44 Filters	\$48.65	Sewer Utility Fund
CAR-CO AUTO PARTS CO.	#48/#51#1025 Maintenance	\$30.52	Parks
CAR-CO AUTO PARTS CO.	#57 Filters	\$5.12	Parks
CAR-CO AUTO PARTS CO.	WTP #3 Aerator Belt	\$12.17	Water Utility Fund
CARVER COUNTY	2nd 1/2 2021 Taxes	\$6,355.79	PIR Fund
C-D PRODUCTS, INC.	World War I Sign	\$3,235.00	PIR Fund
CENTERPOINT ENERGY RESOURCES CORP	10250 10th St. 9.29-10.28	\$21.09	Water Utility Fund
CENTERPOINT ENERGY RESOURCES CORP	Natural Gas Services 10.2021	\$2,852.59	Central Facilities
CENTERPOINT ENERGY RESOURCES CORP	Natural Gas Services 10.2021	\$631.66	Water Utility Fund
CENTERPOINT ENERGY RESOURCES CORP	Natural Gas Services 10.2021	\$74.31	Sewer Utility Fund
CENTERPOINT ENERGY RESOURCES CORP	Natural Gas Services 10.2021	\$24.77	Storm Water Utility Fund
CENTERPOINT ENERGY RESOURCES CORP	Natural Gas Services 10.2021	\$24.76	Street Light Utility Fund
CENTERPOINT ENERGY RESOURCES CORP	Natural Gas Services 10.2021	\$1,657.58	Ice Arena
CHOICE ELECTRIC INC	Brine Project	\$2,725.41	Capital Equipment Fund
CHOICE ELECTRIC INC	Light Pole Fixtures Lot One	\$901.42	Street Light Utility Fund
CHOICE ELECTRIC INC	PW Drinking Fountain Outlet	\$140.30	Central Facilities
CHOICE ELECTRIC INC	Waconia Pkwy S Light Pole Install	\$5,692.20	PIR Fund
CINTAS CORPORATION NO. 2	CH Restrooms 10-11.2021	\$109.54	Central Facilities
CINTAS CORPORATION NO. 2	PW First Aid Supplies	\$179.04	Central Facilities
CINTAS CORPORATION NO. 2	PW Uniforms 10.2021	\$179.26	Streets
CINTAS CORPORATION NO. 2	PW Uniforms 10.2021	\$56.91	Parks
CINTAS CORPORATION NO. 2	PW Uniforms 10.2021	\$63.05	Water Utility Fund
CINTAS CORPORATION NO. 2	PW Uniforms 10.2021	\$63.04	Sewer Utility Fund
CINTAS CORPORATION NO. 2	PW Uniforms 10.2021	\$95.10	Storm Water Utility Fund
CINTAS CORPORATION NO. 2	PW Uniforms 10.2021	\$3.50	Street Light Utility Fund
CITY OF BLOOMINGTON	Water Testing 12.01.2021	\$147.00	Water Utility Fund
CITY OF BURNSVILLE	JPA Admin Fees 2021	\$607.33	Streets
COLONY PLAZA	Forklift LP	\$40.75	Streets

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VENDOR NAME	DESCRIPTION	AMOUNT	FUND / DEPARTMENT
CORE & MAIN	Cover O-Ring	\$130.38	Water Utility Fund
CORE & MAIN	Electrofusion Machine	\$5,040.00	Storm Water Utility Fund
CORE & MAIN	Hydrant Parts/AFC Parts	\$2,378.09	Water Utility Fund
CORE & MAIN	Hydrant/Main Valves	\$562.52	Water Utility Fund
CORE & MAIN	Interlaken 8th Watermain	\$145.25	Water Utility Fund
CORE & MAIN	Pipe Scraper	\$813.25	Water Utility Fund
CUSTOMIZED FIRE RESCUE TRAINING INC.	FF1 - FF2 Training	\$10,990.00	Fire
DISPLAY SALES COMPANY	Holiday Light Upgrades	\$4,483.25	Street Light Utility Fund
DOLLAR TREE STORES INC	Candy Cane Hunt Supplies	\$48.00	Administration
DULTMEIER SALES LLC	Brine Maker Clamps	\$110.01	Capital Equipment Fund
DULTMEIER SALES LLC	Brine Maker Valves	\$33.60	Capital Equipment Fund
ECM PUBLISHERS INC	Publishing Fees 10.2021	\$262.44	Administration
ECM PUBLISHERS INC	Publishing Fees 10.2021	\$58.32	PIR Fund
ECM PUBLISHERS INC	PW Patriot Subscription	\$60.95	Streets
EFTPS	Federal Taxes - Pay 26-2021	\$34,171.66	Personnel Liabilities
EROSION PRODUCTS LLC	Drainage Tile/Basin Kit	\$451.00	Storm Water Utility Fund
EROSION PRODUCTS LLC	Project Seeding Straw	\$278.00	PIR Fund
EROSION PRODUCTS LLC	Road Fabric	\$360.00	Streets
EVERSON HARDWARE HANK	Duck Tape	\$12.98	Fire
EVERSON HARDWARE HANK	Fence Posts	\$20.92	Streets
EVERSON HARDWARE HANK	Hammer	\$49.99	Parks
EVERSON HARDWARE HANK	Joints	\$49.98	Streets
EVERSON HARDWARE HANK	Light Bulbs	\$21.99	Sewer Utility Fund
EVERSON HARDWARE HANK	Paint	\$10.48	Streets
EVERSON HARDWARE HANK	Paint	\$45.98	Central Facilities
EVERSON HARDWARE HANK	Paint/Supplies	\$42.45	Central Facilities
EVERSON HARDWARE HANK	Plumbing Supplies/Paste/Adapter	\$54.22	Streets
EVERSON HARDWARE HANK	Streets Supplies	\$78.32	Streets
EVERSON HARDWARE HANK	Toilet Seat	\$32.99	Streets
EVOQUA WATER TECHNOLOGIES LLC	Bioxide Storage Lease 09.2021	\$1,996.00	Sewer Utility Fund
EVOQUA WATER TECHNOLOGIES LLC	Bioxide Storage Lease 10.2021	\$1,996.00	Sewer Utility Fund
EVOQUA WATER TECHNOLOGIES LLC	LS Bioxide Treatment 284/SE/L5	\$11,041.25	Sewer Utility Fund
FASTENAL INDUSTRIAL & CONST	Pliers/Fiberglass	\$173.54	Streets
FASTENAL INDUSTRIAL & CONST	Safety Vending Equipment 10.2021	\$397.58	Sewer Utility Fund
FERGUSON ENTERPRISES, INC.	Hydrant Gate Valve	\$475.00	Water Utility Fund
FERGUSON ENTERPRISES, INC.	New Home Meters/Components	\$19,026.26	Water Utility Fund
FIRE SAFETY U.S.A.	Keiser Force Machine	\$3,650.00	Fire
FIRE STORE/WITMER	Forcible Entry Stimulator	\$8,353.78	Fire
FIRE STORE/WITMER	Light/Decals	\$280.98	Fire
FIRE STORE/WITMER	Premix Gas Holder Return	-\$179.18	Fire
FIRE STORE/WITMER	Sales Tax Refund	-\$91.77	Fire
FIRST HOSPITAL LABORATORIES, INC.	DOT Testing 10.2021	\$56.38	Parks
GOPHER STATE ONE-CALL	Utility Locate Tickets 12.2021	\$87.75	Water Utility Fund
GOPHER STATE ONE-CALL	Utility Locate Tickets 12.2021	\$87.75	Sewer Utility Fund
GRAINGER, INC.	Water Treatment Plant Air Filter	\$61.80	Water Utility Fund
H & L MESABI	Cutting Edges	\$2,298.00	Parks

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VENDOR NAME	DESCRIPTION	AMOUNT	FUND / DEPARTMENT
HACH COMPANY	Testing Beakers	\$72.39	Water Utility Fund
HACH COMPANY	Water Testing Accuracy	\$324.13	Water Utility Fund
HACH COMPANY	Water Testing Accuvacs	\$31.15	Water Utility Fund
HAUGO GEOTECHNICAL SERVICES, LLC	East Frontage Rd Parking Lot	\$432.00	PIR Fund
HAWKINS, INC	Water Treatment Plant Chemicals	\$6,173.27	Water Utility Fund
HECKSEL MACHINE INC	Handrails	\$6,500.00	Parks
HOLIDAY GAS STATION	Command Vehicle Wash 11.2021	\$16.50	Fire
HOLTON ELECTRIC CONTRACTORS LLC	FD Electrical Repairs	\$1,354.41	Fire
HOLTON ELECTRIC CONTRACTORS LLC	Photocells- Xmas Light Repair	\$102.22	Parks
HOME DEPOT	Chain/Misc Supplies	\$236.59	Parks
HOME DEPOT	Mulch/Knobs/Paint	\$47.01	Streets
INTERNATIONAL CODE COUNCIL	Membership Dues - Stein	\$145.00	Planning
INVOICE CLOUD, INC.	CC Transaction Fees 11.2021	\$1,407.60	Finance
KANSAS STATE BANK OF MANHATTAN	Exercise Equip Lease 12.2021	\$2,310.00	Safari Island Fund
KCI CONSERVATION	World War I Memorial Restore	\$4,612.00	PIR Fund
LAMETTI & SONS, INC.	L-52 Lift Station Upgrade	\$82,708.66	Sewer Utility Fund
LANO EQUIPMENT, INC.	Mini Excavator Rental	\$1,000.00	Parks
LANO EQUIPMENT, INC.	STI Blade	\$114.78	Parks
LEADERSHIP GROWTH GROUP, LLC.	Fineran - Leadership Growth	\$600.00	Administration
LEADERSHIP GROWTH GROUP, LLC.	Leadership Growth Group Books	\$129.93	Administration
LEAGUE OF MINNESOTA CITIES	Training - Leo	\$275.00	Administration
MACKENTHUN'S FINE FOODS	CSP X-Mas Tree	\$91.27	Parks
MACKENTHUN'S FINE FOODS	Fire Station Santa Supplies	\$108.26	Fire
MACQUEEN EMERGENCY	SCBA Bottles	\$9,680.00	Fire
MACQUEEN EMERGENCY	Turn Out Gear	\$27,175.20	Fire
MADISON CONCOURSE HOTEL	Training Lodging - Shaw	\$185.36	Water Utility Fund
MADISON CONCOURSE HOTEL	Training Lodging - Shaw	\$185.37	Sewer Utility Fund
MARCO HOLDINGS, LLC	Central Fac Support 12.2021	\$10.00	Central Facilities
MARCO HOLDINGS, LLC	CH Printer Lease 11.21-12.21	\$907.39	Central Facilities
MARCO HOLDINGS, LLC	PW Printer Lease 11.2021	\$70.69	Water Utility Fund
MARCO HOLDINGS, LLC	PW Printer Lease 11.2021	\$70.68	Sewer Utility Fund
MAS COMMUNICATIONS	FS Elevator Phone	\$202.44	Central Facilities
MEDIACOM	SI Cable Box Fee 11.2021	\$11.05	Safari Island Fund
MELCHERT HUBERT SJODIN, PLLP	City Legal Fees 10.2021	\$3,387.00	Administration
MELCHERT HUBERT SJODIN, PLLP	City Legal Fees 10.2021	\$10,639.23	PIR Fund
MELCHERT HUBERT SJODIN, PLLP	City Legal Fees 10.2021	\$502.10	Revolving Loan Fund
MELCHERT HUBERT SJODIN, PLLP	City Legal Fees 10.2021	\$708.50	Water Utility Fund
MENARDS	Driveway Markers	\$425.80	Parks
MENARDS	Driveway Markers/Sprayer	\$457.99	Parks
MENARDS	Holiday Lights	\$1,368.85	Street Light Utility Fund
METROPOLITAN COUNCIL	SAC Report 12.2021	\$54,123.30	Sewer Utility Fund
METROPOLITAN COUNCIL	Sewer Flow Charges 02.2022	\$83,836.95	Sewer Utility Fund
MID-COUNTRY BANK	Transfer Bond Proceeds to Project Account - 2021A	\$1,413,048.97	2021A Bond
MILLS FLEET FARM	Pipe Covering Tarps	\$323.17	Water Utility Fund
MILLS FLEET FARM	Tarps	\$230.98	Parks
MINNESOTA DEPARTMENT OF REVENUE	Sales Tax Liability 11.2021	\$8.72	Personnel Liabilities

CITY OF WACONIA
Council List-Expenditures
Meeting: January 18, 2022

VENDOR NAME	DESCRIPTION	AMOUNT	FUND / DEPARTMENT
MINNESOTA DEPARTMENT OF REVENUE	Sales Tax Liability 11.2021	\$242.87	Safari Island Fund
MINNESOTA DEPARTMENT OF REVENUE	Sales Tax Liability 11.2021	\$1,265.41	Water Utility Fund
MINNESOTA DEPARTMENT OF REVENUE	State Taxes - Pay 26-2021	\$6,447.06	Personnel Liabilities
MN CROP PRODUCTION RETAILERS	Applicator Recertification - Rolf	\$190.00	Streets
MN DEPARTMENT OF PUBLIC SAFETY - DVS	Trailer #8021 License Plates	\$1,266.65	Capital Equipment Fund
MN NURSERY AND LANDSCAPE	Expo/Training - 5 EE's	\$200.00	Parks
MN NURSERY AND LANDSCAPE	Pesticide Recert - Michel	\$169.00	Streets
MN POLLUTION CONTROL AGENCY	Training/Testing - Pierson	\$399.71	Sewer Utility Fund
MN VALLEY ELECTRIC COOP	Electric Service 11.2021	\$109.73	Central Facilities
MN VALLEY ELECTRIC COOP	Electric Service 11.2021	\$389.73	Sewer Utility Fund
MN VALLEY ELECTRIC COOP	Electric Service 11.2021	\$3,222.89	Street Light Utility Fund
MN VALLEY ELECTRIC COOP	Waconia Parkway South Roundabout Lighting	\$8,152.00	PIR Fund
MN VALLEY TESTING LABS	Water Testing	\$591.25	Water Utility Fund
MONEY MOVERS	SI Insurance Reimburse 11.2021	\$11.50	Safari Island Fund
MPLS PARKING	Training Parking	\$10.00	Streets
MTI DISTRIBUTING, INC.	#182 Side Mirror	\$107.51	Streets
NATIONWIDE RETIREMENT SOLUTIONS	EE Retirement - Pay 26-2021	\$2,285.00	Personnel Liabilities
NEWMAN SIGNS	Fields/Burandt Signage	\$7,742.15	Streets
NORDIC MECHANICAL SERVICES	Fire Department - Heat Repairs	\$687.18	Central Facilities
NORDIC MECHANICAL SERVICES	Library Heat Repair	\$3,006.48	Central Facilities
NORDIC MECHANICAL SERVICES	Water Treatment Plant Fan Motor Repair	\$297.00	Water Utility Fund
NORDIC MECHANICAL SERVICES	Water Treatment Plant Replaced Vent Motors	\$1,395.00	Water Utility Fund
NORTHERN STATES POWER COMPANY, MINNESOTA	10525 10th St Electric 10.2021	\$26.86	Central Facilities
NORTHERN STATES POWER COMPANY, MINNESOTA	Electric Services 10.2021	\$29.38	Community Safety
NORTHERN STATES POWER COMPANY, MINNESOTA	Electric Services 10.2021	\$27.31	Central Facilities
NORTHERN STATES POWER COMPANY, MINNESOTA	Electric Services 10.2021	\$6,617.88	Water Utility Fund
NORTHERN STATES POWER COMPANY, MINNESOTA	Electric Services 10.2021	-\$926.35	Sewer Utility Fund
NORTHERN STATES POWER COMPANY, MINNESOTA	Electric Services 10.2021	\$244.69	Storm Water Utility Fund
NORTHERN STATES POWER COMPANY, MINNESOTA	Electric Services 10.2021	\$11,266.13	Street Light Utility Fund
NORTHERN STATES POWER COMPANY, MINNESOTA	Electric Services 10.2021	\$9,331.86	Ice Arena
NUSS EQUIPMENT GROUP LLC	#52/#54 Name Plates	-\$12.41	Streets
OLD NATIONAL BANK	EE HSA Liability - Pay 26-2021	\$3,506.91	Personnel Liabilities
OLD NATIONAL BANK	ER HSA Liability - Pay 26-2021	\$2,261.56	Personnel Liabilities
PERA	EE/ER Retirement - Pay 26-2021	\$19,874.37	Personnel Liabilities
PINE PRODUCTS	Compost Disposals	\$3,575.00	Streets
PINE PRODUCTS	Mulch	\$162.00	Parks
PRECISE MRM LLC	#48 Air/Temp Sensor	\$537.21	Parks
PRECISE MRM LLC	#56 Air/Temp Sensor	\$537.20	Streets
PRECISE MRM LLC	Vehicle Data Charge 10.2021	\$516.00	Storm Water Utility Fund
PROJECT ONE CONSTRUCTION	Install Gutters & Downspouts	\$3,985.00	Central Facilities
QUALITY FORKLIFT SALES & SERVICE, INC.	#170 Brake Shoe/Oil Seal	\$360.84	Streets
RANDY'S SANITATION	CH Shredding Service 12.2021	\$26.41	Central Facilities
RELIANCE STANDARD	Premiums 12.2021	\$1,421.84	Personnel Liabilities
RINK MANAGEMENT SERVICES CORPORATION	IA CC Reimburse 11.20-11.30.21	\$1,286.38	Ice Arena
RINK MANAGEMENT SERVICES CORPORATION	IA CC Reimburse 12.01-12.19.21	\$1,493.67	Ice Arena
RINK MANAGEMENT SERVICES CORPORATION	SI CC Reimburse 12.1-12.19.21	\$39,458.43	Safari Island Fund

CITY OF WACONIA
Council List-Expenditures
Meeting: January 18, 2022

VENDOR NAME	DESCRIPTION	AMOUNT	FUND / DEPARTMENT
ROYAL TIRE INC	#56 Tires	\$1,006.44	Streets
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY	EMR Renewal - 8 FF's	\$1,600.00	Fire
SHEPLERS	EE Safety Allowance	\$109.99	Streets
SHI INTERNATIONAL CORP.	ViewSonic ViewBoard	\$4,359.00	Technology
STAPLES CONTRACT & COMMERCIAL, INC.	Fire Office Supplies	\$40.76	Fire
STAPLES CONTRACT & COMMERCIAL, INC.	PW Office Supplies	\$51.61	Streets
STAPLES CONTRACT & COMMERCIAL, INC.	PW Printer Cartridges	\$209.98	Streets
STORMS WELDING & MFG INC	Metal	\$77.67	Streets
TARGET	Candy Cane Hunt Supplies	\$305.79	Administration
TARGET	CH Paper Towels/Holiday Bev	\$37.98	Administration
TARGET	Fire Station Santa Supplies	\$27.65	Fire
TIMBERWALL LANDSCAPING, INC.	2020 Recon Supplies Return	-\$109.26	PIR Fund
TIMBERWALL LANDSCAPING, INC.	Bullet Edger	\$116.35	Parks
TIMBERWALL LANDSCAPING, INC.	Pallets	\$261.58	Streets
TIMBERWALL LANDSCAPING, INC.	Super Sand Return	-\$26.32	Streets
U.S. DEPARTMENT OF TRANSPORTATION	CDL/DOT Inquiries	\$62.50	Administration
UNIVERSITY OF MINNESOTA	Pesticide Manuals	\$123.00	Parks
US BANK	Qtr 03-2021 Purchasing Rebate	-\$5,882.24	Finance
VERIZON WIRELESS	City Cell/Aircard Svc 10.2021	\$102.52	Administration
VERIZON WIRELESS	City Cell/Aircard Svc 10.2021	\$444.21	Technology
VERIZON WIRELESS	City Cell/Aircard Svc 10.2021	\$81.26	Planning
VERIZON WIRELESS	City Cell/Aircard Svc 10.2021	\$251.31	Fire
VERIZON WIRELESS	City Cell/Aircard Svc 10.2021	\$111.86	Streets
VERIZON WIRELESS	City Cell/Aircard Svc 10.2021	\$201.19	Parks
VERIZON WIRELESS	City Cell/Aircard Svc 10.2021	-\$30.83	Safari Island Fund
VERIZON WIRELESS	City Cell/Aircard Svc 10.2021	\$251.50	Water Utility Fund
VERIZON WIRELESS	City Cell/Aircard Svc 10.2021	\$251.50	Sewer Utility Fund
VERIZON WIRELESS	City Cell/Aircard Svc 10.2021	\$111.86	Storm Water Utility Fund
VERIZON WIRELESS	City Cell/Aircard Svc 10.2021	\$31.75	Street Light Utility Fund
VERIZON WIRELESS	City Cell/Aircard Svc 10.2021	\$36.25	Ice Arena
ZIEGLER INC	#165 Plug/Cap	\$44.15	Streets
Grand Total		\$2,079,184.77	

The above bills have been approved for payment at the regular City Council Meeting on January 18, 2022.
Authorized and ordered for payment:

Mayor

City Clerk



REQUEST FOR CITY COUNCIL ACTION

Meeting Date:	January 18, 2022
Item Name:	Rink Management Services Corporation Waconia Ice Arena Expenditures Incurred December 2021
Originating Department:	Finance
Presented by:	Nicole Meyer

Previous Council Action (if any):

Item Type (X only one):	Consent	<input checked="" type="checkbox"/>	Regular Session	<input type="checkbox"/>	Discussion Session	<input type="checkbox"/>
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RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED *(Include motion in proper format.)*

Motion to Approve Rink Management Corporation Expenditures for Waconia Ice Arena Incurred in December 2021

EXPLANATION OF AGENDA ITEM *(Include a description of background, benefits, and recommendations.)*

Rink Management Services Corporation has provided the attached report for expenditures paid in December 2021. Per the City’s contract with Rink Management, these expenditures are paid by Rink Management for the City’s operation of the Waconia Ice Arena.

Attachments:

1. [Rink Management Payments-IA_Attach.pdf](#)

FINANCIAL IMPLICATIONS: Funding Sources & Uses:	ADVISORY BOARD RECOMMENDATIONS:
Budget Information:	Planning Commission
_____ Budgeted	Parks and Recreation Board
_____ Non Budgeted	Safari Island Advisory Board
_____ Amendment Required	Other

**Waconia Ice Arena
Bills and Applied Payments
December 2021**

Date	Transaction Type	Num	Memo/Description	Split	Amount
Advanced Energy Partners					
12/17/2021	Bill Payment (Check)	2657		0012 Cash - IA/RMSC	-103.17
12/01/2021	Bill	2021-11	11/1 - 11/30/21	4049 2 Utilities:Solar Energy	103.17
Bank of America - Business Credit Card					
12/17/2021	Bill Payment (Check)	2658		0012 Cash - IA/RMSC	-77.78
12/07/2021	Bill	BOA12/06/21	4339 9314 7514 2162	4029 1 Maintenance & Repairs:Building Repairs	77.78
Bryan Woitas - Petty Cash					
12/17/2021	Bill Payment (Check)	2659		0012 Cash - IA/RMSC	-94.36
12/06/2021	Bill	pc120621	2 clocks and rubber feet for skate aids	-Split-	94.36
12/27/2021	Bill Payment (Check)	2663		0012 Cash - IA/RMSC	-211.24
12/13/2021	Bill	pc12.13.21	Snow removal and ice cleat:	-Split-	184.22
12/20/2021	Bill	pc12.20.21	Ring clamps and rubber feet for skate aid:	-Split-	27.02
CD Products INC					
12/27/2021	Bill Payment (Check)	2664		0012 Cash - IA/RMSC	-283.47
12/16/2021	Bill	78829	Smothers and Falk Dasherboard	4046 1 COGS - Advertising	283.47
City of Waconia					
12/16/2021	Bill Payment (Check)			-Split-	
07/31/2021	Journal Entry	JE 07.31.21	07.31.21 balance adjustments from the City of Waconia - AO	-Split-	14,631.42
08/31/2021	Journal Entry	JE 08.31.21	08.31.21 balance adjustments from the City of Waconia - AO	-Split-	-12,786.46
09/30/2021	Journal Entry	JE 09.30.21	09.30.21 balance adjustments from the City of Waconia - AO	-Split-	-1,637.21
12/17/2021	Bill Payment (Check)	2662		0012 Cash - IA/RMSC	-3,025.25
12/06/2021	Bill	OD 11.30.21	Amount over the \$100,000 reserve for month of 11/30/21	0010 Cash - City of Waconia	3,025.25
Continental Safety Equipment, Inc					
12/10/2021	Bill Payment (Check)	2654		0012 Cash - IA/RMSC	-446.46
11/22/2021	Bill	454167	Bump gas to calibrate Air Quality Measuring Device	4029 1 Maintenance & Repairs:Building Repairs	446.46
Dalco					
12/10/2021	Bill Payment (Check)	2655		0012 Cash - IA/RMSC	-302.21
11/30/2021	Bill	3863181	Blue Pad Scrubber	4023 2 Operating Supplies:Maintenance Supplies	26.29
11/18/2021	Bill	3859657	Paper towels and toilet paper	4023 2 Operating Supplies:Maintenance Supplies	275.92

	Date	Transaction Type	Num	Memo/Description	Split	Amount
Kristie Mitchell						
	12/27/2021	Bill Payment (Check)	2666		0012 Cash - IA/RMSC	-1,536.00
	12/20/2021	Bill	LTSFall2021	LTS Classes Fall 2, 2021 \$3840 x 40% = \$1536	4069 4 COGS - Learn to Skate	1,536.00
MIAMA						
	12/27/2021	Bill Payment (Check)	2667		0012 Cash - IA/RMSC	-200.00
	12/20/2021	Bill	146	Arena Membership	4053 Subscript., Memberships & Dues	200.00
R & R Specialties of Wisconsin Inc						
	12/17/2021	Bill Payment (Check)	2660		0012 Cash - IA/RMSC	-132.50
	12/09/2021	Bill	74474	Blade sharpening	4029 2 Maintenance & Repairs:Equipment Repairs	132.50
Rink Management Services Corporation						
	12/10/2021	Bill Payment (Check)	2656		0012 Cash - IA/RMSC	-10,839.19
	11/12/2021	Bill	105209	Timeclock Services; Paychex Statement	4004 3 Contracted Payroll:Payroll Expenses	148.62
	11/12/2021	Bill	105164	Screening Services; Paychex Statement	4004 3 Contracted Payroll:Payroll Expenses	53.91
	12/01/2021	Bill	104915	December 2021 Management Fee	4069 1 Contract Services:Management Fees	3,750.00
	12/02/2021	Bill	105001	Payroll Period Ending 11/28/21, Pay Date	4004 1 Contracted Payroll:Payroll	6,136.77
	11/08/2021	Bill	105141	Paychex Invoice #2021110301; WK 45	4004 1 Contracted Payroll:Payroll	65.24
	11/06/2021	Bill	105113	Constant Contact; Split Charge from Bill	4046 Advertising	71.25
	11/06/2021	Bill	105054	Getty and Adobe	-Split-	27.98
	11/06/2021	Bill	104976	Buffer Split Charge from Bill #110621jg	4046 Advertising	11.00
	11/06/2021	Bill	105073	HR Classroom; Split Charge from Bill	4004 3 Contracted Payroll:Payroll Expenses	45.24
	11/06/2021	Bill	105027	Quickbooks online monthly subscription	4053 Subscript., Memberships & Dues	180.00
	11/12/2021	Bill	105187	Monitoring Services; Paychex Statement	4004 3 Contracted Payroll:Payroll Expenses	15.12
	11/17/2021	Bill	104961	Principal Health Insurance Invoice 11/17/21; Billing Period 12/1 - 12/31/21	-Split-	334.06
	12/27/2021	Bill Payment (Check)	2668		0012 Cash - IA/RMSC	-13,888.93
	12/17/2021	Bill	105304	Payroll WK 51; Pay Date 12/20/21	4004 1 Contracted Payroll:Payroll	7,011.72
	12/06/2021	Bill	105372	Paychex Invoice #2021111701; WK 47	4004 3 Contracted Payroll:Payroll Expenses	64.96
	12/06/2021	Bill	105320	Cigna Health Insurance Billing Period 12/1 -	-Split-	3,006.69
	12/01/2021	Bill	105344	Paychex Invoice #2021111701; WK 47	4004 3 Contracted Payroll:Payroll Expenses	55.56
	01/01/2022	Bill	105268	January 2022 Management Fee	4069 1 Contract Services:Management Fees	3,750.00
Viking Automatic Sprinkler Co.						
	12/17/2021	Bill Payment (Check)	2661		0012 Cash - IA/RMSC	-3,950.00
	12/01/2021	Bill	1025-F187464	Fix Compressor	4029 1 Maintenance & Repairs:Building Repairs	3,950.00
					Total Expenses:	\$ 35,090.56



REQUEST FOR CITY COUNCIL ACTION

Meeting Date:	January 18, 2022
Item Name:	Rink Management Services Corporation Safari Island Community Center Expenditures Incurred December 2021
Originating Department:	Finance
Presented by:	Nicole Meyer

Previous Council Action (if any):

Item Type (X only one):	Consent	<input checked="" type="checkbox"/>	Regular Session	<input type="checkbox"/>	Discussion Session	<input type="checkbox"/>
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RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED *(Include motion in proper format.)*

Motion to Approve Rink Management Corporation Expenditures for Safari Island Community Center Incurred in December 2021

EXPLANATION OF AGENDA ITEM *(Include a description of background, benefits, and recommendations.)*

Rink Management Services Corporation has provided the attached report for expenditures paid in December 2021. Per the City’s contract with Rink Management, these expenditures are paid by Rink Management for the City’s operation of the Safari Island Community Center.

