

RECORD OF RESOLUTIONS

Resolution No. 12-2026

Passed: February 10, 2026

A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE, TO ENTER INTO, AND TO EXECUTE A STANDARD FORM OF AGREEMENT BETWEEN OWNER (CITY OF WEST CARROLLTON) AND CONSTRUCTION MANAGER AS CONSTRUCTOR (PRUS CONSTRUCTION) WHERE THE BASIS OF PAYMENT IS THE COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE.

WHEREAS, through various external funding efforts the City of West Carrollton has raised \$5,000,000 in grant funding to advance the Whitewater Park Project with no local match required; and

WHEREAS, in February 2022, the City of West Carrollton contracted a whitewater park feasibility analysis with Merrick & Company / McGlaughlin Whitewater and PROS Consulting, which was completed in December 2023 at a cost of \$60,000; and

WHEREAS, the City of West Carrollton, upon participating in market analyses and evaluating options for transformative economic development and recreational development on the Great Miami River, requested funding from the Montgomery County Board of Commissioners for preliminary design and engineering for the West Carrollton Whitewater Park; and

WHEREAS, in July 2023, the City of West Carrollton secured an appropriation of \$750,000 from the Montgomery County Board of County Commissioners for a 30% Whitewater Park design task order, which resulted in the completion of an Endangered, Threatened, and Rare (ETR) Species and Habitat Assessment; Mussel Survey Report; Water Resources Delineation Report; Geotechnical Engineering Exploration; Illustrative Master Plan; Preliminary Architectural Design Report; 30% Preliminary Design Construction Plans; Stormwater Management Report; Low Dam Bathymetric Survey and Report; Engineer's Estimate of Probable Cost and Quantities; US Army Corps of Engineers' Hydrologic Engineering Center River Analysis System (HEC-RAS) Model; and Preliminary Park Specifications list, which was completed by Merrick & Company / McGlaughlin Whitewater, among other specialized subcontractors in August 2024; and

WHEREAS, the Consolidated Appropriations Act, 2023 included an award of \$3,000,000 to the City of West Carrollton as the grantee for the Development and Low Dam Revitalization Project under grant number B-23-CP-OH1211; and

WHEREAS, on November 12, 2024, the West Carrollton City Council authorized the execution of a grant agreement via Resolution 31-2024 with the United States Department of Housing and Urban Development for the purpose of directing grant number B-23-CP-OH1211, in the amount of \$3,000,000, to be used for detailed final design, development of construction documents, and other eligible costs under the program; and

WHEREAS, in 2022, the West Carrollton City Council worked with elected officials in the legislature of the State of Ohio in order to advocate for and to receive an appropriation of \$250,000 in Capital Budget funding through the Ohio Department of Natural Resources ("ODNR"), with no local matching fund requirement, for the West Carrollton Whitewater Park Project; and

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WHEREAS, in 2024, Representative Tom Young and the West Carrollton City Council worked together to gain approval from the 135th Ohio General Assembly in order to secure a reappropriation of the same grant funding pursuant to Substitute House Bill 2 (the "Act"), in the amount of \$250,000 for the West Carrollton Whitewater Park; and

WHEREAS, on June 10, 2025, the West Carrollton City Council authorized the execution of a pass through grant agreement via Resolution 29-2025 with the ODNR in the amount of \$250,000, to advance the Whitewater Park Project including hard and soft costs relating to infrastructure improvements such as design; engineering; permitting; eligible indirect costs under the grant program; development of construction drawings; professional studies as required; surveying; relocation of mussels and / or endangered, threatened, or rare species as required; and costs related to the construction phases of the project if funds are available, and such activity is permitted by ODNR; and

WHEREAS, the City of West Carrollton has partnered with Woodard Development and JT Development to further the City's overall efforts to create jobs and to encourage private and public sector capital investment in the