Attachments:

- [1. Rink Managment Payments-SI_Attach.pdf](#)

FINANCIAL IMPLICATIONS: Funding Sources & Uses:	ADVISORY BOARD RECOMMENDATIONS:
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Budget Information: <input type="checkbox"/> Budgeted <input type="checkbox"/> Non Budgeted <input type="checkbox"/> Amendment Required	Planning Commission	
	Parks and Recreation Board	
	Safari Island Advisory Board	
	Other	

**Safari Island Community Center
Bills and Applied Payments
December 2021**

Date	Transaction Type	Num	Memo/Description	Split	Amount
2nd Wind Exercise Equipment					
12/27/2021	Bill Payment (Check)	4129		0012 Cash - SI/RMSC	-176.13
12/21/2021	Bill	21-069625	Spin Bike Accessories	4023 6 COGS - Operating:COGS - Reg., Programs & Lessons	176.13
American Red Cross					
12/10/2021	Bill Payment (Check)	4100		0012 Cash - SI/RMSC	-256.00
11/24/2021	Bill	22389241	CPR/AED for Professional Rescuers	4041 Training & Education	256.00
Aquatic Technology Inc					
12/27/2021	Bill Payment (Check)	4130		0012 Cash - SI/RMSC	-403.30
12/17/2021	Bill	E19694	Fitness Hand Buoys	4023 6 COGS - Operating:COGS - Reg., Programs & Lessons	403.30
Boller, Bonnie					
12/17/2021	Bill Payment (Check)	4114		0012 Cash - SI/RMSC	-33.25
12/15/2021	Bill	2,001,641.00	Transfer from Adult monthly to employee membership	3043 Memberships	33.25
Bruce Weinzierl					
12/10/2021	Bill Payment (Check)	4101		0012 Cash - SI/RMSC	-16.80
12/02/2021	Bill	expl2.2.21	Travel to Home Depot	4043 2 Travel & Entertainment:Travel & Mileage	16.80
CD Products, INC					
12/10/2021	Bill Payment (Check)	4102		0012 Cash - SI/RMSC	-872.42
11/23/2021	Bill	78707	New Member Folders	4023 3 Operating Supplies:Office Supplies	872.42
12/17/2021	Bill Payment (Check)	4115		0012 Cash - SI/RMSC	-2,535.00
12/02/2021	Bill	78766	Graphics, Art, and signs for building	4029 1 Maintenance & Repairs:Building Repairs	2,535.00
Choice Electric					
12/17/2021	Bill Payment (Check)	4116		0012 Cash - SI/RMSC	-714.20
11/01/2021	Bill	20697	Power to front door	4029 1 Maintenance & Repairs:Building Repairs	714.20
Dan Montague - Petty Cash					
12/10/2021	Bill Payment (Check)	4103		0012 Cash - SI/RMSC	-21.43
12/03/2021	Bill	PC12.3.21	Paint Rollers	4023 2 Operating Supplies:Maintenance Supplies	21.43
12/17/2021	Bill Payment (Check)	4117		0012 Cash - SI/RMSC	-67.63
12/10/2021	Bill	pc121021		-Split-	67.63

	Date	Transaction Type	Num	Memo/Description	Split	Amount
	12/27/2021	Bill Payment (Check)	4131		0012 Cash - SI/RMSC	-70.87
	12/17/2021	Bill	PC121721	Birthday Party Supplies	4023 4 COGS - Operating:COGS - Birthday Parties	70.87
GK2 Promotions						
	12/17/2021	Bill Payment (Check)	4128		0012 Cash - SI/RMSC	-276.23
	12/13/2021	Bill	5881	T-shirts for Row Challenge Participants	4023 6 COGS - Operating:COGS - Reg., Programs & Lessons	276.23
Honor Trading Company						
	12/27/2021	Bill Payment (Check)	4132		0012 Cash - SI/RMSC	-49.84
	12/17/2021	Bill	121721	Pool Noodles for Aqua Class	4023 6 COGS - Operating:COGS - Reg., Programs & Lessons	49.84
Horizon Commercial Pool Supply						
	12/27/2021	Bill Payment (Check)	4133		0012 Cash - SI/RMSC	-1,992.66
	12/06/2021	Bill	211203203-EO Pump Room Supplies 2211122081-		4075 Chemicals/Pool Supplies	144.12
	12/01/2021	Bill	EO	Chemicals for pool	4075 Chemicals/Pool Supplies	1,676.93
	12/16/2021	Bill	21101206-EO	Pump Room Supplies	4029 2 Maintenance & Repairs:Pool Repairs	171.61
Innovative Office Solutions, LLC						
	12/10/2021	Bill Payment (Check)	4104		0012 Cash - SI/RMSC	-395.15
	11/19/2021	Bill	3562401	First Aid Supplies	4023 3 Operating Supplies:Office Supplies	8.24
	12/02/2021	Bill	3574560	Janitorial Supplies	4023 2 Operating Supplies:Maintenance Supplies	386.91
	12/17/2021	Bill Payment (Check)	4120		0012 Cash - SI/RMSC	-626.47
	12/09/2021	Bill	IN3583076	Janitorial Supplies	4023 2 Operating Supplies:Maintenance Supplies	626.47
Maas, Brian						
	12/17/2021	Bill Payment (Check)	4121		0012 Cash - SI/RMSC	-257.72
	12/06/2021	Bill	2,001,636.00	Moved out of Waconia (Family Monthly)	3043 Memberships	257.72
Minneapolis Oxygen Company						
	12/10/2021	Bill Payment (Check)	4105		0012 Cash - SI/RMSC	-19.62
	11/30/2021	Bill	85260	Helium for Birthday Parties	4023 4 COGS - Operating:COGS - Birthday Parties	19.62
Pole, Jane						
	12/10/2021	Bill Payment (Check)	4106		0012 Cash - SI/RMSC	-144.67
	11/30/2021	Bill	2,001,634.00	Membership transfer, Sr. Annual	3043 Memberships	144.67

	Date	Transaction Type	Num	Memo/Description	Split	Amount
Pole, Michael						
	12/10/2021	Bill Payment (Check)	4107		0012 Cash - SI/RMSC	-153.28
	11/30/2021	Bill	2,001,633.00	Membership Transfer	3043 Memberships	153.28
Puetz, Aryanna						
	12/17/2021	Bill Payment (Check)	4122		0012 Cash - SI/RMSC	-120.00
	12/06/2021	Bill	1,076,319.00	Reimbursement for Lifeguard class	3041 10 Regist., Programs & Lessons:Prograr Revenue	120.00
Refund - Jamie Drahos						
	12/17/2021	Bill Payment (Check)	4123		0012 Cash - SI/RMSC	-71.94
	12/15/2021	Journal Entry	vd chk 3829	To void check # 3829 to Jamie Drahos; never received, sent to old address, moved over a year ago	-Split-	71.94
Rink Management Services Corporation						
	12/10/2021	Bill Payment (Check)	4108		0012 Cash - SI/RMSC	-5,917.00
	11/06/2021	Bill	104975	Buffer Split Charge from Bill #110621jg	4046 Advertising & Promotion	11.00
	11/06/2021	Bill	105014	Quick Books Monthly Subscription	4053 Subscript., Memberships & Dues	180.00
	11/06/2021	Bill	105068	HR Classroom; Split Charge from Bill #110621th	4004 3 Contracted Payroll:Payroll Expenses	45.24
	11/08/2021	Bill	105137	Paychex Invoice 2021110301; WK 45 Processing	4004 3 Contracted Payroll:Payroll Expenses	344.84
	11/12/2021	Bill	105039	Verizon Billing 10/13 - 11/12/21; Invoice #9892713986	-Split-	143.74
	11/12/2021	Bill	105160	Screening Services; Paychex Statement #24281195	4004 3 Contracted Payroll:Payroll Expenses	53.91
	11/12/2021	Bill	105183	Monitoring Services; Paychex Statement #24281195	4004 3 Contracted Payroll:Payroll Expenses	79.92
	11/12/2021	Bill	105198	Timeclock Services; Paychex Statement #24281195	4004 3 Contracted Payroll:Payroll Expenses	297.24
	11/17/2021	Bill	104959	Principal Health Insurance Invoice 11/17/21; Billing Period 12/1 - 12/31/21	-Split-	11.11
	12/01/2021	Bill	104914	December 2021 Management Fee	4069 1 Contract Services:Management Fees	4,750.00
	12/17/2021	Bill Payment (Check)	4124		0012 Cash - SI/RMSC	-22,314.36
	11/06/2021	Bill	105053	Getty and Adobe	-Split-	27.98
	12/02/2021	Bill	104997	Payroll Period Ending 11/28/21, Pay Date 12/6/21; WK 49	4004 1 Contracted Payroll:Payroll	22,286.38
	12/27/2021	Bill Payment (Check)	4134		0012 Cash - SI/RMSC	-28,437.06
	12/17/2021	Bill	105299	Payroll WK 51; Pay Date 12/20/21	4004 1 Contracted Payroll:Payroll	22,963.94
	12/01/2021	Bill	105340	Paychex Invoice #2021111701; WK 47 Processing Fes	4004 3 Contracted Payroll:Payroll Expenses	333.36
	01/01/2022	Bill	105267	January 2022 Management Fees	4069 1 Contract Services:Management Fees	4,750.00
	12/06/2021	Bill	105367	Paychex Invoice #2021120201; WK 49 Processing Fees	4004 3 Contracted Payroll:Payroll Expenses	389.76
Steven, Julia - Expense Reimbursement						
	12/10/2021	Bill Payment (Check)	4109		0012 Cash - SI/RMSC	-14.00
	11/29/2021	Bill	exp12.09.21	Mileage to and from the bank	4043 2 Travel & Entertainment:Travel & Mileage	14.00
	12/17/2021	Bill Payment (Check)	4125		0012 Cash - SI/RMSC	-14.00
	12/06/2021	Bill	exp12.06.21	Mileage to and from bank	4043 2 Travel & Entertainment:Travel & Mileage	14.00
	12/27/2021	Bill Payment (Check)	4135		0012 Cash - SI/RMSC	-14.00

Date	Transaction Type	Num	Memo/Description	Split	Amount
12/13/2021	Bill	Exp 12.13.21	to and from bank 12/13 - 12/17/21	4043 2 Travel & Entertainment:Travel & Mileage	14.00
SVL Service Corporation					
12/10/2021	Bill Payment (Check)	4110		0012 Cash - SI/RMSC	-768.00
11/24/2021	Bill	SVC-103289	Emergency call for Lap Pool Motor	4029 2 Maintenance & Repairs:Pool Repairs	768.00
The Lifeguard Store, INC					
12/10/2021	Bill Payment (Check)	4111		0012 Cash - SI/RMSC	-509.20
11/24/2021	Bill	1136099	Flex Boards, mask, resuscitator	4075 Chemicals/Pool Supplies	368.70
11/29/2021	Bill	1136580	Lifeguard Uniforms	4085 Uniforms	140.50
12/27/2021	Bill Payment (Check)	4136		0012 Cash - SI/RMSC	-165.00
12/22/2021	Bill	1143587	Pool Supplies	4075 Chemicals/Pool Supplies	165.00
Waconia Ice Arena					
12/17/2021	Bill Payment (Check)	4126		0012 Cash - SI/RMSC	-2,752.97
11/19/2021	Bill	ST 10.31.21	Sales & Use tax payment for October 2021	-Split-	2,752.97
Watson Company					
12/10/2021	Bill Payment (Check)	4112		0012 Cash - SI/RMSC	-139.62
11/25/2021	Bill	121210	Ice Cream for Concessions	-Split-	139.62
12/27/2021	Bill Payment (Check)	4137		0012 Cash - SI/RMSC	-218.36
12/15/2021	Bill	121720	Ice cream for concessions	-Split-	218.36
Weirauch, Melissa					
12/10/2021	Bill Payment (Check)	4113		0012 Cash - SI/RMSC	-257.72
11/29/2021	Bill	2,001,628.00	Thought Family Monthly Membership was on hold, have not used in over a year	3043 Memberships	257.72
Welcome Neighbor Inc					
12/17/2021	Bill Payment (Check)	4127		0012 Cash - SI/RMSC	-255.00
12/01/2021	Bill	15557	Welcome packet sent to new homeowners	4046 Advertising & Promotion	255.00
Total Expenses:					\$ 71,050.90



REQUEST FOR CITY COUNCIL ACTION

Meeting Date:		January 18, 2022					
Item Name:		Amusement Machine Permits					
Originating Department:		Administration					
Presented by:		Ann Meyerhoff					
Previous Council Action (if any):							
Item Type (X only one):		Consent	X	Regular Session		Discussion Session	
RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED <i>(Include motion in proper format.)</i>							
Adopt Resolution 2022-26, Approving Amusement Machine Permits							
EXPLANATION OF AGENDA ITEM <i>(Include a description of background, benefits, and recommendations.)</i>							
Applications and payment for amusement machines to be placed at the Waconia Ice Arena have been submitted by Intensity Rental Properties LLC and Mendota Valley Amusement.							
Attachments:							
1. 2226res permits.doc							
FINANCIAL IMPLICATIONS:				ADVISORY BOARD RECOMMENDATIONS:			
Funding Sources & Uses:							
Budget Information:				Planning Commission			
_____ Budgeted				Parks and Recreation Board			
_____ Non Budgeted				Safari Island Advisory Board			
_____ Amendment Required				Other			

**CITY OF WACONIA
RESOLUTION NO. 2022-26**

RESOLUTION APPROVING AMUSEMENT PERMIT APPLICATIONS

WHEREAS, Applications for new and renewal permits have been received in the Office of the City Clerk for the following licenses:

Amusement Machines/Billiard, Pool, and Game Tables

WHEREAS, Licenses will be issued contingent upon receipt of appropriate fees and certificates of insurance as required by City Ordinance.

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Waconia hereby approves Amusement Permits, for the term February 1, 2022 through January 31, 2023.

Adopted by the City Council of the City of Waconia this 18th day of January, 2022.

Kent Bloudek, Mayor

ATTEST: _____
Jackie Schulze, City Clerk

M/ _____	Bloudek	_____
	Pierson	_____
S/ _____	Leo	_____
	Waldron	_____
	Sorensen	_____



REQUEST FOR CITY COUNCIL ACTION

Meeting Date:		January 18, 2022					
Item Name:		Gift Card Donations					
Originating Department:		Administration					
Presented by:		Shane Fineran					
Previous Council Action (if any):							
Item Type (X only one):		Consent	X	Regular Session		Discussion Session	
RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED <i>(Include motion in proper format.)</i>							
Adopt Resolution 2022-27, Accepting Donation and Directing Use							
EXPLANATION OF AGENDA ITEM <i>(Include a description of background, benefits, and recommendations.)</i>							
<p>During the holiday season, municipal staff received gift donations from area businesses. The City Council should accept these donations and direct use for staff and city council use.</p> <ol style="list-style-type: none"> 1. Everson's Hardware Hank - \$25 Waconia Chamber Bucks 2. Homecare Professionals Inc. -\$100 Starbucks gift card 							
Attachments:							
1. 2227res_Gift_Card_Donation.doc							
FINANCIAL IMPLICATIONS:				ADVISORY BOARD RECOMMENDATIONS:			
Funding Sources & Uses:							
None							
Budget Information:				Planning Commission			
_____ Budgeted				Parks and Recreation Board			
X Non Budgeted				Safari Island Advisory Board			
_____ Amendment Required				Other			

**CITY OF WACONIA
RESOLUTION NO. 2022-27**

**RESOLUTION ACCEPTING GIFT CERTIFICATE DONATIONS FOR ORGANIZATIONAL
USE**

WHEREAS, the City of Waconia is generally authorized to accept contributions of real and personal property pursuant to Minnesota Statutes Sections 412.21 and 465.03 for the benefit of its citizens and is specifically authorized to accept gifts and requests for the benefit of facilities, services and the development of programs to benefit residents pursuant to Minnesota Statutes Section 471.17; and

WHEREAS, the following persons and/or entities have offered to contribute the items set forth below to the City:

<u>Name of Donor</u>	<u>Item</u>	<u>Value</u>
Everson's Hardware Hank	Waconia Chamber Bucks	\$25
Homecare Professionals Inc.	Starbucks card	\$100

WHEREAS, these donations have been contributed for the benefit of residents within the City's corporate limits either alone or in cooperation with others, as allowed by law; and

WHEREAS, the City Council hereby finds that it is appropriate to accept the contributions offered.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF WACONIA, MINNESOTA, AS FOLLOWS:

1. The contribution described above is hereby accepted and acknowledged with gratitude.
2. Said contribution shall be used for the designated purposes of providing meal or beverages for staff or city council meeting use.
3. That the Finance Director is hereby directed to issue receipts to the donor acknowledging the City's receipt of the donor's contribution.

Adopted by the City Council of the City of Waconia this 18th day of January, 2022.

Kent Bloudek, Mayor

ATTEST: _____
Jacqueline Schulze, City Clerk

M/_____	Bloudek	_____
	Pierson	_____
S/_____	Leo	_____
	Sorensen	_____
	Waldron	_____



REQUEST FOR CITY COUNCIL ACTION

Meeting Date:		January 18, 2022					
Item Name:		Return to Work for Firefighter Robbie Clark					
Originating Department:		Administration					
Presented by:		Jackie Schulze					
Previous Council Action (if any):		Resolution 2021-234: Extending Firefighter Leave of Absence					
Item Type (X only one):		Consent	<input checked="" type="checkbox"/>	Regular Session		Discussion Session	
RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED <i>(Include motion in proper format.)</i>							
Adopt Resolution 2022-28 Authorizing Firefighter Return to Work							
EXPLANATION OF AGENDA ITEM <i>(Include a description of background, benefits, and recommendations.)</i>							
<p>Firefighter Robbie Clark was granted a leave of absence in the summer of 2021 and extended through the end of the year in October of 2021. At this time, Robbie is prepared to come back to the Waconia Fire Department.</p> <p>Robbie's return is effective immediately and contingent upon successful completion and City's evaluation of the physical exam, which he is in the process of getting done.</p>							
Attachments:							
1. 2228res_Clark_RTW.docx							
FINANCIAL IMPLICATIONS:				ADVISORY BOARD RECOMMENDATIONS:			
Funding Sources & Uses:							
Budget Information:				Planning Commission			
<input checked="" type="checkbox"/> Budgeted				Parks and Recreation Board			
<input type="checkbox"/> Non Budgeted				Safari Island Advisory Board			
<input type="checkbox"/> Amendment Required				Other			

**CITY OF WACONIA
RESOLUTION NO. 2022 - 28**

**RESOLUTION APPROVING
FIREFIGHTER RETURN TO WORK**

WHEREAS, Firefighter Robbie Clark was granted a leave of absence through the end of 2021;

WHEREAS, Firefighter Clark is requesting to return to work, effective immediately, pending the necessary return to work requirements including a physical evaluation, which he will coordinate with Chief Sorensen; and

NOW, THEREFORE, BE IT RESOLVED, that, the City Council hereby approves the return to work of Firefighter Robbie Clark, as of January 18, 2022.

Adopted by the City Council of the City of Waconia this 18th day of January, 2022.

Kent Bloudek, Mayor

ATTEST: _____
Jackie Schulze, Assistant Administrator/Clerk

M/ _____	Bloudek	_____
	Sorensen	_____
S/ _____	Pierson	_____
	Leo	_____
	Waldron	_____



REQUEST FOR CITY COUNCIL ACTION

Meeting Date:	January 18, 2022
Item Name:	Hire of Office Assistant - Flex Position
Originating Department:	Administration
Presented by:	Jackie Schulze

Previous Council Action (if any):

Item Type (X only one):	Consent	<input checked="" type="checkbox"/>	X	Regular Session	<input type="checkbox"/>	Discussion Session	<input type="checkbox"/>
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RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED (Include motion in proper format.)

Adopt Resolution 2022-29, Authorize Hire of Office Assistant - Flex Position

EXPLANATION OF AGENDA ITEM (Include a description of background, benefits, and recommendations.)

At the Monday, January 3, 2022 City Council Meeting the Council authorized moving Office Assistant - Flex David Havlik to the Office Assistant - Planning position. This created a vacancy in the Office Assistant - Flex position. After many internal discussions, Jennifer Friesen, current Finance Clerk, is interested in stepping into the Office Assistant - Flex position.

The Office Assistant - Flex assists with the City's customer service and front desk coverage, meeting room rentals, and elections. Previously this position also helped with permitting, but because of the addition of the Office Assistant - Planning, this will not be as necessary in this role. We are also confident that given Jennifer's background from her previous position and her marketing degree, she can be of assistance with some Human Resources and Communications items in the future. Also, given that Jennifer has been doing Accounts Payable work with the Finance team for the past year and a half, she will be able to assist with this in the future, if needed.

This move will be effective February 28, 2022.

Attachments:

1. [2229res Office_Assistant_Flex- _Resolution.docx](#)

FINANCIAL IMPLICATIONS:	ADVISORY BOARD RECOMMENDATIONS:	
Funding Sources & Uses:	Personnel Committee: Recommend	
Budget Information:	Planning Commission	
<input checked="" type="checkbox"/> Budgeted	Parks and Recreation Board	
<input type="checkbox"/> Non Budgeted	Safari Island Advisory Board	
<input type="checkbox"/> Amendment Required	Other	

**CITY OF WACONIA
RESOLUTION NO. 2022 - 29**

**RESOLUTION AUTHORIZING
OFFICE ASSISTANT - FLEX HIRE**

WHEREAS, on January 3, the City Council authorized the hire of David Havlik for the Office Assistant – Planning position; and

WHEREAS, this has created a vacancy in the Office Assistant – Flex position; and

WHEREAS, staff recommend Finance Clerk Jennifer Friesen move into the Office Assistant – Flex position;

WHEREAS, Jen will continue at the step closest to her current pay (Step 5) and continue to accrue pro-rated PTO and holidays based on the hours worked in this role; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Waconia authorizes the hire of Jennifer Friesen for the Office Assistant - Flex position, effective February 28, 2022.

Adopted by the City Council of the City of Waconia this 3rd day of January, 2022.

Kent Bloudek, Mayor

ATTEST: _____
Jackie Schulze, City Clerk

M/ _____

S/ _____

Bloudek	_____
Pierson	_____
Leo	_____
Sorensen	_____
Waldron	_____



REQUEST FOR CITY COUNCIL ACTION

Meeting Date:	January 18, 2022
Item Name:	Recruitment Authorization - Accountant
Originating Department:	Administration
Presented by:	Jackie Schulze

Previous Council Action (if any):

Item Type (X only one):	Consent	<input checked="" type="checkbox"/>	Regular Session	<input type="checkbox"/>	Discussion Session	<input type="checkbox"/>
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RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED *(Include motion in proper format.)*

Authorize Recruitment for Accountant Position

EXPLANATION OF AGENDA ITEM *(Include a description of background, benefits, and recommendations.)*

As part of the 2022 budget, the City added a 35-hour per week Accountant position, anticipated to start in July of 2022. With the move of Finance Clerk Jen Friesen to the Office Assistant - Flex position, this creates an immediate vacancy in the Finance department. City staff have had several conversations on what the biggest, immediate needs are for the Finance department. Instead of backfilling Jen's position immediately, City staff and the Personnel Committee recommend recruiting for the Accountant position and increasing the hours of this position from 35 to 40 hours.

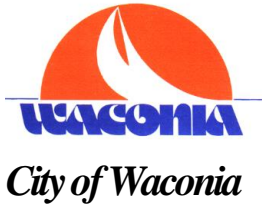
This position will initially focus on payroll, accounts payable, and capital projects while freeing up some of the time of the Finance Director and Assistant Finance Director to focus on higher level projects and items, and be less in the day-to-day. We anticipate this position starting in mid-March of 2022 and will take time in the spring and summer to evaluate this role and how it aligns with the Finance Clerk position.

These changes account for a \$8,850 change to the budget, which would be reflected through a budget amendment and using a small amount of fund balance. Please note this dollar amount does assume a 24-hour/week Finance Clerk starting in August, and may be different depending on the spring and summer analysis that will take place.

Attachments:

1. [Accountant Job Description .pdf](#)

FINANCIAL IMPLICATIONS:	ADVISORY BOARD RECOMMENDATIONS:	
Funding Sources & Uses:	Personnel Committee; Recommend	
Budget Information:	Planning Commission	
_____ Budgeted	Parks and Recreation Board	
_____ Non Budgeted	Safari Island Advisory Board	
<u> X </u> Amendment Required	Other	



City Hall
201 S. Vine Street
Waconia, MN 55387
Phone: (952) 442-2184
FAX: (952) 442-2135
www.waconia.org

Public Services
300 10th Street
Waconia, MN 55387
(952) 442-2615
(952) 442-4963

Parks and Recreation
1600 Community Drive
Waconia, MN 55387
(952) 442-0695
(952) 442-0692

Fire Department
26 S Maple St
Waconia, MN 55387
(952) 442-2316
(952) 442-2198

JOB DESCRIPTION

Accountant
Job Title

Finance
Department

January 2022
Date

Non-Exempt
Status

Director of Finance
Title of Immediate Supervisor

F/T, 40 hours per week
FT/PT Hours per Week

Work Direction Exercised: None

PRIMARY OBJECTIVES:

Primarily responsible for adhering to internal control standards, strong accounting processing and oversight, data mining and fiscal reporting needs, on-going e-government focus, and delivering city services with a strong attention to internal and external customer service detail.

This position will be responsible for the processing, reconciliation and reporting of payroll and accounts payable functions. In addition, this position will assist the Finance Director in the preparation of the annual Comprehensive Financial Report, completion of work papers for annual audit, assisting with enterprise software projects, and assisting other departments in analyzing financial data and adherence to internal control policy and procedures.

ESSENTIAL DUTIES AND RESPONSIBILITIES:

With the highest regard for internal control, process payroll in a timely manner. Assure accurate accounting distribution, governmental reporting/compliance, and preparation of necessary deductions. Update payroll system by adding new employees and terminated employee information, salary, tax, and voluntary deduction changes. Maintain vacation and sick leave records.

Ensure proper documentation and authorization exists for execution of payroll and leave processing according to checklist of tasks and expectation of supervisor. Organize and maintain payroll files in an efficient manner. Communicate through supervisor for information relating to benefits to ensure accurate deductions are applied.

Perform accounts payable and payment processing functions according to policy and accounting procedures. Provide a high level of professional customer service to vendors and customers. Ensure accuracy and use available technology to its highest capacity.

Capitalize fixed assets and complete yearly fixed asset count. Perform physical inventories of assets when needed and maintain the fixed asset database according to GAAP. Utilize the fixed asset property schedules in order to generate annual liability insurance renewal provides for adequate coverage.

Manage developer escrow account balances and prepare check requests when refunds are requested by developer or management team.

Post, balance, calculate, file and reconcile accounts. Assist in the preparation trial balances and perform general fund and enterprise fund accounting activities when needed.

Prepare audit work papers in a timely manner and to auditor requirements according to GAAP.

Assist as needed with accounts receivable functions including general and utility billing. Provide trouble shooting techniques to other finance staff members in the course of daily business.

Assist Director with software implementation, upgrades, and maintenance throughout the City to continue enhancement of the overall enterprise software system for continued improvements to the City's e-government services.

Performs responsible administrative and professional duties involved in budgeting, maintaining and building financial reports, analysis, and forecasting. Prepares monthly and other periodical financial statements showing the City's current financial position and results of operations. Analyzes data in report format, submits reports, and makes recommendations on findings to Director.

Gathers, analyzes, prepares, and summarizes recommendations for financial plans, trended future requirements, and operating forecasts. Assist other departments in preparing and analyzing financial data.

Assist in maintenance of complete and accurate records and be familiar with records management and retention schedules.

Collect, organize, and maintain department data, projects and other files. File documentation, by scanning, in the City's central filing system and electronic records management system according to approved Records Retention Schedule and other approved procedures.

ESSENTIAL KNOWLEDGE SKILLS AND ABILITIES:

Extensive knowledge of spreadsheet, database (prefer SQL server) and word processing software.

Extensive experience with fund accounting software and related municipal modules.

Ability to provide excellent customer care to all city customers.

Ability to perform accurate and detailed calculations.

Ability to perform complex bookkeeping/accounting work requiring a high degree of concentration, organization, and judgment in interpreting practices and procedures.

Ability to work under own initiative with minimal supervision. Ability to research issues and problem solve.

Ability to operate a personal computer and other office equipment, including telephone, fax machine, binding machine, 10-key calculator, postage machine and copier.

Ability to type with speed and accuracy.

Ability to provide considerable attention to detail.

Ability to maintain the highest level of confidentiality.

Ability to work cooperatively within the department and with other departments as needed to complete assigned tasks.

Ability to communicate with supervisors, staff, customers, vendors, and the general public in an effective, tactful, and courteous manner, both verbally and in writing.

Normal working hours: Monday – Thursday 7:30 a.m. - 4:30 p.m. and Friday 7:30 a.m. – 11:30 a.m. May periodically be required to work extended hours, weekends, or holidays.

Ability to attend work punctually and regularly.

OTHER DUTIES AND RESPONSIBILITIES:

Perform other duties and assume responsibilities as apparent or assigned.

MINIMUM QUALIFICATIONS, EDUCATION AND/OR EXPERIENCE:

High School diploma or GED.

Bachelors Degree in accounting and/or finance field.

Significant experience in a municipal finance department setting.

Successful completion of aptitude testing covering areas outlined in this job description.

Extensive knowledge of accounting terms, principles and practices.

Significant experience with a municipal financial and accounting software program(s)

Ability to socially, physically and mentally perform all essential functions under working conditions as described herein.

May be required to successfully complete a criminal background check.

Ability to read, write, speak, and comprehend the English language.

All new hires and/or appointments require that they are subject to City employment policies. This position is considered as Non-Exempt status.

REQUIRED CERTIFICATES, LICENSES AND REGISTRATIONS:

Must possess and maintain valid Minnesota Class D Driver's License.

DESIRED QUALIFICATIONS:

Ability to think progressively and within an e-government perspective.

Knowledge/experience in payroll processing.

Working knowledge of electronic records management.

Customer Service experience.

PHYSICAL DEMANDS:

The physical demands that are described herein are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform essential functions.

The employee is frequently require to sit and talk or hear, use hands to finger handle or feel objects, tools, or controls; and reach with hands and arms.

Considerable ability is required to use large motor skills to bend, stoop, crouch, kneel, push and pull.

Considerable ability is required to use fine motor skills to manipulate objects requiring manual dexterity.

The employee may be required to lift and/or move objects up to 25 pounds for tasks such as carrying supply boxes and equipment and emptying recycle bins. The employee may be required to lift and/or move up to 50 pounds for tasks such as folding tables, lifting and moving files.

Specific vision abilities required by this position include close vision, distant vision, peripheral vision and ability to focus as it relates to such tasks as reading manuals, processing paperwork, and viewing a computer monitor.

Some ability work with and around irritants, fumes, and cleaning supplies.

WORK ENVIRONMENT:

The work environment characteristics described herein are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform essential functions.

The employee is required to sit for extended periods at a desk or personal computer, using repetitive movements and small motor skills. The noise level is quiet to moderate.

NON-DISCRIMINATION POLICY:

The City of Waconia will not discriminate against or harass any employee or applicant for employment because of race, color, creed, religion, national origin, sex, disability, age, marital status, sexual orientation or status with regard to public assistance.

(These examples are intended only as illustrations of various types of work performed and are not necessarily all-inclusive. The job description is subject to change as the needs of the employer and requirements of the job change. The City of Waconia reserves the right to change and/or eliminate any and all job duties if needed.)



REQUEST FOR CITY COUNCIL ACTION

Meeting Date:	January 18, 2022
Item Name:	Call Public Hearing - Establishment of TIF District No. 5
Originating Department:	Administration
Presented by:	Shane Fineran

Previous Council Action (if any):

Item Type (X only one):	Consent	<input checked="" type="checkbox"/>	X	Regular Session	<input type="checkbox"/>	Discussion Session	<input type="checkbox"/>
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RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED *(Include motion in proper format.)*

Adopt Resolution 2022-30, Calling a public hearing to the development program for the Waconia development district, the proposed establishment of tax increment financing district no. 5 therein and the proposed adoption of a tax increment financing plan therefor.

EXPLANATION OF AGENDA ITEM *(Include a description of background, benefits, and recommendations.)*

The city is in receipt of two municipal subsidy applications and fees related to redevelopment of existing parcels in the community. The parcels are located at 233 Olive Street S and 53 Main St E. Both are seeking assistance through the use of Tax Increment Financing (TIF) via the creation of a redevelopment district.

Tax Increment Financing is a tool local governments have in supporting job creation, tax base revitalization, infrastructure development, removal of blight, and housing needs in the community. At a high level, the use of tax increment financing is the dedication or use of tax increment that is generated by private investment. TIF does not utilize general property taxes or that of the community as a whole and does not increase taxes of other parcels to support these efforts.

The first parcel located at 233 Olive Street S currently houses the American Legion and recently received land use approvals by the City Council for redevelopment of the site into 47 units of market rate apartments.

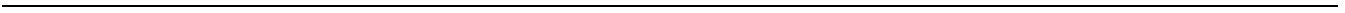
The second site located at 53 Main St E. currently houses the Old National Bank and is seeking to redevelop the parcel into 67 units of apartments and ground floor commercial space, likely housing the existing bank use. No land use applications have been submitted to date for this parcel.

To date, upon application for municipal subsidy, the city had inspections performed on both sites to determine if the buildings met statutory definitions of being substandard and qualification for tax increment financing through the create of a redevelopment TIF district. Upon approval of the resolution a public hearing will be scheduled and a TIF financing plan will be developed for review and consideration by the City Council at the public hearing. No commitment of creation of the district or the use of TIF is contemplated at this point in the process.

Attachments:

1. [2230res_TIF_5_public_hearing.doc](#)

FINANCIAL IMPLICATIONS:	ADVISORY BOARD RECOMMENDATIONS:	
Funding Sources & Uses:		
Applicant Fees		
Budget Information:	Planning Commission	
_____ Budgeted	Parks and Recreation Board	
X Non Budgeted	Safari Island Advisory Board	
_____ Amendment Required	Other	



**CITY OF WACONIA
RESOLUTION NO. 2022-30**

**RESOLUTION CALLING A PUBLIC HEARING ON THE PROPOSED
ADOPTION OF A MODIFICATION TO THE DEVELOPMENT PROGRAM
FOR THE WACONIA DEVELOPMENT DISTRICT, THE PROPOSED
ESTABLISHMENT OF TAX INCREMENT FINANCING DISTRICT NO. 5
THEREIN AND THE PROPOSED ADOPTION OF A TAX INCREMENT
FINANCING PLAN THEREFOR**

BE IT RESOLVED by the City Council (the "Council") of the City of Waconia, Minnesota (the "City"), as follows:

1. Public Hearing. This Council shall meet on March 7, 2022, at approximately 6:00 p.m., to hold a public hearing on the following matters: (a) the proposed adoption of a Modification to the Development Program for the Waconia Development District, (b) the proposed establishment of Tax Increment Financing District No. 5 within the Waconia Development District, and (c) the proposed adoption of a Tax Increment Financing Plan relating thereto, all pursuant to and in accordance with Minnesota Statutes, Sections 469.124 through 469.133, both inclusive, as amended, and Minnesota Statutes, Sections 469.174 through 469.1794, both inclusive, as amended (collectively, the "Act").

2. Notice of Hearing; Filing of Program Modification and Plan. The City Administrator is hereby authorized to cause a notice of the hearing to be published, as required by the Act, and to place a copy of the proposed Modification to the Development Program and the proposed Tax Increment Financing Plan on file in the Administrator's Office at City Hall and to make such copies available for inspection by the public.

3. Consultation with Other Taxing Jurisdictions. The Administrator is hereby directed to mail a notice of the public hearing and a copy of the proposed Modification to the Development Program and the proposed Tax Increment Financing Plan to Carver County and Independent School District No. 110, informing those taxing jurisdictions of the estimated fiscal and economic impact of the establishment of the proposed tax increment financing district.

Adopted by the City Council of the City of Waconia this 18th day of January 2022.

Kent Bloudek, Mayor

ATTEST: _____
Jacqueline Schulze, City Clerk

M/ _____	Bloudek	_____
	Pierson	_____
S/ _____	Leo	_____
	Sorensen	_____
	Waldron	_____



REQUEST FOR CITY COUNCIL ACTION

Meeting Date:	January 18, 2022
Item Name:	Community Growth Partnership Initiative Grant
Originating Department:	Administration
Presented by:	Shane Fineran

Previous Council Action (if any):

Item Type (X only one):	Consent	<input checked="" type="checkbox"/>	Regular Session	<input type="checkbox"/>	Discussion Session	<input type="checkbox"/>
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RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED *(Include motion in proper format.)*

Adopt Resolution 2022-31, Carver County CDA 2022 Community Growth Partnership Initiative Community Development Grant Application.

EXPLANATION OF AGENDA ITEM *(Include a description of background, benefits, and recommendations.)*

Annually the Carver County CDA makes grant funds available to cities to help support affordable housing, job creation, and tax base revitalization in local communities. This is a competitive process in which cities may receive up to \$100,000 to support local projects. In the past, the city has been successful in obtaining these funds to support affordable housing creation in the community.

During this period of application solicitation, staff have identified a job creation and tax base revitalization project that maybe competitive in the grant process. The project seeks to acquire and renovate the former VFW site located at 125 1st St W into a family dining establishment featuring a full bar and music venue. The planned investment is over \$700,000 and would add 30 to 35 jobs to the community. This project seeks to further enhance the offerings of the downtown core of our community that include a wide variety of services in a walkable and accessible downtown. The grant application is seeking \$75,000 in funds from the program.

The CGPI program does not require any financial commitment by the city, but we rather act like a fiscal agent or pass through of the grant funds. If the project is awarded funds, they are reimbursed to the project owners upon submittal of validated eligible expenses. The program application period is typically only once per year and applications are due in January. As part of the application a resolution of support is required by the city.

Attachments:

1. [2231res_Carver_CDA_CGPI.doc](#)
2. [2022 Community Development application.Iron Tap.v4.pdf](#)

FINANCIAL IMPLICATIONS: Funding Sources & Uses: None	ADVISORY BOARD RECOMMENDATIONS:
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Budget Information: _____ Budgeted <input checked="" type="checkbox"/> Non Budgeted _____ Amendment Required	Planning Commission	
	Parks and Recreation Board	
	Safari Island Advisory Board	
	Other	

**CITY OF WACONIA
RESOLUTION NO. 2022-31**

**Carver County CDA 2022 Community Growth Partnership Initiative Community
Development Grant Application**

WHEREAS, the City of Waconia has identified a proposed project within the city that meets the Carver County Community Development Agency (CDA) Community Growth Partnership Initiative Grant Program’s purpose and criteria; and

WHEREAS, the City has established a Redevelopment Plan of which the proposed project is a component; and **OR WHEREAS**, the City has identified a project that will create living wage jobs; and

WHEREAS, the City has the capacity and capability to ensure the proposed project will be completed and administered within the Community Growth Partnership Initiative predevelopment program guidelines; and

WHEREAS, the City has the legal authority to apply for financial assistance; and

WHEREAS, the City is supportive of affordable housing and of the CDA’s mission to improve the lives of Carver County residents through affordable housing and community development.

NOW THEREFORE BE IT RESOLVED that the City of Waconia approves the application for funding from the Carver County CDA Community Growth Partnership Initiative Grant program.

BE IT FURTHER RESOLVED that if the application is approved by the Carver County CDA, Shane Fineran, the City Administrator, is hereby authorized to execute such agreements as are necessary to receive and use the funding for the proposed project.

Adopted by the City Council of the City of Waconia this 18th day of January, 2022.

Kent Bloudek, Mayor

ATTEST: _____
Jacqueline Schulze, City Clerk

M/_____	Bloudek	_____
	Pierson	_____
S/_____	Leo	_____
	Sorensen	_____
	Waldron	_____



Community Growth Partnership Initiative 2022 Community Development Grant Application

Project name:

Applicant:

Contact name:

Contact email and phone:

Authorized official for contract execution (name and title):

Project Summary

Local business owners Bria & Gregory James and Trisha & Jared DeWolf are working to acquire property 125 1st St. W, formerly housing the VFW of Waconia, which was last operational as a club venue in 2018. Plans are to renovate space of 6800 sq. feet into a new restaurant and continue to revitalize downtown Waconia. The new space will consist of a full service family friendly restaurant and bar with planned live music entertainment.

To complete the project, it will require obtaining the property, interior demolition, construction, facade improvements, SAC fees (pending amount), equipment, mechanical and electrical upgrades.

The new restaurant/bar will provide another essential business for Waconia in our vibrant downtown. The project principles currently operate other successful service industry establishments in the downtown core and this will add another much needed community gathering establishment that seeks to maintain and enhance the vibrancy of the downtown core of the community.

It will also provide 30-35 new jobs in Waconia/ Carver County.

1. Request Details

1a. Request Amount:

1b. Proposed activities/use of CGPI funds (check all applicable boxes)

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Acquisition | <input checked="" type="checkbox"/> Utilities | <input type="checkbox"/> Sidewalks/Trails |
| <input checked="" type="checkbox"/> Lighting | <input type="checkbox"/> Site Work | <input checked="" type="checkbox"/> Demolition |
| <input type="checkbox"/> Landscaping | <input type="checkbox"/> Roadways | <input type="checkbox"/> Stormwater |
| <input checked="" type="checkbox"/> Streetscaping | <input type="checkbox"/> Soil Remediation | <input type="checkbox"/> Environmental cleanup |
| <input type="checkbox"/> Parking | <input type="checkbox"/> Relocation | |
| <input checked="" type="checkbox"/> Other (list) <input type="text" value="Mechanicals, electrical upgrades"/> | | |

2. Readiness Details

Milestone	Commitment date or anticipated date	Amount
<i>Construction Timeline</i>		
Market/feasibility study		Not Applicable
Land use approvals (including any zoning, comprehensive plan amendments, variances, etc.)	3/1/22	Not Applicable
Environmental approvals	2/15/22	Not Applicable
Construction bids	2/15/22	Not Applicable
Permits	3/15/22	Not Applicable
Site control	1/10/22	Not Applicable
Financial closing	3/15/22	Not Applicable
Clean up/demolition	4/1/22	Not Applicable
Begin construction	4/15/22	Not Applicable
Project completion	6/15/22	Not Applicable
<i>Project Funding Sources</i>		
First mortgage	1/10/2022	305,000
General partner cash/other equity	1/10/22 and 3/15/22	120,000
Syndication proceeds		
Deferred loans		
TIF		
Sales tax/energy rebates		
Deferred developer fee		
Met Council TOD/LCDA/TBRA		
DEED Redevelopment/Cleanup		
DEED MIF/JCF		
Carver County CDA CGPI		75,0000
City	3/15/22	149,999
Other:		
Other:		

2a. Total development cost: Percentage of funds committed:

2b. List other sources of funds requested or considered but not obtained for the project and explain why.

Personal and partner contributions total: \$120,000

HomeTown Bank Loan: Will hold mortgage for property as of 1/10/22. Will be primary financing bank for buildout and business financing.

City of Waconia Revolving loan: Will apply

3. Project Details

3a. Site address(es)

3b. Site size

3c. Number of parcels

3d. Parcel ID(s):

Housing

3e. Are there any existing housing units on the site: Yes No

If so, how many?

Are any of the units vacant? Yes No N/A

3f. Are any of the existing units affordable? Yes No

3g. Housing Units *(Indicate the number of housing units planned in the project)*

	Total Units	New Units	Retained Units	Owner-Occupied	Rental Units	Market Rate	Affordable Units	Affordability Level (% AMI)
Single Family	0							
Townhome	0							
Apartments/Condos	0							
Duplexes	0							
Other (Specify)								

3h. Is there a mechanism to ensure long term affordability? Yes No

3i. If yes, please describe the type and length of affordability.

NA

3j. Who is the target population for these units (seniors, families, etc.)?

NA

3k. If the project is a rental project, is the owner willing to accept Tenant Based Rental Assistance (Housing Choice Voucher or other tenant based rental assistance)?

Yes No

Commercial

3l. Are there existing commercial buildings on the site: Yes No If so, how many?
 Are any of the units vacant? Yes No N/A

3m. Commercial square footage (Indicate the square footage and jobs planned for the project)

	Total square footage	New square footage	Retained square footage	New FTEs	Retained FTEs	Jobs with wages ≥\$17/hour
Retail/commercial	6800		6800	30+		20+
Industrial						
Office						
Other (Specify)						

3n. List and describe any businesses that will be located on the site. Identify any that are Small Business Enterprises (SBE), Women Business Enterprises (WBE), Minority Business Enterprises (MBE) or Veteran owned.

The business to occupy the space will be a family friendly restaurant on the main level with a separate bar on the lower level.

This will be a small business, local family and women owned business.

4. Project Costs

4a. Current taxable market value of the site:

4b. Anticipated taxable market value after redevelopment:

4c. Development costs
 Acquisition cost: Total development cost:

4d. Proposed cost of activities/use of CGPI funds

Activity	Total Cost	CGPI Request
Acquisition	305,000	25,000
Utilities		
Sidewalks/Trails		
Lighting		
Site Work	300,000+	50,000
Demolition		
Landscaping		
Roadways		
Stormwater		
Streetscaping		
Soil Remediation		
Environmental cleanup		
Parking		
Other		
Other		

5. Narrative

5a. Describe how this project fits into the city's goals and the Redevelopment Plan, it's public purpose, any extraordinary costs, and the community's need for the project. Describe other projects completed/underway as part of the Redevelopment Plan or in the area and how this project may catalyze additional (re)development.

This project will continue to revitalize downtown Waconia by rehabilitating and renovating a current building that in the past has only been used by a subset of the population and has been vacant for the past 4 years. Our project will bring this building back to life and provide a new place for citizens of Waconia and surrounding areas to dine and gather. The extraordinary costs we may endure relate to the age of the building, outdated mechanicals, and the unknowns we may come upon during construction. We believe Waconia is in great need of another full service family friendly restaurant in town due to the rapid growth in the community. The draw of the downtown is the walkability to shop, dine, and receive services. The downtown core is seeing increasing interest in redevelopment

5b. Provide a brief history of the site including previous uses, slum or blight, activities, contamination and other attempts at redevelopment.

The history of this property include a site for the VFW gatherings dating back to 1948 when they obtained the building. Prior to that, although dates are unknown, we have gathered it was a former butcher shop as well as the location of one of the first schools in Waconia.

5c. How does your project create a more livable community? Include information about the mix of uses, proximity to transit, reduced/shared parking, resiliency, walkable neighborhoods, green space, increased density, benefits to businesses/organizations, and community building elements.

Another restaurant in downtown Waconia enhances the community by providing a service to many local residents particularly those living in apartment complexes nearby, as well as, the many homes and neighborhoods in the downtown area. It brings people from other areas of the community, as well as, outside of the community to the downtown area which in turn helps other businesses nearby and the Waconia community in general. Increasing the amount of places to visit in downtown Waconia, increases the time people will stay and the amount of money they will spend while visiting. And with additional shops, restaurants, etc, it will increase the likelihood of people to come back to visit

5d. Describe any contamination on the project site or in the redevelopment plan area. Was a Response Action Plan developed? Will the project be cleaning up any contaminated soils, hazardous waste or other elements? If so, describe the type of clean up.

There is no contamination concerns we are aware of. Based upon the age of the building and plans for interior demolition, there maybe items that need remediation like asbestos. There is not a response action plan. Any clean up with renovation will be done properly.

5e. Describe how the project is maximizing the potential of the site.

The project will fully utilize a large building that is currently vacant in the core of downtown, directly adjacent to the movie theatre. It also takes advantage of ample public parking behind and adjacent to the site. Current zoning allows for the planned use.

5f. Will any existing residents, tenants or businesses be temporarily or permanently relocated as a part of this project? If so, please describe how relocation will occur.

None.

5g. Describe the biggest challenges or extraordinary costs facing your project and explain why the project is not feasible without CGPI funds. Please include any challenges not previously described such as status of site control, financing, rents and returns, tenants/leasing and other items pertinent to a successful project.

This will be a small locally owned and operated business. When dealing with aged and existing buildings such as this, many updates to meet new building, fire, and accessibility codes are required, adding additional costs or challenges not associated with new builds.

Attachments

- 1. City Resolution (sample is attached and must contain all provisions listed)
- 2. Location map
- 3. Site plan and elevations (if available)
- 4. Existing conditions photos
- 5. Redevelopment plan (if it is a redevelopment project)
- 6. Relocation plan (if applicable)
- 7. Copies of any funding commitments
- 8. Evidence of site control
- 9. Development pro forma that includes such things as sources and uses, financing assumptions of any debt, debt service coverage ratio, loan to value, loan to cost, percent equity and cash on cash return.

Sample Resolution

WHEREAS, the City of _____ has identified a proposed project within the city that meets the Carver County Community Development Agency (CDA) Community Growth Partnership Initiative Grant Program's purpose and criteria; and

WHEREAS, the City has established a Redevelopment Plan of which the proposed project is a component; and **OR** WHEREAS, the City has identified a project that will create living wage jobs; and

WHEREAS, the City has the capacity and capability to ensure the proposed project will be completed and administered within the Community Growth Partnership Initiative predevelopment program guidelines; and

WHEREAS, the City has the legal authority to apply for financial assistance; and

WHEREAS, the City is supportive of affordable housing and of the CDA's mission to improve the lives of Carver County residents through affordable housing and community development.

NOW THEREFORE BE IT RESOLVED that the City of _____ approves the application for funding from the Carver County CDA Community Growth Partnership Initiative Grant program.

BE IT FURTHER RESOLVED that if the application is approved by the Carver County CDA, _____, the _____, is hereby authorized to execute such agreements as are necessary to receive and use the funding for the proposed project.



REQUEST FOR CITY COUNCIL ACTION

Meeting Date:	January 18, 2022
Item Name:	Authorize Acquisition of Excessive Slope Mower
Originating Department:	Public Services
Presented by:	Craig Eldred

Previous Council Action (if any):

Item Type (X only one):	Consent	X	Regular Session		Discussion Session	
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RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED *(Include motion in proper format.)*

Adopt Resolution 2022-32; Authorizing Acquisition of Excessive Slope Mower from Trenchers Plus in the Amount of \$53,950.00 and Appurtenant Safety Equipment, CIP Project 658

EXPLANATION OF AGENDA ITEM *(Include a description of background, benefits, and recommendations.)*

As part of the 2022 Capital Improvement Plan staff established and was approved by City Council to acquire an excessive slope mower with a funding amount of \$60,000.00. Staff conducted research on unit and models available and went through the process of demonstrating the unit on one of its storm pond slopes. With reconstruction improvements and development occurring it adds both wet and dry basin features to meet storm water requirements. One example of this units use is to limit woody growth in the dry basins, which may ultimately clog drain tile systems required to work effectively.

The slope mower will allow one single staff member to operate the mower without being in equipment on steep slopes to manage weed infestations and small woody growth to maintain the basins effectively. This will also eliminate the need to wait until we have dry periods to complete the maintenance activities. Presently, staff wait until late July or August to complete these types of activities.

Staff obtained two model unit prices similar in the abilities and results we were looking for. They are provided in the table below.

Vendor	Model	Price
Trenchers Plus	RC MowerTK-52XP	\$53,950.00
Tri-State Bobcat	Green Climber LV300	\$58,310.00
Appurtenant Safety Equipment	Staff Acquired	\$1,000

Appurtenant Safety Equipment includes the following: unit number, tie-down straps specific to unit and Personal Protective Gear for Operator when working in proximity of unit operation such chaps, eye and face shield. Staff recommends acquisition of the RC Mower from Trenchers Plus in the amount of \$53,950.00 and allocation of funds for safety equipment up to \$1,000.00.

Attachments:

1. [2232res Excessive Slope Mower Res.doc](#)
2. [Excessive Slope Mower Att I.pdf](#)
3. [Excessive Slope Mower Att II.pdf](#)

FINANCIAL IMPLICATIONS: Funding Sources & Uses:	ADVISORY BOARD RECOMMENDATIONS:
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Budget Information:	Planning Commission
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_____ Budgeted	Parks and Recreation Board	
_____ Non Budgeted	Safari Island Advisory Board	
_____ Amendment Required	Other	

**CITY OF WACONIA
RESOLUTION NO. 2022-32**

**RESOLUTION AUTHORIZING APPROVAL OF ACQUISITION OF EXCESSIVE SLOPE
MOWER FROM TRENCHERS PLUS IN THE AMOUNT OF \$53,950.00 AND APPURTENANT
SAFETY EQUIPMENT, CIP PROJECT 658**

WHEREAS, one of the City’s Priorities “Infrastructure – managing, maintaining, and improving our current and future physical assets”; and

WHEREAS, community growth and requirements to maintain storm water features to reduce unnecessary maintenance impacts supports this equipment acquisition; and

WHEREAS staff acquired pricing on two units as provided in the table below; and

Vendor	Model	Price
Trenchers Plus	RC Mower TK-52XP	\$53,950.00
Tri-State Bobcat	Green Climber LV300	\$58,310.00
Appurtenant Safety Equipment	Staff Acquired	\$1,000.00

WHEREAS, staff recommend acquisition of the RC Mower TK-52XP from Trenchers Plus for \$53,950.00 and staff acquisition of safety equipment up to \$,1000.00.

NOW, THEREFORE, BE IT RESOLVED That the City Council of the City of Waconia hereby authorizes approval of acquisition of excessive slope mower from Trenchers Plus in the Amount of \$53,950.00 and appurtenant safety equipment, CIP Project 658.

Adopted by the City Council of the City of Waconia this 18th day of January, 2022.

Kent Bloudek, Mayor

Attest: _____
Jackie Schulze, City Clerk

M/ _____	Bloudek	_____
	Pierson	_____
S/ _____	Leo	_____
	Waldron	_____
	Sorensen	_____

TrenchersPlus

Underground Equipment Specialists

2309 W Hwy. 13 Burnsville, MN 55337

Ph: 952-890-6000 Fax: 952-890-4563

www.trenchersplus.com

November 29, 2021

City of Waconia
310 10th Street E.
Waconia, MN 55387
Attn: Brian Buetow

In line with our conversations, we are pleased to quote you the following **MN State Bid contract number 188871** equipment:

1- New RC Mower Model TK-52XP Slope Mower



TK-52XP Tracked 52" rotary mower, 50 degrees max slope

Height 49.5"

Width 78" Overall

Cutting Width 52"

Weight 1790 Lbs.

Tracks 9" Wide

Gas Engine 29 HP

Remote control

Retail Price

\$67,438.00

20% Discount off Retail

(\$13,488.00)

Special Price

\$53,950.00

***Sales Tax and Freight not included**

We appreciate the opportunity and looks forward to serving your future equipment needs.

Sincerely,

**Monty Woolf
Trenchers Plus, Inc.
612-916-0275 Mobile**



Product Quotation

Quotation Number: 39231D039274
Date: 2021-11-15 16:39:46

Ship to	Bobcat Dealer	Bill To
CITY OF WACONIA Attn: BRIAN BUETOW 201 VINE ST WACONIA, MN 55387 Phone: (612) 205-4527 Email: bbuetow@waconia.org	Tri-State Bobcat Inc, Burnsville, MN 1200 HWY 13 E BURNSVILLE MN 55337-2214 Phone: (952) 894-0894 Fax: (952) 894-5759 ----- Contact: Mark LaVigne Cellular: 612-240-2595 E Mail: mark@tristatebobcat.com	CITY OF WACONIA Attn: BRIAN BUETOW 201 VINE ST WACONIA, MN 55387 Phone: (612) 205-4527

Description	Part No	Qty	Price Ea.	Total
GREEN CLIMBER LV300 WITH FLAIL MOWER MODEL TXL-115		1	\$58,310.00	\$58,310.00
GREEN CLIMBER LV600 WITH FLAIL MOWER MODEL UT- 125		1	\$87,710.00	\$87,710.00
Total of Items Quoted				\$146,020.00
Dealer P.D.I.				\$0.00
Freight Charges				\$0.00
Dealer Assembly Charges				\$0.00
Quote Total - US dollars				\$146,020.00

Notes:

All prices subject to change without prior notice or obligation. This price quote supersedes all preceding price quotes.

Customer Acceptance:

Purchase Order: _____

Authorized Signature:

Print: _____ Sign: _____ Date: _____



REQUEST FOR CITY COUNCIL ACTION

Meeting Date:	January 18, 2022
Item Name:	Site Plan Amendment - 96 8th Street
Originating Department:	Community Development
Presented by:	Lane Braaten

Previous Council Action (if any):

Item Type (X only one):	Consent	X	Regular Session		Discussion Session	
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RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED (Include motion in proper format.)

Adopt Resolution 2022-33, Approving the proposed Site Plan Amendment to expand the footprint of the remaining unbuilt building at 96 8th Street.

EXPLANATION OF AGENDA ITEM (Include a description of background, benefits, and recommendations.)

BACKGROUND:

Applicant: Ed Flaherty/Lariat Companies, Inc.
Owner: Lariat Companies, Inc.
Address(es): 96 8th Street
P.I.D. #: 753700060
Zoning Districts: I-1, Industrial Park District

REQUEST:

The City has received a Site Plan Amendment from Ed Flaherty for phase III of their development plan. Specifically, the applicant is requesting to increase the overall square footage of the proposed 3rd building from 5,200 square feet to 8,400 square feet, which would include 4,800 square feet of warehouse use and 3,600 square feet of storage. The 2018 approval identified the 3rd building as a self-storage building only.

APPLICABLE ORDINANCE PROVISIONS:

1. Section 900.05 – District Regulations, Subd. 2.J. – I-1, Industrial Park District
2. Section 900.06 – Supplementary Regulations, Subd. 9 – Architectural Design Standards
3. Section 900.07 – Landscaping and Fencing
4. Section 900.08 – Performance Standards
5. Section 900.09 – Off-Street Parking, Loading, and Access Regulations
6. Section 900.10 – Sign Regulations
7. Section 900.12 - Administration, Enforcement and Procedures, Subd. 10 - Site Plan Review

EXISTING CONDITIONS/IMPROVEMENTS TO DATE:

1. 2011 Site Plan & Design Review Approval – mini-storage facility including 10 overall structures. Only 4 of the structures were built (see attached location map).
2. 2018 Site Plan Revision Approval – construction of two office/warehouse structures and one future self-storage building.

To date the property owner has constructed both office/warehouse structures.

SITE PLAN REVIEW

City Ordinance requires Site Plan Review “in order to further promote the safe and efficient use of land and to further enhance the value of property in the City.” City Ordinance requires Site Plan Review for any construction for which a building permit is required, except for construction of detached, single-family residential structures or structures accessory thereto.

EXISTING USE

The subject parcel is currently improved with four (4) self-storage buildings and two (2) office/warehouse structures. The subject parcel also has an 85-foot Northern Natural Gas Co. pipeline easement located in the

southeast portion of the property.

ZONING

The subject parcel is zoned I-1, Industrial Park District. Manufacturing and warehousing are permitted uses in this district. Offices, which are incidental to the principal use are permitted as an accessory use in the district.

LOT REQUIREMENTS

The I-1, Industrial Park District section of the City Ordinance states “The purpose of this district is to provide for higher quality employment areas within the City where light manufacturing and related compatible uses can be accommodated in a value enhancing park-like setting.”

Based on a review of the Site Plan dated 12/21 the proposed 8,400 square foot building meets all required setbacks and the improvements will not exceed the hardcover requirements stated in City Code.

SCREENING OF EQUIPMENT

Mechanical equipment, such as furnaces, air conditioners, elevators, transformers, and utility equipment, shall be screened, whether on the roof or mounted on the ground, with a screening material similar to or compatible with material used on the main structure.

The applicant has not indicated the location(s) of the future mechanical for the site. All future mechanical shall be screened per City Ordinance requirements.

OFF-STREET PARKING

The purpose of off-street parking regulation is to alleviate or prevent congestion of public streets, and to promote the safety and welfare of the public, by establishing minimum requirements for the off-street parking, loading and unloading of motor vehicles in accordance with the use to which the property is put.

The Planning Commission, at their regular meeting on January 6th, 2022 reviewed the existing parking and the proposed revisions and found the plan in compliance with City Code requirements.

The City’s off-street parking requirements are stated below for convenience.

City Ordinance requires the following parking requirements for a business office;

One (1) space per 200 square feet of gross floor area, but at least three (3) parking spaces.

City Ordinance requires the following parking requirements for a warehousing use:

One (1) space for each 1,000 square feet of floor area, plus one (1) space for each employee on maximum shift.

LANDSCAPING

Section 900.07, Subd. 2.A of the City Ordinance requires one (1) tree for every one thousand (1,000) square feet of total building floor area.

The expanded footprint of the third building would require 31 trees to be planted on site. The original landscape plan proposed 31 trees, which conforms to City Code requirements.

SIGNS

The applicant has not submitted any additional sign information for the proposed project. Future signage shall require a permit through the City and be formally reviewed at that time.

TRASH

City Ordinance requires “All trash and trash handling equipment to be stored within the principal structure, within an attached structure accessible from within the principal structure, or totally screened from eye-level view from public streets and adjacent residential properties. If accessory structures are proposed, they shall be constructed of the same building material as the principal structure.”

The original application included a trash enclosure on the eastern portion of the paved parking surfaces. The trash enclosure is currently located within the second building, which is conforming.

GRADING, DRAINAGE & UTILITIES

The Public Services Director and the City Engineer have reviewed the initial plans for the grading, drainage and utilities for the project. The City Engineers comments have been attached for review. Staff has included a condition of approval that the applicant revise plans in conformance with said staff comments prior to work

commencing on site.

DESIGN REVIEW – INDUSTRIAL DISTRICT

City Ordinance requires Design Review with the understanding that “the visual character and historic resources of the City are important attributes of its quality of life.” City Ordinance requires Design Review to be conducted as part of the Site Plan Review process.

The applicant intends to construct the building of the same, or similar materials, as the previous construction which is in compliance with the City design standards.

RECOMMENDATION

The Planning Commission, at their regular meeting on January 6th, 2022, reviewed all pertinent information and recommended approval of the Site Plan Amendment to allow the third and final building on site to be a mix of warehouse and storage with an overall square footage of 8,400 square feet via a 5-0 vote.

If the City Council approves the Site Plan Amendment, the Planning Commission and staff would recommend the approval upon the following conditions:

1. The proposed improvements shall be completed as approved and as conditionally revised by the Planning Commission and the City Council.
2. All applicable permits are applied for by the applicant with all supporting documentation and issued prior to the start of construction.
3. The items listed on the City Engineer comments dated December 22, 2021, shall be resolved to the satisfaction of the City Engineer, the Public Services Director and the Community Development Director prior to the issuance of the building permit for the third building.
4. The final landscaping shall be reviewed to ensure compliance with approvals.
5. Outdoor storage areas are not allowed in the I-1 zoning district.
6. The applicant has not indicated the location(s) of the future mechanical for the site. All future mechanical shall be screened per City Ordinance requirements.
7. All indirect costs with the building permit, review, and final plans associated with engineering and administrative costs shall be paid by the applicant/owner.
8. All future signage shall require a sign permit from the City of Waconia. The specific details regarding each sign shall be reviewed for conformance to City Ordinance requirements.
9. Improvements shall be consistent with Resolution 2018-152 except as has been modified by this amendment.

ATTACHMENTS:

- Attachment 1: Draft Resolution (2 pages)
- Attachment 2: Location Map (1 page)
- Attachment 3: 2018 Site Plan (1 page)
- Attachment 4: REVISED 2021 Site Plan (1 page)
- Attachment 5: Applicant Statement (2 pages)
- Attachment 6: Waconia Tech Center III – Parking Information (1 page)
- Attachment 7: City Engineer Comments dated December 22, 2021 (1 page)

Attachments:

1. [2233res SITE PLAN AMEND_96 8TH STREET_RES.docx](#)
2. [SITE PLAN AMEND_96 8TH STREET_ATTACH.pdf](#)

FINANCIAL IMPLICATIONS:		ADVISORY BOARD RECOMMENDATIONS:	
Funding Sources & Uses:			
Budget Information:		Planning Commission	
_____ Budgeted		Parks and Recreation Board	
_____ Non Budgeted		Safari Island Advisory Board	
_____ Amendment Required		Other	

**CITY OF WACONIA
RESOLUTION 2022-33**

**A RESOLUTION APPROVING A SITE PLAN AMENDMENT
FOR THE PROPERTY LOCATED AT 96 8TH STREET**

WHEREAS, Lariat Companies, Inc. (the “**Applicant**”), has submitted a Site Plan Amendment for the property located at 96 8th Street (the “**Property**”) pursuant to Section 900.12 of the City Zoning Code; and

WHEREAS, the Applicant received Site Plan and Design Review approval for the construction of two (2) freestanding industrial multi-tenant buildings, one (1) self-storage building, parking areas and other site improvements via Resolution 2018-152 on August 6th, 2018; and

WHEREAS, the Site Plan Amendment application requests the revision to the self-storage building, which increases the square footage of the building from 5,200 square feet to 8,400 square feet and allows for both warehouse and storage uses; and

WHEREAS, the Property is zoned I-1, Industrial Park District and the proposed warehouse use and storage use are a permitted uses within said district; and

WHEREAS, the Site Plan Amendment application complies with all City Ordinance requirements and Architectural Design regulations; and

WHEREAS, the Site Plan was discussed at the Planning Commission’s regular meeting on January 6th, 2022 in the Council Chambers at Waconia City Hall, 201 South Vine Street, Waconia, Minnesota and the Planning Commission recommended approval of the application via a 5-0 vote; and

WHEREAS, the Planning Commission and City staff recommend approval of the Site Plan Amendment application with the following conditions:

1. The proposed improvements shall be completed as approved and as conditionally revised by the Planning Commission and the City Council.
2. All applicable permits are applied for by the applicant with all supporting documentation and issued prior to the start of construction.
3. The items listed on the City Engineer comments dated December 22, 2021, shall be resolved to the satisfaction of the City Engineer, the Public Services Director and the Community Development Director prior to the issuance of the building permit for the third building.
4. The final landscaping shall be reviewed to ensure compliance with approvals.
5. Outdoor storage areas are not allowed in the I-1 zoning district.
6. The applicant has not indicated the location(s) of the future mechanical for the site. All future mechanical shall be screened per City Ordinance requirements.
7. All indirect costs with the building permit, review, and final plans associated with engineering and administrative costs shall be paid by the applicant/owner.
8. All future signage shall require a sign permit from the City of Waconia. The specific details regarding each sign shall be reviewed for conformance to City Ordinance requirements.
9. Improvements shall be consistent with Resolution 2018-152 except as has been modified by this amendment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Waconia hereby approves the Site Plan Amendment for the property located at 96 8th Street subject to the conditions, findings and recommendations of the Waconia Planning Commission stated above.

Adopted by the City Council of the City of Waconia this 18th day of January, 2022.

Kent Bloudek, Mayor

ATTEST: _____
Jackie Schulze, City Clerk

M/ _____

Bloudek _____

Leo _____

S/ _____

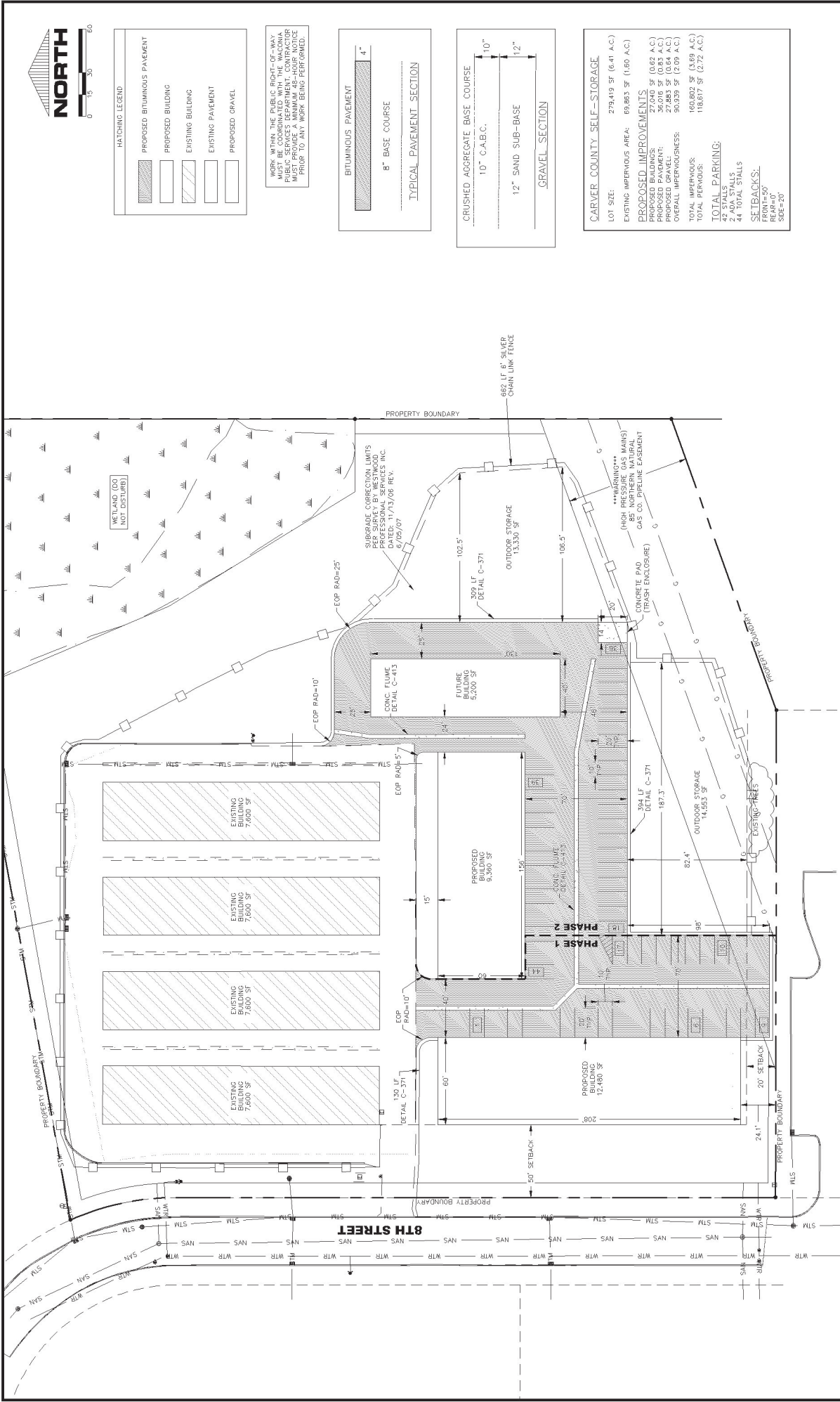
Pierson _____

Sorensen _____

Waldron _____

LOCATION MAP — 96 8TH STREET





HATCHING LEGEND

[Hatched pattern]	PROPOSED BITUMINOUS PAVEMENT
[White box]	PROPOSED BUILDING
[Diagonal lines]	EXISTING BUILDING
[Diagonal lines]	EXISTING PAVEMENT
[White box]	PROPOSED GRAVEL

WORK WITHIN THE PUBLIC RIGHT-OF-WAY MUST BE COORDINATED WITH THE WISCONSIN PUBLIC SERVICES DEPARTMENT, CONTRACTOR AND UTILITIES TO DETERMINE THE UTILITY GROUP TO ANY WORK BEING PERFORMED.



CARVER COUNTY SELF-STORAGE

LOT SITE: 279,419 SF (6.41 A.C.)
 EXISTING IMPERVIOUS AREA: 69,863 SF (1.60 A.C.)

PROPOSED IMPROVEMENTS

PROPOSED BITUMINOUS PAVEMENT	14,120 SF (0.69 A.C.)
PROPOSED BUILDING	36,016 SF (0.84 A.C.)
PROPOSED PAVEMENT	27,883 SF (0.64 A.C.)
CEP/ALL IMPERVIOUSNESS	96,339 SF (2.09 A.C.)

TOTAL IMPERVIOUS: 169,802 SF (3.69 A.C.)
 TOTAL PERIODS: 118,617 SF (2.72 A.C.)

TOTAL PARKING:
 42 STALLS
 44 TOTAL STALLS

SETBACKS:
 SETBACK=20'
 REAR=10'
 SIDE=20'

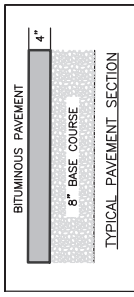
NO.	DATE	REVISIONS	DRAWN BY	DESIGN BY	CHECKED	PROJ. NO.	18120	ADVANCED ENGINEERING CONCEPTS 1300 INTERNATIONAL DRIVE FAU CLARE, WI 54701 TEL: 715-835-8200 FAX: 715-835-8200 COPYRIGHT 2018 AEC, LLC.	SITE PLAN	CARVER COUNTY SELF-STORAGE CITY OF WACONIA, MN	DWG. NAME 18120.P3 3	8
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HATCHING LEGEND

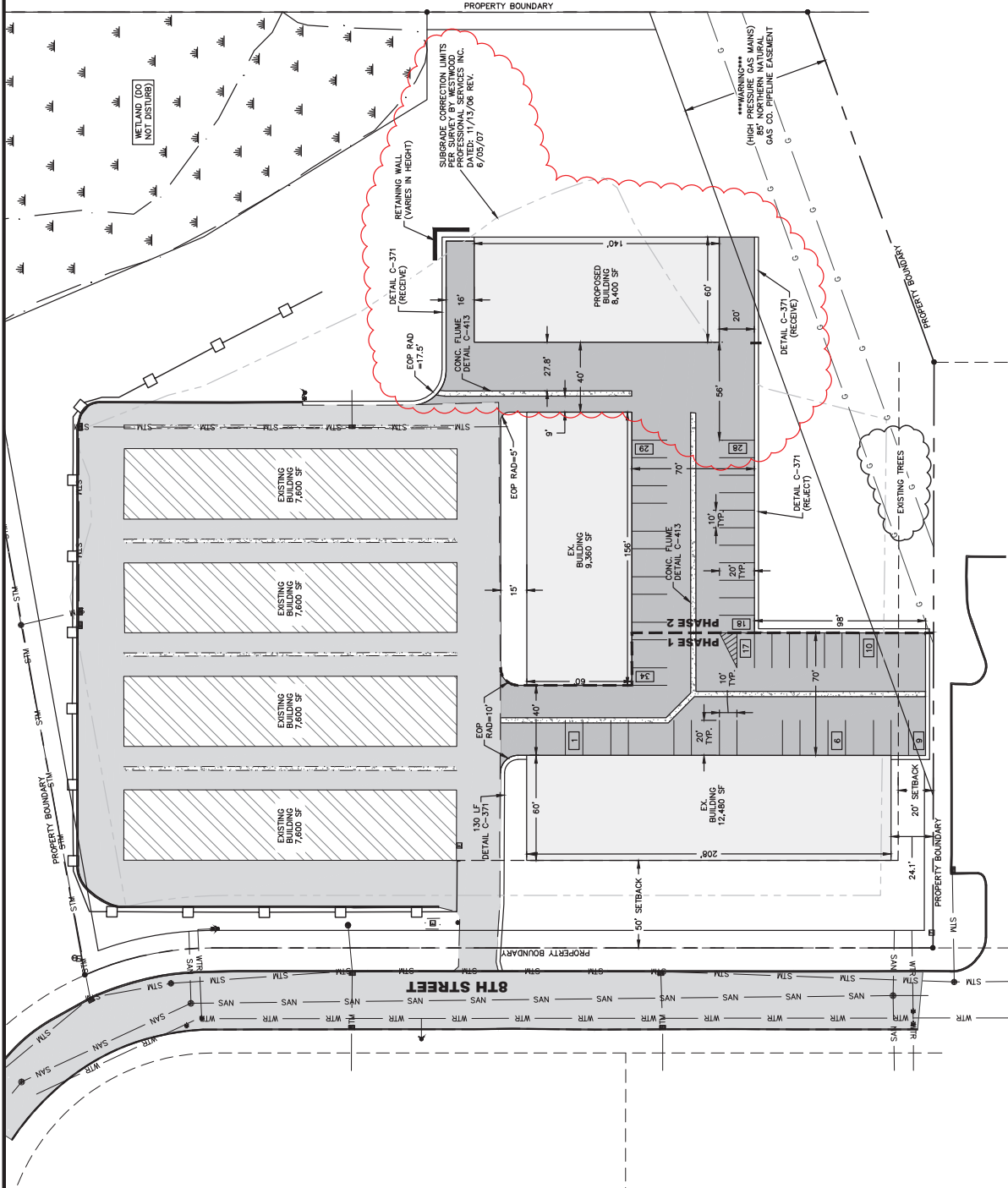
[Hatched pattern]	PROPOSED BITUMINOUS PAVEMENT
[Hatched pattern]	PROPOSED BUILDING
[Hatched pattern]	EXISTING BUILDING
[Hatched pattern]	EXISTING PAVEMENT
[Hatched pattern]	PROPOSED GRAVEL

WORK WITH THE DIBLIS BUREAU OF HIGHWAY PUBLIC SERVICES DEPARTMENT, CONTRACTOR MUST BE COORDINATED WITH THE WACONIA PUBLIC UTILITIES DEPARTMENT. CONTRACTOR SHALL VERIFY ALL UTILITIES PRIOR TO ANY WORK BEING PERFORMED.



CARVER COUNTY SELF-STORAGE

LOT SIZE:	278,419 SF (6.41 A.C.)
EXISTING IMPERVIOUS AREA:	89,883 SF (1.60 A.C.)
PROPOSED IMPROVEMENTS	
PROPOSED BUILDINGS:	30,240 SF (0.69 A.C.)
PROPOSED PAVEMENT:	32,490 SF (0.75 A.C.)
OVERALL IMPERVIOUSNESS:	62,730 SF (1.44 A.C.)
TOTAL IMPERVIOUS:	132,593 SF (3.04 A.C.)
TOTAL PAVEMENT:	146,826 SF (3.37 A.C.)
TOTAL PARKING:	
32 STALLS	
2 ADA STALLS	
34 TOTAL STALLS	
SETBACKS:	
FRONT=50'	
SIDE=20'	



NO.	1	12/21	DATE
	REVISIONS		
NO.	DRAFTED BY		DESIGN BY
	SIC		SPB
PROJ. NO.		18120	
ADVANCED ENGINEERING CONCEPTS 1380 INTERNATIONAL DRIVE EPHRATA, PA 17033 PH: 717-836-0370 info@aec-engineering.com copyright 2021 AEC LLC.			
SITE PLAN		CARVER COUNTY SELF-STORAGE CITY OF WACONIA, MN	
DWS NAME		18120 PG 3	
SITE		3	
DATE		12/2021	

Lane Braaten

From: Ed Flaherty <ed.flaherty@lariatcompanies.com>
Sent: Tuesday, September 21, 2021 5:13 PM
To: Lane Braaten
Subject: Waconia Tech Center III
Attachments: WACONIA TECH CENTER III.docx

Lane:

Thanks for meeting with me last Tuesday!

Here is my proposed narrative for the Planning Commission submittal.

Please provide feedback.

Our original plan for Waconia Tech Center I was one building of 12,400 square feet (8 – 1,550 square foot bays), 14' overhead doors, and 16' clear ceilings. Each space has its own bathroom, water, floor drain and heat!

The uses here are: plumber, manufacturer's rep with inventory (2), man cave, environmental company field garage, parts manufacturing (2 bays), and equipment rental. Only 120 square feet of office was built out.

Our original thinking was 25% office. It turns out this is small business incubator space and they have very little office need. Uses are primarily warehouse and vehicle overnight parking.

The second building, Waconia Tech Center II, is 9,350 square feet. 3,700 square feet is warehouse with water, heat and floor drains and 5,650 square feet of mini-storage. Warehouse uses are internet reseller with inventory, avionics distributor and service, disaster contractor, sheetrock contractor and man cave.

What we found was that most of these uses came out of their home/garage or friend's building. They were growing to the point they needed space and a presence that could present well to customers. Also, we found it rare any of the uses had full time help in the facility all day.

We have constructed 32 parking spaces through Phase II.

Phase III would be a building of 8,400 square feet. 4,800 square feet would be warehouse; 3,600 square feet would be storage.

I have attached a proof of parking which shows we are 10 spaces over parking per city code!

We are submitting a site plan revision as our original plan was approved for the Phase III building of 5,200 square feet. So, we are enlarging this building to 8,400 square feet!

We hope the attached site plan is self-explanatory for the 8,400 square foot proposed building!

To further understand, what we have created is a symbiotic community of small business where the tenants need a variety of space sizes to accommodate their growing business in a mini-storage business that allows them to "flex" their needs and gives them the ability to expand or contract with minimal disruption and manageable overhead costs!

Edward F. Flaherty
President
Lariat Companies, Inc.
8345 Crystal View Road
Suite 200
Eden Prairie, MN 55344
Telephone: 952-943-1404
Ed.flaherty@lariatcompanies.com

P.S. A revised site plan will follow!

WACONIA TECH CENTER III

City Parking Requirements

- 1 per 1,000 square feet of warehouse
- 1 per 200 square feet of office

Parking Codes

Park Spaces Required

Building I 12,400 total square feet

12,275 square feet warehouse
125 square feet office

12
2

Building II 9,350 total square feet

3,700 square feet warehouse
5,560 square feet storage

4
0

Building III 8,400 total square feet (PROPOSED)

4,800 square feet warehouse
3,600 square feet storage

5
0

TOTAL UNDER CITY PARKING REQUIREMENTS

23

TOTAL AS BUILT TO DATE PROVIDED

32

OVER PARKED PER CODE

9

Carver County Self Storage Review

December 22, 2021

This review is based on the plans dated 12/2/2021.

General Comments

1. The applicant will be required to update the Carver County Watershed Management Organization (CCWMO) approval and permitting for erosion control and stormwater management. A copy of any approvals or permits required should be submitted conditional to Final Site Plan approval.
2. The project is already covered under an existing General Construction Permit for Stormwater associated with Construction Activity (NPDES), so no additional permitting is necessary from the MPCA for stormwater runoff.
3. Stormwater management for the site was provided with the original development of the Pine Business Park Addition. All site runoff is directed to the wet retention pond located north of the property.
4. The applicant will be required to obtain a permit from Northern Natural Gas. The existing easement shall be labeled on the plan sheets along with a warning about high pressure gas mains being present.
5. Record drawings must be submitted upon completion of the project. Two hard copies and an electronic copy are required.

Site Plan

6. Drainage and Utility easements shall be provided to cover all watermain and hydrants, with the exception of service lines. The Site Plan as well as the plat should be updated to reflect this.

Grading and Erosion Control Plan

7. Perimeter erosion control measures should be installed by the contractor and inspected by the City prior to any other work. Contractor must provide 24-hour notice prior to inspection.
8. Retaining wall 4' or greater in height must be designed by a licensed Professional Engineer. Wall plans must be submitted for review and approval prior to construction. Also, a building permit is required from the City.

Utility Plan

9. The locations of hydrants, valves, and site fire suppression facilities shall be reviewed and approved by the Fire Chief and the Public Services Department prior to final approval.



REQUEST FOR CITY COUNCIL ACTION

Meeting Date:	January 18, 2022
Item Name:	Authorize City Staff to Obtain Pricing for ATV and Trailer
Originating Department:	Fire
Presented by:	Justin Sorensen

Previous Council Action (if any):

Item Type (X only one):	Consent	<input checked="" type="checkbox"/>	X	Regular Session	<input type="checkbox"/>	Discussion Session	<input type="checkbox"/>
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RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED *(Include motion in proper format.)*

Resolution 2021-36 Authorizing City Staff to Obtain Pricing for ATV and Trailer Replacement, CIP Adopt Project #336

EXPLANATION OF AGENDA ITEM *(Include a description of background, benefits, and recommendations.)*

As part of the 2022 CIP, the Fire Department has an ATV and Trailer replacement (Project #336) budgeted at \$50,000. In 2022, the current 2006 Polaris Ranger and trailer will be 15 years old. As identified in the Fire Department Capital Replacement Schedule, we anticipate replacing this piece of equipment at 15 years of age in order to update technology and assure that the equipment is serviceable and always ready to respond. Due to the low use of this equipment, cycling it out every 15 years should afford the city a high resale or trade-in value and allow the department to upgrade to any technology that was not available when the current piece of equipment was purchased. The ATV is used to respond to grass/wildland fires and rescue incidents on the lake or other areas that larger apparatus are not able to reach easily. One of the options that staff would like to research as an upgrade to this purchase is the addition of tracks to the vehicle. This will allow the vehicle to reach areas that our current ATV is not able to. Specifically, it would be able to reach all areas on area lakes when the snow depth is more than the current wheeled ATV is capable of.

Staff would like to get the City Council’s approval to obtain pricing early in the year to attempt to stay ahead of the volatile market on this type of equipment in order to stay under the projected budget of \$50,000. Staff has done some research and anticipates currently that the programmed budget amount is sufficient. Once quotes are obtained, staff will bring the project forward with the quotes for formal approval.

Attachments:

1. [2236res ATV and Trailer Replacement Res final.docx](#)

FINANCIAL IMPLICATIONS: Funding Sources & Uses:	ADVISORY BOARD RECOMMENDATIONS:	
Budget Information:	Planning Commission	
_____ Budgeted	Parks and Recreation Board	
_____ Non Budgeted	Safari Island Advisory Board	
_____ Amendment Required	Other	

CITY OF WACONIA

RESOLUTION NO. 2022-36

RESOLUTION AUTHORIZING CITY STAFF TO OBTAIN EQUIPMENT PRICING FOR FIRE ATV AND TRAILER REPLACEMENT

WHEREAS, replacement of the Fire Department’s ATV and Trailer is currently programmed in the 2022 CIP for \$50,000; and

WHEREAS, Fire Department Leadership agrees to ensure that their fleet of equipment is on an appropriate replacement schedule to assure technological compliance and serviceability of its equipment; and

WHEREAS, the City Council will have the opportunity to review the quotes received and ultimately approve or deny the project; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Waconia that City staff are authorized to obtain quotes for the replacement of the ATV and Trailer replacement project currently identified in the CIP as project #336.

Adopted and approved by the City Council of the City of Waconia this 18th day of January, 2022.

Kent Bloudek, Mayor

Attest: _____
Jackie Schulze, City Clerk

M/ _____	Bloudek	_____
	Sorensen	_____
S/ _____	Pierson	_____
	Leo	_____
	Waldron	_____



REQUEST FOR CITY COUNCIL ACTION

Meeting Date:	January 18, 2022
Item Name:	Fire Station Project - Construction Manager Selection
Originating Department:	Administration
Presented by:	Shane Fineran

Previous Council Action (if any):

Item Type (X only one):	Consent		Regular Session	X	Discussion Session	
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RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED *(Include motion in proper format.)*

Adopt Resolution 2022-34, Approving Contract with Kraus-Anderson for Construction Management Advisor Services

EXPLANATION OF AGENDA ITEM *(Include a description of background, benefits, and recommendations.)*

The city has been working toward the eventual construction of a new fire station to be located at 10451 10th St W. To date the city has worked with the BKV Group to complete a space and location analysis as well as completed preliminary site planning efforts. The next phase of the development of the this facility is completing final site planning design and the start of the development of construction design documents.

A critical component to the next step of this process, and to ensure that the city receives a quality project after construction, is the engagement with a firm to provide construction management services. Construction management is a method in project delivery in which the owner contracts with an experienced construction firm to provide design, estimating, bidding, scheduling, and supervision of the construction project. This is advantageous in a situation in which staff do not have the time or expertise to manage general contractors in a design bid format. In cooperation with the architect and owner, a construction management firm will assist in the design phase by providing estimating services, value engineering recommendations, and developing scope of work for bid packages, with a goal of controlling project cost. During construction the firm will be onsite managing all of the day to day construction activities and schedules of sub-contractors and acting as an agent of the owner in mediating and controlling change orders.

City staff and representatives met with three interested construction management firms to review the fire station project, discuss their approach, evaluate build and material methods, review early estimates, and discuss services. A group of two was returned for more discussion and evaluation by the city team and learn more about their fee structure.

Following these discussions the staff group is recommending that the city engage with Kraus-Anderson for construction management agent services. The group represented by Dustin Phillips as senior project manager, Dan Kjellberg as project manager, and Jake Walton as project superintendent, in the opinion of the staff group will provide a high level of experience and expertise in delivering a quality project for the community and organization. Kraus-Anderson has completed over thirty fire station projects around the state and also engaged with the city on the Ice Arena and Public Services projects in the past as well as worked with the school district on facility additions and new building projects in the district.

The fees proposed for these services are:
 Pre-construction: \$14,000
 Construction Supervision: \$462,091
 Construction Management Fee: \$191,400 (estimate based on hard construction costs)

At this phase of the project the city is only committing to the pre-construction services scope of the proposed fees. Once construction documents and work scopes are developed, and the project is bid and accepted by the city, then

the larger fee amounts will begin to be applicable.

Attachments:

1. [2234res_CM_Kraus_Anderson.doc](#)
2. [C132-2019 - KA Std \(6.23.21\) Waconia 01.10.22 DRAFT.docx](#)
3. [A232-2019 - KA Std \(6.23.21\) Waconia 01.10.22 DRAFT.docx](#)

<i>FINANCIAL IMPLICATIONS:</i>		<i>ADVISORY BOARD RECOMMENDATIONS:</i>	
Funding Sources & Uses: Fire Station Plan Development - Project 649			
Budget Information:		Planning Commission	
<input checked="" type="checkbox"/>	Budgeted	Parks and Recreation Board	
<input type="checkbox"/>	Non Budgeted	Safari Island Advisory Board	
<input type="checkbox"/>	Amendment Required	Other	

**CITY OF WACONIA
RESOLUTION NO. 2022-34**

**RESOLUTION APPROVING CONTRACT WITH KRAUS-ANDERSON FOR
CONSTRUCTION MANAGEMENT ADVISOR SERVICES**

WHEREAS, the City of Waconia currently has a fire station planned in the CIP for 2022; and

WHEREAS, the City has completed a space, needs, and location study for the new fire station;
and

WHEREAS, the City has engaged with BKV Group, Inc. to begin the site planning for the new facility; and

WHEREAS, as part of the development of the project and continued refinement of the project scope, scale, and facility elements it is recommended that engaging with a professional firm to provide pre-construction and construction management advisor services is in the best interest of the City; and

WHEREAS, Kraus-Anderson has been determined to be a qualified firm and is recommended to enter into a contract to provide these services for and on-behalf of the City per the terms identified in the contract documents; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Waconia hereby approves the contracts submitted by Kraus-Anderson for consideration, and authorizes the City Administrator to execute any necessary documents as reviewed by the City Attorney.

Adopted by the City Council of the City of Waconia this 18th day of January 2022.

Kent Bloudek, Mayor

Attest: _____
Jackie Schulze, City Clerk

M/ _____	Bloudek	_____
	Pierson	_____
S/ _____	Leo	_____
	Waldron	_____
	Sorensen	_____

DRAFT AIA® Document C132™ – 2019

Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the «10th» day of «January» in the year «2022»
(In words, indicate day, month and year.)

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

«City of Waconia» «»
«201 South Vine Street»
«Waconia, MN 55387»
«»

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

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

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

«City of Waconia- New Fire Station»
«10451 10th Street West»
«Waconia, MN 55387»

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

«BKV Group» «»
«222 North 2nd Street»
«Suite 101»
«Minneapolis, MN 55401»

The Owner and Construction Manager agree as follows.

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

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

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

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TABLE OF ARTICLES

1	INITIAL INFORMATION
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

«Construct a new fire station of approximately 28,000 SF on an approximately 4 acre site. Site is located at 10451 10th Street West, Waconia, MN 55387 »

§ 1.1.2 The Project's physical characteristics:

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

«See 1.1.1 above »

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

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

«\$11,600,000 »

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

.1 Design phase milestone dates, if any:

«Design Development – 12/13/2021 to 02/24/2022

Construction Documents – 02/25/2022 to 04/28/2022

Bidding – 05.05.2022 to 07.06.2022

»

.2 Construction commencement date:

«To Be Determined »

.3 Substantial Completion date or dates:

«To Be Determined »

.4 Other milestone dates:

«To Be Determined »

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

«Multiple Prime Bids »

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

«To Be Determined »

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

«To Be Determined »

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

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

«N/A »

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

«Shane Fineran, City Administrator »

«City of Waconia »

«201 South Vine Street »

«Waconia, MN 55387 »

«Phone: 952.442.3100 »

«Email: sfineran@waconia.org »

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

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

.1 Land Surveyor:

«Tim Sorenson »
«Bolton & Menk »
«2638 Shadow Lane #200 »
«Chaska, MN 55318 »
«Phone: 612-759-3580 »
«Email: tim.sorenson@bolton-menk.com »

.2 Geotechnical Engineer:

«To Be Determined »« »
« »
« »
« »
« »

.3 Civil Engineer:

«Jake Saulsbury »
« Bolton & Menk »
« 2638 Shadow Lane #200 »
«Chaska, MN 55318 »
«Phone: 952-448-8838 »
«Email: jake.saulsbury@bolton-menk.com »

.4 Contractors, as defined in Section 1.4:

«To Be Determined »

.5 Separate Contractors, as defined in Section 1.4:

«To Be Determined »

.6 Other, if any:

(List any other consultants retained by the Owner.)

«N/A »

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

«Mark Kotten »
«Kraus-Anderson Construction Company »
«501 South 8th Street »
«Minneapolis, MN 55404 »
«Phone: 612.747.5357 »
«Email: mark.kotten@krausanderson.com »

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

«N/A »

§ 1.1.14 The Construction Manager's consultants retained under Basic Services, if any:
(List name, legal status, address, and other contact information of any consultants.)

«N/A »

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

«N/A »

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

«N/A »

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

§ 1.3 The Construction Manager shall assist the Owner and Architect in establishing protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

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

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

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

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

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

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

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

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

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

§ 2.8.1 Commercial General Liability with policy limits of not less than « One Million Dollars » (\$ « 1,000,000 ») for each occurrence and « Two Million Dollars » (\$ « 2,000,000 ») in the aggregate for bodily injury and property damage.

§ 2.8.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than « 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, along with any other statutorily required automobile coverage.

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

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

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

§ 2.8.6 Reserved.

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

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

§ 2.10 If a centralized electronic document management system will be used on the Project, the Construction Manager shall be responsible for managing and maintaining the centralized electronic document management system.

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

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in this Article 3, and include usual and customary Preconstruction and Construction Phase Services. Services not set forth in this Article 3 are Supplemental or Additional Services. The Owner, Construction Manager, and Contractors may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently.

§ 3.2 Preconstruction Phase

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

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

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

§ 3.2.4 The Construction Manager shall prepare and periodically update the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that affect the Project's timely completion.

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

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

§ 3.2.7 The Construction Manager shall review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; sequencing for phased construction; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.2.24 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities per the agreed-upon terms, conditions and services related to the Owner's Sustainable Objective.

§ 3.3 Construction Phase

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

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

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

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

§ 3.3.5 The Construction Manager shall review and analyze the construction schedules provided by the Contractors to update the Project schedule, incorporating the activities of the Owner, Architect, and Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action to the Owner and Architect.

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

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

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

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

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

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

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

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

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

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

§ 3.3.12.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractors are entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; (2) results of subsequent tests and inspections; (3) correction of minor deviations from the Contract Documents prior to completion; and (4) specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.3.21.2 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information identified below:

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

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

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

Supplemental Services	Responsibility (Construction Manager, Owner or not provided)
§ 4.1.1.1 Measured drawings	Owner
§ 4.1.1.2 Tenant-related services	Owner, if required
§ 4.1.1.3 Commissioning	Owner, if required
§ 4.1.1.4 Development of a commissioning plan	Owner, if required
§ 4.1.1.5 Sustainable Project Services pursuant to Section 4.1.3	N/A

§ 4.1.1.6	Furniture, furnishings and equipment delivery, and installation coordination	Owner, if required
§ 4.1.1.7	Furniture, furnishings and equipment procurement assistance	N/A
§ 4.1.1.8	Assistance with site selection	N/A
§ 4.1.1.9	Assistance with selection of the Architect	Owner
§ 4.1.1.10	Furnish land survey	Owner, if required
§ 4.1.1.11	Furnish geotechnical engineering services	Owner
§ 4.1.1.12	Provide insurance advice	Owner, if required
§ 4.1.1.13	Provide supplemental Project risk analysis and mitigation strategies	Owner, if required
§ 4.1.1.14	Stakeholder relationships management	N/A
§ 4.1.1.15	Owner moving coordination	N/A
§ 4.1.1.16	Coordination of Owner's Separate Contractors	Construction Manager, if required
§ 4.1.1.17	Other Supplemental Services	N/A

§ 4.1.2 Description of Supplemental Services

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

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

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

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

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§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall provide, as a Supplemental Service, the Sustainability Services per the agreed-upon terms, conditions and services related to the Owner's Sustainable Objective. The Owner shall compensate the Construction Manager as provided in Section 11.2.

§ 4.2 Construction Manager's Additional Services

§ 4.2.1 The Construction Manager may provide Additional Services after execution of this Agreement, without invalidating this Agreement. Except to the extent services are required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.2 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

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

- 1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6. Services necessitated by sections 6.4 and 6.6 shall not be considered additional services;
- 2 Services necessitated by the enactment or revision of codes, laws, regulations or official interpretations after the date of this Agreement;
- 3 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's other consultants or contractors;
- 4 Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
- 5 Preparation for, and attendance at, a public presentation, meeting or hearing;

- .6 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- .7 Consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work; or
- .8 Assistance to the Initial Decision Maker.

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

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

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

§ 4.2.5 If the services covered by this Agreement have not been completed within «Seventeen » («17 ») months of the date of this Agreement, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

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

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

and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

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

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

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

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

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

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

§ 5.14 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.

§ 5.15 The Owner shall communicate with the Contractors and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

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

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

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

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

ARTICLE 6 COST OF THE WORK

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

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

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

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

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

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

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

ARTICLE 7 COPYRIGHTS AND LICENSES

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Construction Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

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

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

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

§ 8.2 Mediation

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

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

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

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

(Check the appropriate box.)

[] Arbitration pursuant to Section 8.3 of this Agreement

[« »] Litigation in a court of competent jurisdiction

[« »] Other: *(Specify)*

« »

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

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

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

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

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

§ 8.3.4 Consolidation or Joinder

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

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

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

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

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, the Construction Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner

shall pay the Construction Manager all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause.

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

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

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

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

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

§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Construction Manager by the Owner prior to the assignment.

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

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

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

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

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

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

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

ARTICLE 11 COMPENSATION

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

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

[OPTION] Lump Sum of \$14,000 _____ for 6 _____ months of Preconstruction Phase Services from the date of this Agreement. Should the Preconstruction Phase exceed the above period, the Construction Manager's time shall be billed at the hourly rates set forth in Section 11.5.

§ 11.1.2 For Construction Phase Services in Section 3.3:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

[OPTION] The Construction Manager shall be paid (i) a fee of 1.65% _____ % of the Cost of the Work defined in Article 6, (ii) the Construction Manager's costs for administrating and managing the Project at the hourly rates set forth in Section 11.5.1, (iii) the costs of Construction Manager's field labor for general conditions work at the hourly rates set forth in section 11.5.2, and (iv) any Reimbursable Expenses.

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

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

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

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

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

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

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

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

« »

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

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

[OPTION]

§ 11.5.1 Hourly Rates for administrative and management personnel:

<u>Personnel Category</u>	<u>Rate Per Hour</u>
Project Director	\$180____ / hour
Senior Project Manager	\$157____ / hour
Project Manager	\$130____ / hour
Estimator	\$133____ / hour
General Superintendent	\$141____ / hour
Project Superintendent	\$125____ / hour
Clerical	\$63____ / hour
Accounting	\$63____ / hour
Safety Director	\$123____ / hour
Quality Manager	\$134____ / hour
MEP Specialist	\$141/hour
Quality Manager	\$134/hour

The rates set forth above shall be in effect through December 31, 2023____. Thereafter the rates shall be increased by three____ percent (3____%) per year as of January 1 of each subsequent year.

For the Construction Manager’s costs for administrating and managing the Project referenced in Section 11.1.2(ii), the Construction Manager’s compensation shall be a stipulated sum of \$462,091.00_____.

This stipulated sum assumes a 11_____ -month schedule for the Construction Phase. Should the Construction Phase extend beyond 11_____ months, the Construction Manager is entitled to charge additional amounts at the hourly rates set forth above not to exceed the following: (i) \$9,701.00_____ per each additional week, or (iii) \$42,008.00_____ per each additional month.

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

<u>Personnel Category</u>	<u>Rate Per Hour</u>
Carpenter - Journeyman	\$95.48_____ / hour
Carpenter - Foreman	\$99.11_____ / hour
Carpenter – General Foreman	\$102.01_____ / hour
Laborer - Journeyman	\$87.00_____ / hour
Laborer - Foreman	\$91.35_____ / hour

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

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

§ 11.6 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Professional photography, and presentation materials requested by the Owner;
- .8 If required by the Owner, and with the Owner's prior written approval, the Construction Manager's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Construction Manager's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; .11 General conditions expenditures
- .12 Construction collaboration technology
- .13 General liability, professional liability, and umbrella liability insurance at a rate of 0.82% of the cost of the Construction Manager's Preconstruction and Construction Phase services; and
- .14 Other similar Project-related expenditures.

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants plus «one and sixty-five tenths » percent («1.65 » %) of the expenses incurred.

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

« »

§ 11.8 Payments to the Construction Manager

§ 11.8.1 Initial Payment

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

§ 11.8.2 Progress Payments

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

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

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

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

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

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

« »

- .3 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

[] AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:

(Insert the date of the E235-2019 incorporated into this agreement.)

« »

[] Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits identified in Section 4.1.2.)

« »

.4 Other documents:

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

« Exhibit A – Tool and Equipment Rental Rates »

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

[City of Waconia]

Kraus-Anderson® Construction Company

OWNER (Signature)

«Shane Fineran »
«City Administrator »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

«Terrance P. Hart »
«Vice President, Director of Operations »

(Printed name and title)

DRAFT AIA® Document A232™ - 2019

General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

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

«City of Waconia- New Fire Station »
«10451 10th Street West »
Waconia, MN 55387

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

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

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

«City of Waconia »« »
«201 South Vine Street »
Waconia, MN 55387

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

«BKV Group »« »
«222 North 2nd Street »
Suite 101
Minneapolis, MN 55401

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

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

This document is intended to be used in conjunction with AIA Documents A132™-2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

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

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

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

§ 1.1.4 The Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors, and by the Owner's own forces and Separate Contractors.

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

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

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

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

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

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

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

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

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

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

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

§ 1.3 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 may use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without written agreement to protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 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.

§ 2.3 Information and Services Required of the Owner

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

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

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

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

§ 2.3.5 Except as otherwise required by the Contract Documents, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made

in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 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.

§ 3.3 Supervision and Construction Procedures

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

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

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

§ 3.4 Labor and Materials

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

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. All work shall be performed in the best and most workmanlike manner to the highest standards for the work. Incompetent or careless workmanship shall not be permitted by the Contractor and will not be accepted.

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

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

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

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

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

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager, 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. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The quality required under this Warranty shall, as a minimum, equal all standards or requirements of form, function, durability, performance, type, strength, efficiency, service, appearance or other criteria established by the requirements of the Contract Documents.

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

§ 3.6 Taxes

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

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

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall provide and pay for all bonds that may be required to accomplish the Work, including any bonds required by municipalities.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. In any instance where requirements of the Contract Documents are in excess of, but not in conflict with or violation of requirements of a public authority, the provisions of the Contract Documents shall govern.

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

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- 1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- 2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances, except where installation is specified as part of the allowance in the Contractor Documents;
- 3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2; and
- 4 the supplier or subcontractor for an allowance item is subject to acceptance of the Owner, Architect, and Construction Manager; and the Contractor's Purchase Order or Subcontract Agreement shall bind the supplier or subcontractor to the requirements of the Contract Documents.

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

§ 3.9 Superintendent

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require

additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

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

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

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

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data, and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed

in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

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

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

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

§ 3.13 Use of Site

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

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

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

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

§ 3.14 Cutting and Patching

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

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

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

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

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

§ 3.19 EQUAL OPPORTUNITY IN EMPLOYMENT

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

§ 3.20 VERIFICATION OF FIELD CONDITIONS

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

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

§ 3.21 MISCELLANEOUS CONTRACTOR RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

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

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. The term Architect means the Architect or his authorized representative, including employees or consultants. Where "Architect" may be used relating to engineering phases of the Work, substitute the term "Engineer" therefore.

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

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

§ 4.2 Administration of the Contract

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

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

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

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

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

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

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

duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

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

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

§ 4.2.11 The Architect will review and accept, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.12 Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

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

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

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

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

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

§ 4.2.21 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person, firm or entity who has a direct contract or purchase order with the Contractor to provide or furnish materials, equipment, facilities, labor or services, or a combination of these, for the execution and completion of the Work or part thereof. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

§ 5.1.2 A Sub-subcontractor is a person or entity having a direct or indirect contract or purchase order with a Subcontractor to provide or furnish materials, equipment, facilities, labor or services, or a combination of these, for the execution and completion of the Work or part thereof. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

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

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

§ 5.2.3 If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such

change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. No increase in the Contract Sum shall be allowed should a substitution be required as a result of the Owner's or Architect's reasonable objection based on specified criteria on which a proposed subcontractor will be evaluated.

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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

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

§ 6.2 Mutual Responsibility

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

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

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

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

- .1 As a minimum, the detailed breakdown shall include and indicate the items enumerated below. Items (a) and (b) constitute the cost of labor, and items (a), (b), (c) and (d) constitute the basic costs referred to under this Article 7.
 - (a) Labor costs, itemized by each trade involved, showing the hourly rates for each, and the hours required for the change. Labor rates shall be the same for extra and credit computations and shall be the actual rate paid workmen in accordance with established management labor agreement.
 - (b) Burden on labor, which shall be only the actual costs of mandatory fringe benefits required by established agreements, taxes on labor, worker's or workmen's compensation, insurance on labor as affected by payroll, unemployment taxes and insurance, including FICA and FUTA.
 - (c) Quantities of materials, equipment and supplies, at their actual cost, with unit costs indicated.
 - (d) The cost of subcontracted work, computed in the same way as provided for under this Subsection 7.1.4.
 - (e) Overhead, profit or commission.
 - (f) Applicable sales tax on materials, added after the above computations are complete.
- .2 The maximum that will be allowed for overhead and profit, or commission, shall be as follows, expressed as a percentage of the basic cost of the change. The maximum allowable percentages for profit, overhead and commission may be less, depending on the nature, extent or complexity of the change, where the percentage is not commensurate with the responsibility and administration involved (such as the Contractor merely processing a substantial Change Order to a Subcontractor) but in no event shall they exceed the following:

	Overhead/Profit	Commission
(a) To the Contractor and/or Subcontractor for work performed with their own forces.	10%	
(b) To the Contractor for work performed by other than its own forces.	--	5%
- .3 Not more than two percentages for overhead, profit and commission will be allowed. The mark-up on any part of the Work a Subcontractor subcontracts will be limited to one overhead/profit figure in addition to the Contractor's commission, the Subcontractor and Sub-Subcontractor may divide the overhead and profit amount as they agree upon.
- .4 The burden on labor may be indicated as a dollar/cents addition to the hourly rate or may be expressed as a percentage of the extended hourly rate costs. If required by the Owner, Construction Manager or the Architect, the Contractor shall provide a detailed breakdown to justify the labor burden. The Construction Manager reserves the right to reject any labor burden which is inconsistent with other similar contractors or where the cost of fringe benefits are in excess of established labor agreements. The burden on labor shall not include any costs noted as general overhead.
- .5 Material, equipment and supply costs shall be quoted at the actual cost to the Contractor, or Subcontractor. Upon request, the Contractor (or Subcontractor) shall submit evidence to substantiate the costs. Said costs shall be quoted at trade discount prices, with quantity discounts also applied where the quantities warrant. Cash or prompt payment discounts need not be credited. In any proposal with material, equipment and supply credits, the credit shall be based on the actual Contract cost of the material (including trade and quantity discounts) less any charges actually incurred for handling or returning a material which has been delivered. No cancellation, restocking or similar charge will be allowed unless actually incurred by the purchaser and generally will not be allowed when the product has not been shipped.
- .6 The percentages allowed for overhead, profit or commission under clause 7.1.4.2 shall be deemed to include, and no further addition allowed for: (1) field and office supervision and administration, including the field superintendent and foremen; (2) general insurance, except that listed as the labor burden; (3) use or replacement of tools; (4) shop burden; (5) equipment rental (other than specifically required additional hoisting equipment, required excavating equipment or similar equipment necessary solely as a result of the change); (6) engineering and estimating costs; (7) performance and

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

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

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

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

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

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

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

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

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

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

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

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Architect shall also have the right to make minor changes in dimensions, locations, arrangements or details to accommodate changes in other materials and equipment, improve the Work, or prevent unforeseen interference with structural or other features. Such changes shall be made without a change in the Contract Sum.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion within the Contract Time. The Work shall not be suspended or shut down, but shall progress continuously with sufficient labor at all times, unless otherwise approved by the Owner, Architect and Construction Manager.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

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

§ 8.3.3 This Section 8.3 does not preclude the Owner's recovery of damages for delay by either party under other provisions of the Contract Documents. To the fullest extent allowed by applicable law, the Contractor's sole and exclusive remedy for delay is a right to a time extension for completion of the Contract and not damages.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

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

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

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

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

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

§ 9.3.4 The Contractor shall submit its Application for Payment on forms as the Construction Manager or Architect may specify or direct. The Application shall be accompanied by a sworn, notarized Certificate by the Contractor, attesting to the accuracy of the amount as being for work satisfactorily complete in accordance with the Contract Documents, and that all just claims and bills for labor, materials, equipment, subcontracts and services or other expenses represented in previous Applications for Payment have been paid, such that the Contractor is entitled to the payment.

§ 9.3.5 PROMPT PAYMENT TO SUBCONTRACTORS In accordance with Minnesota law, the Contractor shall include, in all subcontracts and other agreements with its subcontractors and suppliers, a provision which requires the Contractor to pay any of its subcontractors and suppliers within 10 days of the Contractor's receipt of payment from the Owner, for undisputed services or supplies provided by the subcontractor or supplier. The provision shall also include the requirement that the Contractor shall pay interest of one and one-half percent (1.5%) per month or any part of a month to the subcontractor or supplier on any undisputed amount not paid on time to the subcontractor or supplier. The provision shall further provide that the minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10; for an unpaid balance of less than \$100, the Contractor shall pay the actual penalty due to the subcontractor or supplier; and a subcontractor or supplier who prevails in a civil action to collect interest penalties from the Contractor shall be awarded its costs and disbursements, including attorneys' fees, incurred in bringing the action.

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the

Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.2.1 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§ 9.4.4 The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§ 9.4.5 The representations made pursuant to Sections 9.4.3 and 9.4.4 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Construction Manager or Architect.

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to issue a Certificate of Payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will

promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

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

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

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

§ 9.5.4 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both will reflect such payment on the next Certificate for Payment.

§ 9.6 Progress Payments

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

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

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

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

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

§ 9.6.6 Issuance of a Contractor's Application and Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute an acceptance of any Work not in accordance with the Contract Documents. [The Contractor and its Surety agree any issuance of a Contractor's Application and](#)

Certificate for Payment by the Architect, payment on the Contract Sum or in reducing any retaining amount, or any use or occupancy of the Work will in no way relieve them of the obligation to completely fulfill or accomplish all obligations of the Contract, including warranty of the Work, and that they waive any actual or alleged rights of subrogation or action against the Owner or the Architect as a result of any such issuance of a Contractor's Application and Certificate for Payment, payment, or use or occupancy. At any time, the Surety shall have the right to examine the status of the Work, as well as any payments, and may request the Owner to withhold additional sums as it considers appropriate to protect its interests.

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

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

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

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

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

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items

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

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

§ 9.8.6 After Substantial Completion, the Contractor shall coordinate his activities with the Owner's use of the substantially completed work and shall diligently complete the remaining work, without delay or interruption, within the remaining Contract Time.

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

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

warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and recommendation by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims. Notwithstanding the foregoing, the Owner may at its option retain a minimum of three times the value of the incomplete or uncorrected parts of the Work, or the minimum amount allowed by applicable law, as estimated by the Construction Manager, provided the remaining work is minor and cannot be completed or corrected due to weather, unsuitable conditions for testing or other circumstances beyond the Contractor's control, as agreed upon by the Architect and Construction Manager.

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 10.1.2 In addition to the Contractor's responsibilities referenced in this Article 10, the Contractor shall, at a minimum, comply with the requirements of the Owner's Site Specific Safety Plan, as the same may be amended from time to time (the "SSSP"), which SSSP the Contractor hereby acknowledges has been made available to the Contractor for the Contractor's review, including, without limitation, the following general safety rules:

- .1 The Contractor shall actively promote safe working performance on the part of its employees. The Contractor's site supervisors shall participate in such activities as regular safety meetings, safety inspections, and other safety programs. The Contractor will also conduct its own safety programs best suited to its particular needs;
- .2 The Contractor shall hold no less than weekly safety meetings with its construction workers. Minutes of these meetings shall be forwarded promptly to the Construction Manager;
- .3 The Contractor shall implement and practice an effective system of indoctrination and education of new and transferred employees to the Project. The Contractor shall inform its employees of all safety

- rules and safety procedures before the employee begins work on the Project. A suggested system such as review of local regulations and the SSSP should be used as a guide;
- .4 The Contractor shall inform its employees of the location and use of emergency equipment;
 - .5 The Contractor shall inform its employees of existing Project procedures for first aid and ambulance calls;
 - .6 The Contractor shall use its own regular system of inspection to promptly detect and correct hazardous conditions, safety rule violations and unsafe working practices in its own areas. The Contractor's safety inspection audit will include the Contractor areas and will be reviewed by the Contractor with the Construction Manager;
 - .7 Good housekeeping and orderliness are basic requirements for all jobs and must be maintained at all times. Special attention must be given to maintaining clear walkways, removal of trash, removal of slipping and tripping hazards, and proper storage of materials. Materials shall not be left in aisles, walkways, stairways or other points of ingress or egress. Temporary material storage areas must always be requested and cleared through the Construction Manager and kept neat;
 - .8 The Contractor's site supervisor shall give his or her current address and telephone number to the Construction Manager so that he or she is available to be contacted after hours in case of emergency involving hazard, loss, or damage; and
 - .9 The Contractor shall ensure that all of its employees are equipped with all personal protection equipment as required by local laws, regulations, codes and/or by the SSSP.

In the event of any conflict, inconsistency or uncertainty between the SSSP and the Contract Documents, or between the SSSP and any applicable law, statute, ordinance, code, rule, regulation or lawful order of a public authority, the greater, more detailed or more stringent requirement shall control.

§ 10.2 Safety of Persons and Property

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

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

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault, acts, operations, methods, or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.2.9 The Contractor shall indemnify, defend and hold harmless the Owner and Construction Manager from and against any and all liability, fines, penalties, costs and expenses, including, but not limited to reasonable attorneys' fees, caused by or resulting from the Contractor's breach of any of its obligations under Sections 10.1 and 10.2 herein.

§ 10.3 Hazardous Materials

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

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

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the

Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

§ 10.4 Emergencies

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

§ 10.5 MISCELLANEOUS GENERAL PROVISIONS

§ 10.5.1 The requirements under 10.4, Miscellaneous General Provisions, shall be considered as minimum requirements and shall not be construed to limit the amount of protection required to safeguard all persons and property, nor construed as directing or establishing the Contractor's methods or responsibilities.

§ 10.5.2 The Construction Manager shall provide and maintain adequate fire extinguishers in and around the construction area, available to all workers, but the Contractor shall not use extinguishers that are to be installed in the Work.

§ 10.5.3 The Contractor shall provide and maintain guard lights at barricades, railings, obstructions in streets, roads or sidewalks and at trenches or pits including at those adjacent to existing buildings, public roads, walks, and similar locations where a hazard may exist. The Contractor shall provide and maintain suitable barricades or fences around excavations, including trench excavations, excavated by Contractor or Subcontractors.

§ 10.5.4 As may be applicable to the Project and to the Work, the Contractor shall provide and be responsible for: protection of equipment, materials, supplies and Work to prevent any damage, including from freezing, thermal shock, heat, water, and other damaging elements; providing proper and adequate drainage (temporary and permanent) of the site in connection with work of this Contract; damage to property as a result of work or operations under this Contract, including but not restricted to damage from water, excavation, underpinning, removal or changing or structural supports; collapse or other failure to the Project resulting from the Contractor's acts, operations or work, including water undermining or creating pressure on the construction; pumping of water from work areas and excavations of this Contract, and spaces built, constructed or opened up under the Contract, and if necessary, installing temporary heat to keep the spaces dry; providing protection and planking on finished floors and other finished surfaces where work is being done by the Contractor or Subcontractors; closing and protecting all holes or openings through walls, floors and roofs that are cut or built by the Contractor or Subcontractors; and which will admit water to interior spaces during the construction period or will create a potential safety hazard; removal of snow to accomplish the Work; keeping premises in neat and orderly condition; eliminating fire hazards.

§ 10.5.5 As may be applicable to the Project and to its Work, the Contractor shall be responsible for the following: providing safe and adequate stairways (temporary and permanent) for the use of all trades; maintaining access to the site; proper protection by heating of an enclosed building during cold weather; protection for trees and other similar features, which are to remain, from damage from operations in connection with the Project, by boxing tree trunks and setting up barricades at sufficient distance to prevent damage to branches; the removal of accumulated snow and ice within a building, which generally shall be hauled out (not melted), unless it is a minor amount, as approved by Architect/Construction Manager.

§ 10.5.6 The Contractor and each of its Subcontractors shall provide storage and enclosures to protect and preserve the materials stored at and off the site. Materials such as wood, metal, cement, masonry materials, equipment of any type, conduit and similar materials, shall not be set directly on ground. Coverings shall be durable, watertight, fully cover sides as well as top, substantial and well anchored to prevent blowing away. Shed type enclosures shall be provided for easily damaged and small items. Any protection which becomes damaged shall be replaced immediately at the Contractor's sole cost and expense. Contractor's storage shall be reviewed and must be acceptable to the Construction Manager, as it relates to site coordination.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Liability Insurance

§ 11.1.1 The Contractor shall purchase and maintain commercial general liability insurance as required to protect the Contractor, Construction Manager, Architect and Owner from claims set forth below which may arise out of, result from, or are in any manner connected with, the execution of the Work provided for in this Contract, or occur or result from the use by Contractor, its agents or employees, of materials, equipment, instrumentalities or other property, whether the same be owned by the Construction Manager, Contractor, or third parties, whether such claims arise during Contract performance or subsequent to completion of operations under this Contract and whether operations be by the Contractor or by anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable, and whether such claims are claims for which the Contractor may be, or may be claimed to be, liable. Such insurance shall include, without limitation, coverage and endorsements as will insure the Contractor's obligations under the provisions of Subsection 3.18 herein. Insurance shall be purchased from a company licensed to do business in the state where the Project is located, and shall be written for not less than the limits of liability specified below or required by law, whichever is greater. The types of claims, required coverages and minimum limits of liability are as follows:

§ 11.1.1.1 Claims under Worker's Compensation, disability benefit and other similar employee benefit acts; claims for damages because of bodily injury, occupational sickness or disease or death of employees. Insurance coverages shall include Statutory Workers' Compensation, including Employer's Liability with a minimum limit of \$100,000.00 for each employee.

§ 11.1.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death, by any person other than employees; claims for personal injuries which are sustained (1) by any person as a result of an act or omission directly or indirectly related to the employment of such person by the Contractor, or (2) any other person; claims for damages other than to the Work itself, because of injury to or destruction of tangible property including loss of use resulting therefrom. Insurance coverages shall include:

- .1 Premise-Operations
- .2 Products-Completed Operations
- .3 Blanket Contractual – Such insurance and endorsements as will insure the obligations under the provisions of Subsection 3.18 of this Document.
- .4 Broad Form Property Damage
- .5 Personal Injury
- .6 Blanket Explosion, Collapse and Underground Property Damage
- .7 Operations of Independent Contractors
- .8 Policy Limits:

General Aggregate	\$2,000,000.00
Products/Completed Operations Aggregate	\$2,000,000.00
Personal Injury	\$2,000,000.00
Each Occurrence	\$2,000,000.00

§ 11.1.1.3 Claims for damages because of bodily injury or death of any person, or any property damage, arising out of the ownership or use of any motor vehicle. Insurance coverage shall include:

- .1 Business Auto Liability insurance including owned, hired and non-owned vehicles with limits of \$1,000,000.00
- .2 Combined Single Limit for each accident for bodily injury and death, or property damage.

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

§ 11.1.1.5 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than \$1,000,000 per claim and (\$1,000,000 in the aggregate).

§ 11.1.1.6 If the Work involves the transport, dissemination, use, or release of pollutants or hazardous materials, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than \$1,000,000 per claim and \$1,000,000 in the aggregate.

§ 11.1.1.7 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than \$1,000,000 per claim and \$1,000,000 in the aggregate.

§ 11.1.1.8 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than \$3,000,000 per claim and \$3,000,000 in the aggregate.

§ 11.1.1.9 The limits of liability specified in Section 11.1.1 shall be considered minimum requirements. The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under subsections (B) and (C) above, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 11.1.1.10 All aforesaid insurance policies shall be underwritten with responsible insurance carriers, with Best's Ratings of not less than A and X and otherwise satisfactory to Construction Manager and Owner and licensed to provide insurance in the state in which the Project is located. Non-admitted carriers may be considered on an individual basis. Approval of the insurance by the Construction Manager or Owner shall not relieve or decrease the liability of the Contractor. The Construction Manager, Architect and Owner do not in any way represent that the insurance or limits of insurance specified in this Section 11.1.1 are sufficient or adequate to protect the Contractor's interests or liabilities, but are minimums. The Contractor is responsible, at Contractor's expense and not a reimbursable expense, for providing any additional insurance Contractor deems necessary to protect Contractor's interest from other hazards or claims in excess of the aforementioned minimum insurance coverages.

§ 11.1.1.11 The Construction Manager and Architect are intended third-party beneficiaries of the Contractor's obligations in this Section 11.1.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment and, with respect to the Contractor's completed operations coverage, until the expiration of the statute of repose applicable to such completed operations claims or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of Insurance, The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article 11 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section 11.1.2. The certificates will show the Owner, Architect and Construction Manager as additional insureds on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

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

§ 11.1.5 **Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability and umbrella excess liability coverage to include (1) the Owner, the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner and the Construction Manager and the Construction Manager's

consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory and without recourse to or contribution from any similar insurance carried by such additional insureds and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04. The Additional Insured status must be reflected on the Contractor's Certificate of Insurance to Construction Manager and Owner. The Contractor shall provide Construction Manager with a copy of Contractor's Commercial General Liability Insurance policy or such Additional Insured endorsement to confirm Contractor's compliance with this section.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 11.2. The 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 both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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

§ 11.2.4 Property Insurance

§ 11.2.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.2.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.2.4.2 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm,

falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Architect's, Contractor's, and Construction Manager's services and expenses required as a result of such insured loss.

§ 11.2.4.3 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.2.4.4 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

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

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

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by Section 11.2 or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

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

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by

appropriate agreements the Construction Manager, Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§ 11.6 Performance Bond and Payment Bond

§ 11.6.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract (the "Bond").

§ 11.6.2 The Contractor shall provide as part of its bid, a valid and enforceable Bond which will run throughout the life of the Contract and its warranty periods. The Bond shall be issued by a corporate surety company authorized to do business in the state in which the Project is located and the surety company shall be subject to the Owner's approval. Fully executed copies of the Bond shall be provided to the Owner, Construction Manager and Architect.

§ 11.6.3 The minimum requirement for the Owner's approval of the Surety shall be that the Surety is listed by the United States Treasury Department as acceptable for bonding federal projects and that the bond amount is within the limit set by the Treasury Department as the net limit on any single risk. There shall be no affiliation between the Contractor and the Surety Company, Agent or Agency.

§ 11.6.4 For public work or other projects subject to statutory bond requirements, the bond form shall be the two-part AIA Form A312 Performance Bond and Payment Bond, 1984 edition, and both parts shall comply with the statutory bond requirements of the state in which the Project is located.

§ 11.6.5 The Bond shall be in the amount of 100% of the full Contract Sum. When two part bonds are provided, the Bond shall be provided with 100% of the Contract Sum for the Performance Bond and 100% of the Contract Sum for the Payment Bond.

§ 11.6.6 The Bond shall guarantee the Contractor will perform each and every part of the Contract, cover all guarantees called for and insure prompt payment to all persons furnishing material or labor required in prosecution of the Work under the Contract. In the event of additions to the Contract, the Owner reserves the right to require evidence of additional bonding.

§ 11.6.7 The Bond shall provide: (1) for additions or deductions from the Work in any amount; (2) that completion time shall not be extended by reason of changes in the Work, unless agreed to at time of change; (3) that no notice of aforesaid alterations, additions, or omissions need to be given the Surety; and (4) permit occupancy by the Owner at any time.

§ 11.6.8 Final acceptance of the Work shall not relieve the Contractor nor Surety from their obligations under this Contract, including warranties of materials, equipment, installation or service.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

The Contractor shall give timely notice to the Architect, through the Construction Manager, of the readiness of the work to be observed.

§ 12.1.2 If a portion of the Work has been covered which the Contract Documents require be observed before it is covered or the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed, unless the Owner elects to accept the Work as provided under Section 12.3. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. Work rejected before final completion shall be corrected prior to the processing of the final Contractor's Application and Certificate for Payment.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5. The expiration of the above one year or any other specified time period, or any other period prescribed by law, shall not relieve the Contractor of the obligation for the expense to correct any latent defect in the Work or deficiencies which are not readily ascertained, including but not limited to defective materials and workmanship, defects attributable to material substitutions for specified materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Subsection 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in corrected or replaced materials and workmanship, which is found within one year after the date of correction or replacement.

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

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

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 For the purpose of the commencement of the specified periods covered by this Article 12, or any other special specified period, the date of the inspection for Substantial Completion of the last unit, part or phase of the Work shall be the starting date of the period, for all of the Work, except for any work noted as incomplete or unsatisfactory at that time. The period covered by this article for said incomplete or unsatisfactory work shall start on the date of specifically noted dates of inspection for Substantial Completion, (or of acceptance, in writing, by the Owner of corrected Work), the date of the Architect's issuance of the final Certificate and Application for Payment on the entire Contract will be the start of the period.

§ 12.3 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, Construction Manager, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards 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.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, with the advice of the Architect and Construction Manager, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, three (3) days' notice, terminate the employment of the Contractor (except the obligations of the Surety under the Bond) and/or require the Surety to promptly take over and complete the Work under the terms of the Contract and may:

- .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 and may
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work; and/or
- .4 Accept assignment of subcontracts pursuant to Section 5.4.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor and/or the Contractor's Surety shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the Owner completes the Work and the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including the Owner's additional costs, attorney's fees and compensation for the Construction Manager's and Architect's additional services, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages for the Owner to complete the Work exceed such unpaid balance, the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Contractor or to the Owner, as the case may be, shall be certified by the Owner or Contractor and approved by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

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

- .1 cease operations as directed by the Owner in the notice;
- .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; for proven out-of-pocket loss with respect to materials, equipment, tools, and construction

equipment and machinery incurred by reason of the termination, but excluding any fee or profit on any unperformed Work.

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. 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 Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, 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.

§ 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, the Construction Manager, and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time.

§ 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.

ARTICLE 16 ADDITIONAL CONDITIONS

§ 16.1 ADDITIONAL DEFINITIONS

§ 16.1.1 Provide: As used in connection with labor, materials and equipment shall mean to furnish and install complete, including connections to utilities or service, complete anchorage and suspension, fastening or anchor devices, trim, finish and other related work, unless specified otherwise.

§ 16.1.2 Accepted, approved, satisfactory, equal to, proper, as directed and similar terms: These shall mean the decision rests with the Architect, whose decision shall be final and binding upon the Contractor and subcontractors.

§ 16.1.3 Project, Work, Job: In the technical sections or on the drawings, these terms may be used interchangeably and are synonymous. They shall mean the facility, construction and/or improvement within the intent and scope of the Contract Documents. The terms shall mean the entire facility, or separable parts as appropriate to the use of the term, including that under subcontract where applicable, and includes labor, materials, equipment, services and skill.

§ 16.1.4 Notice to Proceed: This shall be written notice by the Construction Manager to the Contractor to commence Work of the Contract, issued either before or after execution of the Contract. In issuing the Notice, stipulations may be included as to time and other requirements that may condition commencement of the Work.

§ 16.2 USE OF DRAWINGS AND SPECIFICATIONS

§ 16.2.1 During construction, the Contractor shall examine and use all Specifications and Drawings for the Project, including those that may primarily pertain to other work the Contractor normally does not perform with his own forces. The Contractor shall use all of the Project Drawings and Specifications: for a complete understanding of the Project and the Work; to determine the type of construction and systems; for coordination; to determine what other work may be involved in various parts or phases; to anticipate and notify others when work will be required; and all other relevant matters related to the Project. The Contractor shall also be bound by all the requirements to complete his Work, that are applicable to, pertain to, or affect the Work, as may be shown or inferred by the entire set of Drawings and Specifications.

§ 16.3 PERIODIC PAYMENT ESTIMATE

§ 16.3.1 When required by the Owner to establish a schedule of money available to make payment of periodic Applications for Payment, the Contractor shall provide an estimate by months, of the anticipated amounts for each periodic payment. The retained percentage shall be considered in the estimate schedule, as well as anticipated job progress and materials delivery. The schedule will be deemed an estimate only, for financial planning purposes, and the Contractor shall not be bound to conform to the schedule. The schedule may be required by the Contract Documents or requested by the Owner after Contract execution.

§ 16.4 LAYOUT OF THE WORK

§ 16.4.1 Each Contractor shall employ a qualified engineer or registered surveyor to stake out and locate the construction, locate property markers and other points as needed to properly locate the Work under this Contract.

§ 16.4.2 The Contractor shall recognize that the drawings necessarily are diagrammatic, in many instances. All work and in particular, exposed piping, ducts, conduit and similar items shall be neatly and carefully laid out to provide the most useful space utilization and the most orderly appearance. Except as otherwise indicated or directed, piping and similar work shall be installed as close to ceilings and walls as conditions permit, located to prevent interference with other work or with the use of the spaces in the manner required by the functions of the room and the Owner. Valves shall be located in inconspicuous but accessible places. Before proceeding with any work, particularly where exposed, the Contractor shall carefully plan the layout and review it with the Architect and Construction Manager for acceptability of location.

§ 16.4.3 The Contractor shall verify grades, line levels and dimensions shown on drawings and report any errors or inconsistencies to Architect, through the Construction Manager for decision before commencing work. The Contractor and subcontractor shall be responsible for the correct location, dimensions and elevations of his Work. As the Work progresses, the Contractor shall be responsible for the layout of the exact location of all partitions and similar features, as guide to all trades.

§ 16.5 GENERAL QUALITY OF WORK, INSTALLATION AND OPERATION

§ 16.5.1 All of the Work shall be strictly first quality, in materials, erection, installation and workmanship.

§ 16.5.2 The Contractor shall request interpretations from the Architect, through the Construction Manager, for the following: Work indicated on the Drawings or specified in such a manner as to make it impossible to produce Work of the highest quality within the space shown; possibilities of damaging effects of expansion and contraction; discrepancies found between Drawings or between Drawings and Specifications. If the Contractor does not request such interpretation, no excuse will be entertained thereafter for failure to carry out and guarantee the Work in a satisfactory manner. Elements of the Work intended to protect against the weather shall be guaranteed weatherproof and watertight.

§ 16.5.3 Proper performance of the Contract shall imply correct and proper placement, proper or published results for products and equipment, fitting and operation of fixed or movable and operating parts of the Work, including doors, windows, hardware and all systems and equipment. Materials and equipment shall be completed in every respect, with parts, connections, anchors, devices, backing, fittings and other necessary items, and shall be completely installed, anchored, fitted and placed in operating condition. Before buying, constructing or installing work, the Contractor shall notify the Architect of conditions which exist in the Contract Documents which will adversely affect proper operation of first quality installation.

§ 16.5.4 Throughout the Project, accommodate various materials and pieces of equipment that are fitted to other materials and equipment and various materials that are applied to which other materials attach. Take all reasonable precautions to insure materials, devices, items, equipment or other products can be satisfactorily applied or installed to each other or work of others and make necessary adjustments during preparation of shop drawings or in advance of field or shop work to accommodate other work.

§ 16.5.5 Materials or equipment shall be installed or applied according to directions of the manufacturer or recommendations of an association dealing primarily with materials, unless specifically designated otherwise. In no case shall installation, including any temporary work necessary (e.g., shoring), be below standard recommended by manufacturer. Where specified requirements exceed the manufacturer's standards, the specification shall govern. Fabrication (including reinforcing and accessories) and installation shall be provided to insure proper placement and use of the item or material under the location, use, condition, and available space to serve intended function and to meet code requirements. Equipment and devices shall be provided and installed to "fail safe" under normal operating conditions and it shall be Contractor's obligation to provide and install work in such manner.

§ 16.6 GENERAL FIRE SAFETY

§ 16.6.1 The Contractor shall exercise extreme care to maintain the exercise adequate fire safety precautions throughout construction. This shall include providing sufficient devices, watchmen, standby helpers or other precautions during construction, in use of temporary heat, welding, brazing, sweating, testing or other phases of work. Welding, brazing, cutting and sweating operations performed in vicinity of, or accessible to, combustible materials shall be adequately protected to make certain that sparks or hot slag do not reach the combustible materials and start a fire. Glass and glazed material shall be masked from splatter. When necessary to do cutting, welding, brazing, sweating, in vicinity of wood, or combustible material (and the combustible material cannot be removed), the materials shall be adequately protected with fireproof coverings. In addition, a helper shall be stationed nearby with property fire extinguishers to guard against sparks and fire.

§ 16.6.2 Whenever combustible materials have been exposed to sparks, molten metal, hot slag, or splatter, a watchman shall be kept at the place of work for at least two hours after completion to make sure that smoldering fires have not been started. Whenever cutting or welding operations are carried on in a vertical pipe shaft, a watchman to act as a fire guard shall be employed to examine floors below the point of cutting or welding. This fire guard shall be kept on duty at least two hours after completion of the work to guard against fires and he shall examine each level after this time, prior to leaving.

§ 16.7 EXAMINATION OF BOOKS AND RECORDS

§ 16.7.1 The books, records, documents and accounting procedures and practices of the Contractor as they relate to this Contract are subject to examination of the Owner, and either the Legislative Auditor or the State Auditor, as appropriate, for a period of six (6) years following termination or expiration of this Contract.





REQUEST FOR CITY COUNCIL ACTION

Meeting Date:	January 18, 2022
Item Name:	Fire Station Project - Architect Services
Originating Department:	Administration
Presented by:	Shane Fineran
Previous Council Action (if any):	Resolution #2021-110, Authorizing Space, Needs and Location Study, Adopt Resolution #2021-236, Authorizing Site and Schematic Design Phase

Item Type (X only one):	Consent	<input checked="" type="checkbox"/>	Regular Session	<input type="checkbox"/>	Discussion Session	<input type="checkbox"/>
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RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED (Include motion in proper format.)

Adopt Resolution 2022-35, Approving Contract with BKV Group Inc. for Architect Services

EXPLANATION OF AGENDA ITEM (Include a description of background, benefits, and recommendations.)

The City engaged with BKV Group, Inc. to perform a space, needs, and location study as well as schematic design work related to a new fire station facility in 2021. As the process of schematic design is nearing completion the next step in this process would to begin work related to design development of the facility and project. In this process, city staff, the construction management firm as recommended to be Kraus-Anderson, and BKV Group, Inc. will work to further define the project scope and facility. Currently the proposed facility is 28,022 sq. feet, featuring a 2,300 sq. foot mezzanine, training tower, 6 drive through apparatus bays, decontamination facilities, bunk rooms, office and administrative space as well as training/community room space. Currently the estimated hard construction cost is \$11.6 million dollars. The City intends to issue bonds to finance the project.

This next phase of design development is essentially getting into detailed architect services related to the design of the facility and site. The design development phase will include reviewing the schematic design for constructability, alternate methods and materials, further estimation and budget refinement, as well as more detailed work associated with building systems such as structural, mechanical, and electrical systems. Beyond the design phase of the work contemplated in the contract will be development of construction documents, bidding assistance, and then construction phase services.

The amount of the contract for services not already approved for in the schematic design phase is \$575,000. Previously the Council authorized entering into a contract with BKV for the schematic design phase services totaling \$80,000.

- Attachments:**
1. [2235res_Fire_station_architect_BKV.doc](#)
 2. [2442-02 Waconia-Fire Station_EXTERIOR VIEWS.pdf](#)
 3. [2442-02 Waconia-Fire Station_EXT ELEVATIONS.pdf](#)
 4. [2442-02 Waconia-Fire Station-floor plans.pdf](#)
 5. [B132-2019 - Waconia New Fire Station - 1.12.2022 - Final - \(1\).pdf](#)

FINANCIAL IMPLICATIONS: Funding Sources & Uses: PIR Capital - Fire - Project #22	ADVISORY BOARD RECOMMENDATIONS:
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Budget Information: <input checked="" type="checkbox"/> Budgeted <input type="checkbox"/> Non Budgeted <input type="checkbox"/> Amendment Required	Planning Commission	
	Parks and Recreation Board	
	Safari Island Advisory Board	
	Other	



**CITY OF WACONIA
RESOLUTION NO. 2022-35**

**RESOLUTION APPROVING CONTRACT WITH BKV GROUP INC. FOR ARCHITECT
SERVICES**

WHEREAS, the City of Waconia currently has a fire station planned in the CIP for 2022; and

WHEREAS, the City has completed a space, needs, and location study for the new fire station;
and

WHEREAS, the City has engaged with BKV Group, Inc. to begin the schematic site planning
for the new facility; and

WHEREAS, as part of the development of the project and continued refinement of the project
scope, scale, and facility elements it is recommended that engaging BKV Group, Inc. to continue
professional architect services related to design, construction document development, bidding and
construction services necessary to complete the project; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Waconia
hereby approves the contracts submitted by BKV Group, Inc. for consideration, and authorizes the City
Administrator to execute any necessary documents as reviewed by the City Attorney.

Adopted by the City Council of the City of Waconia this 18th day of January 2022.

Kent Bloudek, Mayor

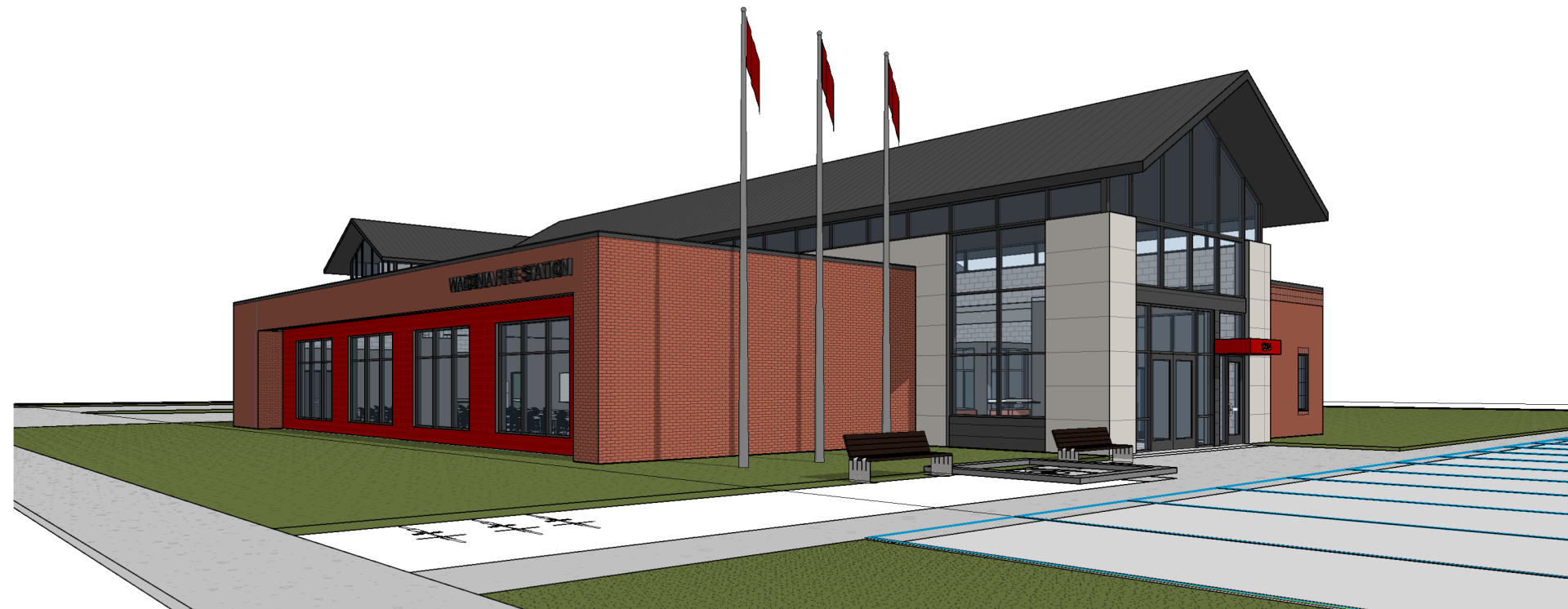
Attest: _____
Jackie Schulze, City Clerk

M/ _____	Bloudek	_____
	Pierson	_____
S/ _____	Leo	_____
	Waldron	_____
	Sorensen	_____



EXTERIOR VIEWS





EXTERIOR VIEWS





EXTERIOR VIEWS



CONSULTANTS

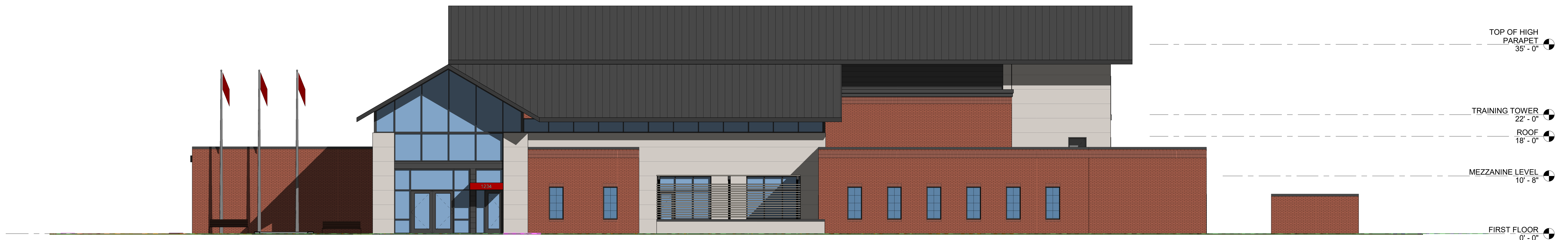
PROJECT TITLE

WACONIA FIRE STATION

ISSUE #	DATE	DESCRIPTION



1 OVERALL BUILDING ELEVATION - NORTH
A401 1/8" = 1'-0"



3 OVERALL BUILDING ELEVATION - WEST
A401 1/8" = 1'-0"

CERTIFICATION

NOT FOR CONSTRUCTION

DRAWN BY	MJH
CHECKED BY	CLC
COMMISSION NUMBER	2442.02

SHEET TITLE

EXTERIOR ELEVATIONS

SHEET NUMBER

A401

CONSULTANTS

PROJECT TITLE

**WACONIA FIRE
STATION**

ISSUE #	DATE	DESCRIPTION
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1
A402
OVERALL BUILDING ELEVATION - SOUTH
1/8" = 1'-0"



2
A402
OVERALL BUILDING ELEVATION - EAST
1/8" = 1'-0"

CERTIFICATION

NOT FOR
CONSTRUCTION

DRAWN BY	Author
CHECKED BY	Checker
COMMISSION NUMBER	2442.02

SHEET TITLE

**EXTERIOR
ELEVATIONS**

SHEET NUMBER

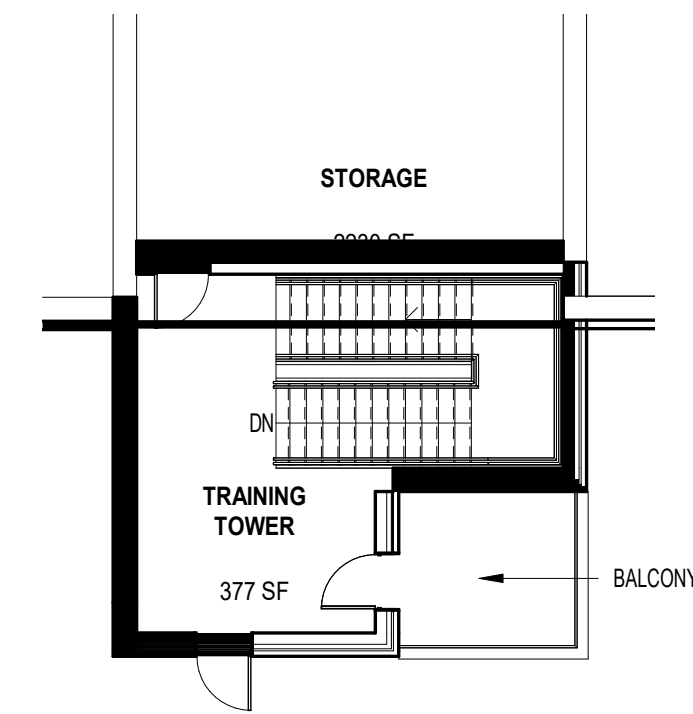
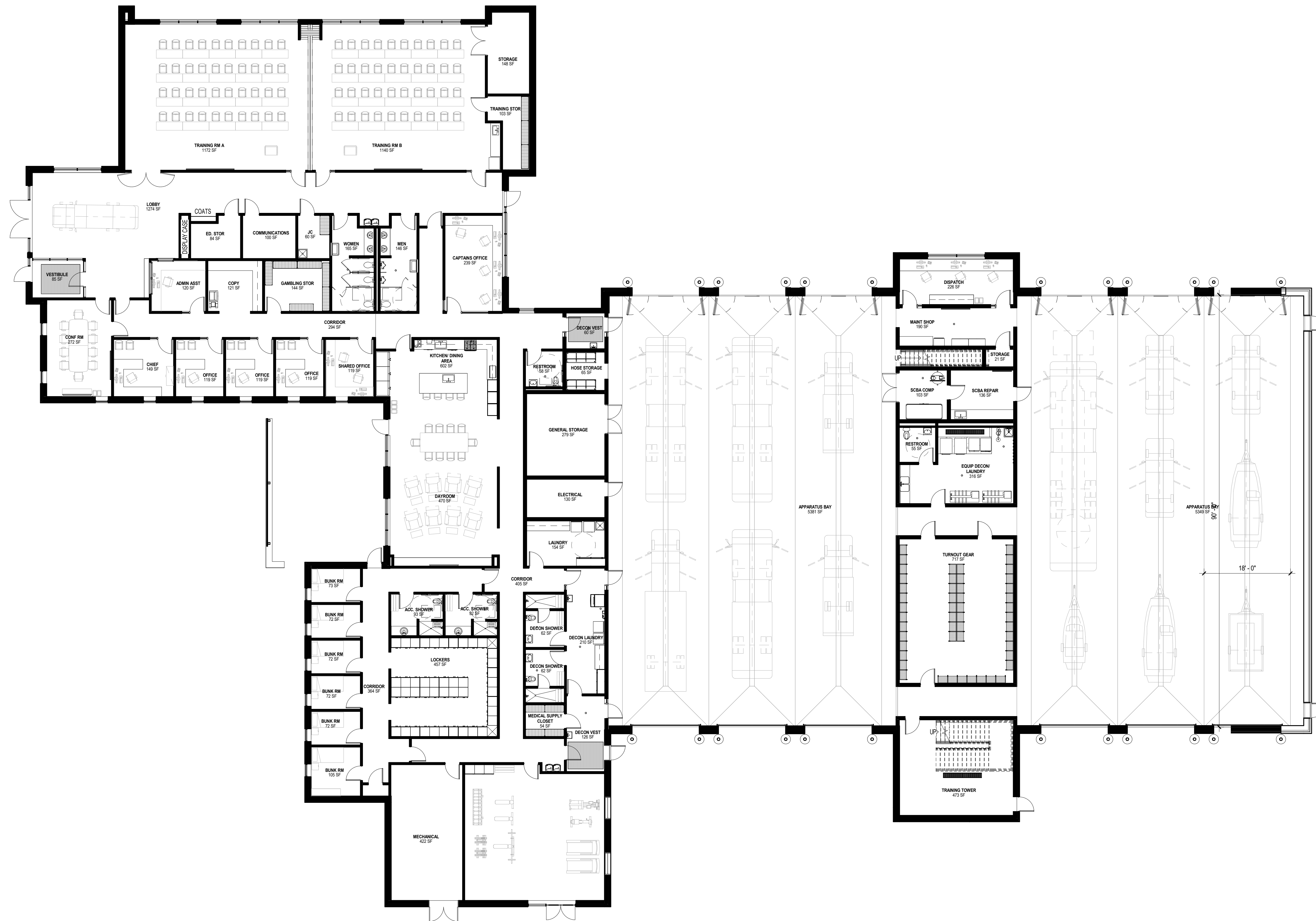
A402

CONSULTANTS

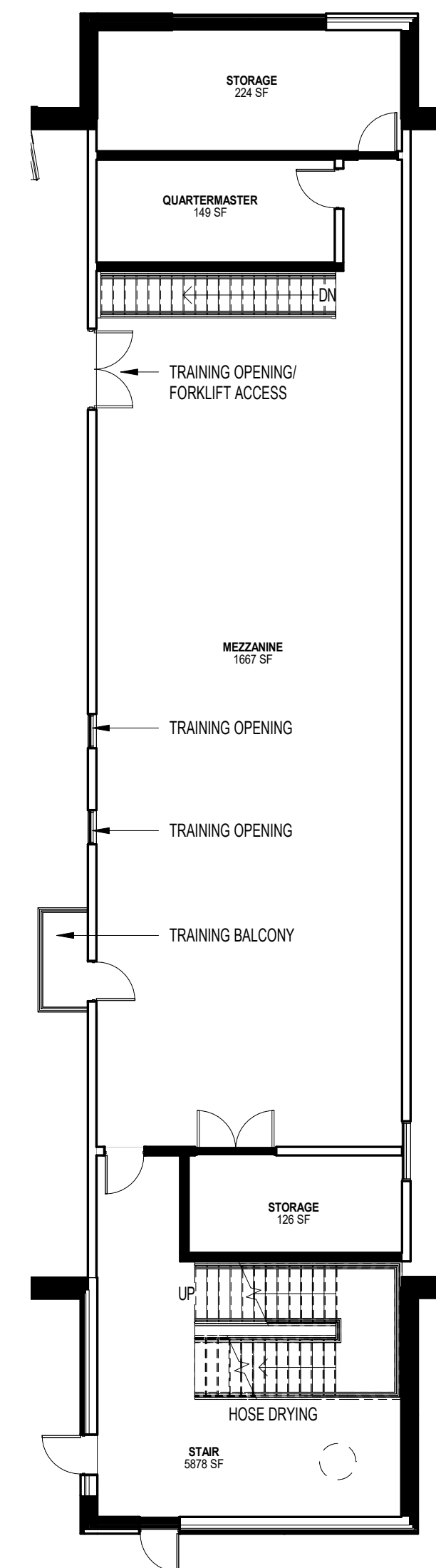
PROJECT TITLE

WACONIA FIRE STATION

ISSUE #	DATE	DESCRIPTION
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3 TRAINING TOWER
AF.1 3/32" = 1'-0"



2 MEZZANINE
AF.1 3/32" = 1'-0"

1 LEVEL 1
AF.1 3/32" = 1'-0"



CERTIFICATION

DRAWN BY	-
CHECKED BY	-
COMMISSION NUMBER	2442.02
SHEET TITLE	
FLOOR PLAN	
SHEET NUMBER	
AF.1	

NOT FOR CONSTRUCTION

 **AIA[®] Document B132[™] – 2019****Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition**

AGREEMENT made as of the fifth day of January in the year two thousand twenty-two
(*In words, indicate day, month, and year.*)

BETWEEN the Architect's client identified as the Owner:
(*Name, legal status, address, and other information*)

City of Waconia
201 S. Vine Street
Waconia, MN 55033

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

Boarman Kroos Vogel Group, Inc.
dba BKV Group
222 N. 2nd St., Ste. 101
Minneapolis, MN 55401

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

Waconia Fire Station (BKV Group Project No. 2442.02)
Architectural and engineering design services for a new fire station of approximately 28,020 square feet, plus mezzanine space of approximately 2,300 square feet. The Project includes deviations from the above description that do not substantially change the character of the description.

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

Kraus-Anderson Construction Company
501 South Eighth Street
Minneapolis, MN 55404

The Owner and Architect 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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

This document is intended to be used in conjunction with AIA Documents A132[™]–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232[™]–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132[™]–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232[™]–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

New fire station, based on a Study by BKV Group dated September 28, 2021.

§ 1.1.2 The Project's physical characteristics:

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

A new fire station of approximately 28,020 square feet, plus mezzanine space of approximately 2,300 square feet. The facility is to be located at 10451 10th St. W. in Waconia, MN.

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

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

Construction cost is estimated as of December 6, 2022 is \$11,600,000.

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

.1 Design phase milestone dates, if any:

Schematic Design Phase: October 5, 2021 to December 7, 2021.

Design Development Phase: December 13, 2021 to February 24, 2022.

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User Notes:

(1346726711)

Construction Documents Phase: February 25, 2022 to April 28, 2022.
Bidding Phase: May 5, 2022 to July 6, 2022.

.2 Construction commencement date:

July 11, 2022 (estimated)

.3 Substantial Completion date or dates:

May 15, 2023 (estimated, based on an 11-month total construction duration)

.4 Other milestone dates:

(N/A)

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

Competitive bid, multiple prime.

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

No fast-tracking is anticipated. One bid package shall be issued. No phased construction is intended.

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

No objectives identified.

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

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

Shane Fineran, City Administrator
City of Waconia
201 S. Vine Street
Waconia, MN 55033

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

To be determined.

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

.1 Construction Manager:

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(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1.)

To be determined during Design Development Phase.

.2 Land Surveyor:

Bolton & Menk, Inc.
7575 Golden Valley Road, Suite 200
Minneapolis, MN 55427

.3 Geotechnical Engineer:

Haugo Geotechnical Services
2825 Cedar Ave. South
Minneapolis, MN 55407

.4 Civil Engineer:

(N/A)

.5 Other consultants and Contractors:

(List any other consultants and Contractors retained by the Owner.)

(N/A)

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:
(List name, address, and other contact information.)

Bruce Schwartzman, Vice President
Boarman Kroos Vogel Group, Inc.
dba BKV Group
222 N. 2nd St., Ste. 101
Minneapolis, MN 55401

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Boarman Kroos Vogel Group, Inc.
dba BKV Group
222 N. 2nd St., Ste. 101
Minneapolis, MN 55401

.2 Mechanical Engineer:

Boarman Kroos Vogel Group, Inc.
dba BKV Group
222 N. 2nd St., Ste. 101
Minneapolis, MN 55401

.3 Electrical Engineer:

Boarman Kroos Vogel Group, Inc.

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dba BKV Group
222 N. 2nd St., Ste. 101
Minneapolis, MN 55401

.4 Civil Engineer:

Bolton & Menk, Inc.
7575 Golden Valley Road, Suite 200
Minneapolis, MN 55427

.5 Exterior Envelope Review:

Wiss, Janney, Elstner Associates, Inc.
605 Highway 169 North, Suite 1000
Minneapolis, MN 55441

§ 1.1.12.2 Consultants retained under Supplemental Services:

(N/A)

§ 1.1.13 Other Initial Information on which the Agreement is based:

The project description on the first page and the documents listed herein are incorporated by reference.

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

§ 1.3 The 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.

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

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide, as part of the Architect's Basic Services, professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the level of reasonable professional skill and customary care ordinarily provided by similarly situated architects experienced in this type of Project and practicing in the same

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or similar locality under the same or similar circumstances - (the "Standard of Care"). The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

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

§ 2.6 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000.00) for each occurrence and Three Million Dollars (\$ 3,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00) each accident, One Million Dollars (\$ 1,000,000.00) each employee, and Two Million Dollars (\$ 2,000,000.00) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars (\$ 2,000,000.00) per claim and Two Million Dollars (\$ 2,000,000.00) in the aggregate.

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

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6. Each such certificate shall provide that the insurer shall endeavor to give Owner not less than thirty (30) days written notice before any insurance coverage required by this Section 2.6. is modified or cancelled. The Architect shall pay all deductibles.

§ 2.6.9 The Architect shall require all design consultants and engineers hired or retained by the Architect to perform any of the Services related to the Project to procure and maintain the same minimum insurance coverages and terms set forth herein for Architect and provide certificates of insurance evidencing such coverage to Owner.

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ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and elsewhere in this Agreement (collectively, "Basic Services") include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services. Architect will, as part of the Basic Services, prepare all Instruments of Service, supply all personnel, and otherwise perform all tasks reasonably inferable from this Agreement to complete the Project in a timely manner consistent with the Project schedule and Owner's programmatic requirements.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's other consultants; provided, however, that the Architect shall review all such services, information, surveys and reports and promptly notify the Owner of any errors, omissions, discrepancies or issues raised, which an architect of similar skill and expertise would be reasonably expected to discover. The Architect shall recommend to the Owner performance of any special testing, or retention of consultants, that in the Architect's reasonable judgement are necessary to provide the Architect with information sufficient to produce the documents required under this Agreement. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency, in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. This schedule shall include allowances for periods of time required for the Owner's review and decisions for the Construction Manager's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's or Construction Manager's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval, which shall not be unreasonably withheld. If the Architect does not approve of an Owner directive or substitution, the Architect shall immediately give written notice to the Owner.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall satisfy applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall identify any documents required for the approval of governmental authorities having jurisdiction over the Project, assist the Owner and Construction Manager in the preparation of such documents, assist the Owner and Construction Manager in connection with the Owner's responsibility for filing the documents, and represent the Owner at any meetings with governmental authorities having jurisdiction.

§ 3.1.8 All documents produced by the Architect during any phase of design services shall comply with all applicable laws, statutes, ordinances, codes, orders, rules and regulations. The Architect shall promptly advise the Owner of any change or modification to any legal or government requirement and assist the Owner with revisions necessary to achieve compliance.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services and the Project.

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§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner and Construction Manager regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner and the budget for the Cost of the Work the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Construction Manager's review and Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program, budget, and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate such revisions in the Design Development Phase.

§ 3.2.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreements between the Owner and Contractors; and (3) the Conditions of the Contracts for Construction (General, Supplementary and other Conditions); and (4) a project manual that includes the Conditions of the Contracts for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.4.5 Upon receipt of the Construction Manager's information and an estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing Contracts for Construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner and Construction Manager in bidding the Project by

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and
- .4 organizing and conducting the opening of bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions, and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements, and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner and Construction Manager in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective Contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective Contractors;
- .3 preparing responses to questions from prospective Contractors and providing clarifications and interpretations of the Proposal Documents to the prospective Contractors in the form of addenda; and
- .4 participating in negotiations with prospective Contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions, consult with the Construction Manager, and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

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

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractors' failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for acts or omissions of the Construction Manager, or acts or omissions of the Contractors or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, 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 shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and the Construction Manager (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents,

whether or not the Work is fabricated, installed or completed. 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 Contractors, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by the Owner and Contractors, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractors designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232–2019, the Architect, with the assistance of the Construction Manager, shall render initial decisions on Claims between the Owner and Contractors as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 Not more frequently than monthly, the Architect shall review and certify an application for payment. Within seven days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.
- .2 Where there is more than one Contractor responsible for performing different portions of the Project, the Architect shall review the Project Application and Project Certificate for Payment, with the Summary of Contractors' Applications for Payment, that the Construction Manager has previously prepared, reviewed, and certified. The Architect shall certify the total amount due all Contractors collectively and shall issue a Project Certificate for Payment in the total of such amounts.

§ 3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, 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 Contractors are entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.3 The issuance of a Certificate for Payment or a Project Certificate for Payment shall 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 each Contractor's right to payment, or (4) ascertained how or for what purpose that Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.4 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's Project submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals transmitted by the

Construction Manager shall be taken in accordance with the approved submittal schedule 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.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractors' submittals such as Shop Drawings, Product Data and Samples, that the Construction Manager has reviewed, recommended for approval, and transmitted to the Architect. The Architect's review of the submittals shall only be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractors' responsibilities. The Architect's review shall not constitute approval of safety precautions or 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.

§ 3.6.4.3 If the Contract Documents specifically require the Contractors to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractors' design professionals, provided the submittals bear such professionals' seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals transmitted by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 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. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

§ 3.6.5.3 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect, assisted by the Construction Manager, shall:

- .1 conduct inspections to determine the date of Substantial Completion and the date of final completion;
- .2 issue a Certificate of Substantial Completion prepared by the Construction Manager;
- .3 review written warranties and related documents required by the Contract Documents and received from the Contractors, through the Construction Manager; and
- .4 after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's

knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner and Construction Manager to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the lists submitted by the Construction Manager and Contractors of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid each of the Contractors, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The Supplemental Services listed in the table below as being the Architect’s responsibility are included as part of Basic Services. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Service is not being provided for the Project.

(Designate the Architect’s Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service.

Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Architect, Owner or Not Provided)</i>
§ 4.1.1.1 Assistance with selection of Construction Manager	Architect
§ 4.1.1.2 Programming	Not Provided
§ 4.1.1.3 Multiple preliminary designs	Architect
§ 4.1.1.4 Measured drawings	Not Provided
§ 4.1.1.5 Existing facilities surveys	Not Provided
§ 4.1.1.6 Site evaluation and planning	Architect
§ 4.1.1.7 Building Information Model management responsibilities	Architect
§ 4.1.1.8 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.9 Civil engineering	Architect
§ 4.1.1.10 Landscape design	Architect
§ 4.1.1.11 Architectural interior design	Architect
§ 4.1.1.12 Value analysis	Architect
§ 4.1.1.13 Cost estimating	Architect (in Schematic Design only) Construction Manager (after Schematic Design)
§ 4.1.1.14 On-site project representation	Not Provided
§ 4.1.1.15 Conformed documents for construction	Not Provided
§ 4.1.1.16 As-designed record drawings	Not Provided
§ 4.1.1.17 As-constructed record drawings	Not Provided

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§ 4.1.1.18	Post-occupancy evaluation	Not Provided
§ 4.1.1.19	Facility support services	Not Provided
§ 4.1.1.20	Tenant-related services	Not Provided
§ 4.1.1.21	Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.22	Telecommunications/data design	Owner
§ 4.1.1.23	Security evaluation and planning	Not Provided
§ 4.1.1.24	Commissioning	Owner
§ 4.1.1.25	Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.26	Historic preservation	Not Provided
§ 4.1.1.27	Furniture, furnishings, and equipment design	Owner
§ 4.1.1.28	Other services provided by specialty Consultants	Not Provided
§ 4.1.1.29	Other Supplemental Services	Not Provided

§ 4.1.2 Description of Supplemental Services

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

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

Not determined at the time of this Agreement

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

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

Not determined at the time of this Agreement

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement, without invalidating the Agreement. The Architect shall notify the Owner in writing before providing Additional Services unless the Architect and the Owner have already signed an agreement expressly authorizing the Additional Services. If upon receiving any such notice the Owner believes the service at issue is part of the Basic Services, the owner shall so inform the Architect in writing. The Architect shall then perform the service and may pursue a claim as provided for in this Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule. Any services that must be provided or re-provided by the Architect due to the fault of the Architect to comply with any requirements of this Agreement shall be provided as Basic Services and not as Additional Services and shall be provided at no additional cost to the Owner.

§ 4.2.1 Upon recognizing the need to perform any Additional Services, the Architect shall notify the Owner with reasonable promptness in writing before starting the Additional Services and explain the facts and circumstances giving rise to the need. Unless such notice is given, the Architect's claim for the Additional Services shall be waived. Without limiting the general nature of the forgoing requirements, the Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

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- .1 Services necessitated by material change in the Initial Information, a material change in previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, building systems, the Owner's schedule or budget for Cost of the Work, constructability considerations, procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;
- .3 Services necessitated by enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable Standard of Care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner, Construction Manager or the Owner's other consultants or contractors;
- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients, except as otherwise specified as part of the Basic Services;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Evaluation of the qualifications of entities providing bids or proposals;
- .11 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .12 Assistance to the Initial Decision Maker, if other than the Architect, unless the Architect's services are at issue.

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

- .1 Reviewing a Contractor's submittal out of sequence from the Project submittal schedule approved by the Architect;
- .2 Responding to the Contractors' requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractors from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractors' proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or
- .5 Evaluating substitutions proposed by the Owner, Construction Manager or Contractors and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractors
- .2 Twenty (20) visits to the site by the Architect during construction
- .3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

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.4 One (1) inspections for any portion of the Work to determine final completion

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work, or (2) the anticipated date of Substantial Completion identified in the Initial Information, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Thirty (30) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall consult with the Architect regarding the requirements for the Project, and shall provide such information as the Architect reasonably requests.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. The Owner shall provide the Architect with a copy of the scope of services in the agreement executed between the Owner and the Construction Manager, and any subsequent modifications to the Construction Manager's scope of services in the agreement.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and the Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractors to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

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

§ 5.6 If reasonably necessary for the Architect to perform its services under this Agreement, the Owner shall upon the Architect's request furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

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

§ 5.10 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Architect shall prepare a schedule of required tests, inspections and reports and advise the Owner of their costs.

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

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

§ 5.13 The Owner shall communicate with the Contractors and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

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

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

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

§ 5.17 The term "approved" and its derivatives as used in this Agreement in reference to the Owner shall be interpreted to mean either acceptance by the Owner of a proposal or authorization by the Owner to proceed with a particular action. The Architect hereby acknowledges and agrees that any such approval by the Owner is made in reliance on the Architect's professional skill, judgment and recommendations, without any independent investigation, review or evaluation by the Owner other than that required for the Owner to make decisions in connection with (1) the Owner's programmatic objectives and goals or (2) issues that are discretionary or elective of a building owner. In no event shall any approval by the Owner relieve the Architect of any responsibility or liability under this Agreement or be construed as a determination by the Owner of the adequacy, accuracy or completeness of any Drawing or Specifications. Notwithstanding anything to the contrary in this paragraph, the Owner acknowledges that its approvals are not in reliance on the recommendations of the Architect to the extent such approvals are contrary to the recommendations of the Architect, provided the Architect notifies the Owner (1) that such approval is contrary to the recommendation of the Architect and (2) of the specific ramifications and consequences of such approval which cause the Architect to withhold its recommendation, endorsement or acceptance of the item under consideration.

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ARTICLE 6 COST OF THE WORK

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

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies established by the Owner for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

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

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

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

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

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 If the Owner and the Architect intended to transmit Instruments of Service (defined below), or any other information, or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Any error in electronic format reproduction or documentation shall be the sole responsibility of the

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Architect if such error occurred within the Architect's office or when reproduction is under the control of the Architect.

§ 7.2 All drawings, specifications and other documents, including those in electronic format, prepared by the Architect and the Architect's consultants pursuant to this Agreement (including drawings and specifications which become part of the Contract Documents incorporated into the Agreement between the Owner and the Contractor) (collectively, the "Instruments of Service") shall, upon payment of undisputed compensation due under this Agreement be the property of the Owner. Without limiting the foregoing, the Architect grants and transfers to the Owner, among other things, an exclusive license to use and reproduce the Instruments of Service for the purposes of constructing, occupying, using, repairing, adding to, expanding, modifying and maintaining the Project. Submission or distribution of any of the Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project shall not be construed as publication in derogation of any reserved rights of the Architect and the Architect's consultants.

§ 7.3 Intentionally omitted.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all actual and direct costs and expenses, including the reasonable cost of defense incurred and related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 The provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law.

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

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

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

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

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

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

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

(Check the appropriate box.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

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

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

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

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

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

§ 8.3.4 Consolidation or Joinder

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

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

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

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

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make undisputed payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. In the event the Owner disputes any payments due and owing to the Architect, the Owner shall provide the Architect with written notice of the disputed payment (which written notice may be made by email) and the parties shall meet and confer within a reasonable time thereafter, not to exceed 30 days, to attempt to reach a resolution of the dispute. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a justified suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all undisputed sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted if warranted by a materially significant lapse of time.

§ 9.2 If the Owner suspends the Project due to no fault of the Architect for more than 90 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for the remaining services once performed and the time schedules shall be equitably adjusted if warranted by a materially significant lapse of time.

§ 9.3 If the Owner expressly abandons the Project for more than 90 consecutive days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

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

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

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

§ 9.7

(Paragraphs deleted)
Intentionally omitted.

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

§ 9.9 Intentionally omitted.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

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

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement and including any payments due to the Architect by the Owner prior to the assignment. The Architect shall execute all necessary consents to accomplish such an assignment.

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

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

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. Should the Architect, however, become aware of, or discover, the presence of hazardous materials or toxic substances on the Project site, the Architect shall promptly report the same to the Owner in writing.

§ 10.7 The Architect shall not use photographic or artistic representations of the Project for promotional or professional purposes unless the Architect first obtains the Owner's written approval to do so. If approved, upon reasonable prior notice, the Owner shall give the Architect reasonable access to the completed Project to take photographs and make artistic representations. If the Owner approves the use of photographic or artistic representations of the Project, the Architect shall provide the Owner with electronic files (raw or best available format) of such photographic images and artistic representations together with a copyright license allowing the Owner to use the same on a nonexclusive, perpetual basis for such purposes as the Owner desires. This Section 10.7 shall survive the termination of this Agreement.

§ 10.8 The Architect and the Owner shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as amended, and all Minnesota Rules promulgated pursuant to Chapter 13. The Architect and the Owner shall further cause their officers, employees, and agents to abide by such laws and rules. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 Intentionally omitted.

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

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parties' intentions and purposes in executing the Agreement. The waiver by one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any provision hereof shall be limited to the particular waiver or non-enforcement and shall not operate, or be deemed to waive, any future breach of this Agreement or be construed to be a waiver of any other provision of this Agreement.

§ 10.10 The Architect represents and warrants that the designs, drawings and documents prepared by the Architect will be original, will not infringe upon or violate the copyrights or any other property rights of any person or entity, and that the Architect has the full and exclusive right and authority to enter into and fulfill this Agreement. The Architect shall indemnify, defend and hold harmless the Owner from and against any claims arising under this paragraph.

§ 10.11 Pursuant to Minnesota Statutes § 16C.05, subd. 5, the books, records, documents, and accounting procedures and practices of the Architect relative to this Agreement and the services performed by the Architect shall be subject to examination by the Owner and the State Auditor. Complete and accurate records of the services performed by the Architect pursuant to this Agreement shall be kept by the Architect for a minimum of six (6) years following termination of this Agreement for such auditing purposes. The retention period shall be automatically extended during the course of any administrative or judicial action involving the Owner regarding matters to which the records are relevant. The retention period shall be automatically extended until the administrative or judicial action is finally completed or until the authorized agent of the Owner notifies the Architect in writing that the records need no longer be kept. This Section 10.11 shall survive the termination of this Agreement.

ARTICLE 11 COMPENSATION

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

- .1 Stipulated Sum
(Insert amount)

(Paragraphs deleted) Six Hundred Fifty Five Thousand Dollars (\$655,000.00)

§ 11.2
(Paragraphs deleted)
Intentionally omitted.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect
(Paragraphs deleted)
for time actually spent billed at the hourly rates set forth on attached Exhibit A for Additional Services approved by the Owner prior to commencement of the Additional Services.

§ 11.4 Compensation for Additional Services of the Architect's consultants shall be the amount invoiced to the Architect
(Paragraphs deleted)
as a stipulated sum with prior approval from the Owner.

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	\$80,000.00
Design Development Phase	\$150,000.00
Construction Documents Phase	\$230,000.00
Procurement Phase	\$30,000.00
Construction Phase	\$165,000.00
<hr/> Total Basic Compensation	<hr/> \$655,000.00

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The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 Intentionally omitted

(Paragraph deleted)

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

See Exhibit A

(Table deleted)

§ 11.7.1 Regarding the stipulated sum, the Architect shall periodically invoice the Owner for time spent by the Architect on the Project prior to the date of the invoice until the entire stipulated sum has been paid, at which point the Architect shall continue to provide Basic Services without additional compensation.

§ 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Intentionally omitted;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Intentionally omitted;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 Intentionally omitted;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Intentionally omitted;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures.

Any cost or expense not specifically listed in this Section 11.8.1 shall not be considered or construed to be a Reimbursable Expense. All Reimbursable Expenses shall be costs or expenses necessarily incurred by the Architect in good faith at rates not higher than those generally prevailing in the Minneapolis/Saint Paul area, except with the prior written consent of the Owner.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the actual and direct expenses incurred by the Architect and the Architect's consultants plus zero percent (0 %) of the expenses incurred.

§ 11.9

(Paragraphs deleted)

Intentionally omitted.

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of zero (\$ 0) shall be made upon execution of this Agreement for registration fees and other fees payable to the

Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 The Architect shall invoice the Owner monthly in arrears for services performed during the previous calendar month. Each invoice shall itemize, by each day during such month, the name of each person performing services, the number of hours spent by each person performing services, a description of the work performed by each person each day, and the phase of service to which each work entry applies. Further, each invoice shall itemize for each phase of service the amount of the stipulated sum spent on each phase of service through the date of the invoice and the amount remaining to be spent after the date of the invoice. Payments are due and payable within 35 days after the Owner's receipt of the Architect's invoice. Amounts unpaid more than 60 days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

1% over Prime per month. Objections to invoices not made in writing within 30 days of invoice date are deemed waived.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to Contractors for the cost of changes in the Work, unless the Architect is claimed to be liable.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for the term of this Agreement and not less than six years thereafter.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

12.1 If a Change order or Construction Change Directive is necessary due to an omission, oversight, or other act caused by the Architect, the Architect shall prepare drawings, specifications, and other documents and supporting data, evaluate Contractor's proposals, and provide other services as may be required in connection with Change Orders and Construction Change Directives at no additional cost to the Owner. Changes requiring additional time as requested by Owner, Contractor, Job Condition, Building Code, etc., out of the control of the Architect, would be an Additional Service.

12.2 Should the project be terminated at any time by the Owner prior to completion of any phase, the Architect will receive one hundred (100%) percent of any work completed prior to and up to the date of project termination.

12.3 If adjustments or modifications to the completed construction documents are required to meet the Owner's budget resulting in a change in budget by the Construction Manager or due to discrepancies in the initial Schematic Design or Design Development estimates by the Construction Manager / Owner's consultant, such adjustments and changes are to be compensated to the Architect as an Additional Service.

12.4 If services described under Additional Services in Article 12.5 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner in writing and receive the Owner's approval for Scope and Fees in writing prior to commencing such services.

12.5 The date of final completion shall be established prior to the completion of the Owner-Contractor Agreement. The extent of project representation of the Architect for Basic Services shall coincide with a date thirty (30) days beyond the date of final completion. At that time, further project representation beyond Basic Services shall be an Additional Service at the request and approval of the Owner.

12.6 The Architect's fee includes the cost of the Architect and the Architect's consultants to be properly licensed in the location of the Project.

12.7 At the request of the Owner, the Architect shall conduct one (1) inspection after the date of final completion, at the end of eleven (11) months of occupancy for the purpose of ensuring that the facility is in full compliance with the Construction Documents and to notify the Owner of any unfinished work.

12.8 A project contingency will be included in the estimates and shall remain as part of the Construction Phase budget for unforeseen conditions, required modifications to the documents, code interpretations and Owner-requested changes.

12.9 The Architect includes in the basic fee the work for the City submittals and approvals.

12.10 In the performance of its obligations under this Agreement, the Architect will comply with applicable provisions of any Federal, State, or local law prohibiting discrimination on the grounds of race, color, creed, sex, political affiliation, affectional preference, or national origin. The provisions of Minnesota Statutes Section 181.59 are incorporated by reference into this Agreement.

12.11 All hourly rates for additional services are subject to a potential 3% annual cost of living increase effective January of each year.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B132™-2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition

(Paragraphs deleted)

- .2 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

[

(Paragraphs deleted)

- Other Exhibits incorporated into this Agreement: Exhibit A

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A: Hourly Billing Rate Schedule

- .4 Other documents:

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

(N/A)

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

OWNER *(Signature)*

(Printed name and title)

OWNER *(Signature)*

(Printed name and title)

ARCHITECT *(Signature)*

Michael J. Krych, President

(Printed name, title, and license number, if applicable)

ARCHITECT *(Signature)*

Bruce Schwartzman, Vice President

(Printed name, title, and license number, if applicable)

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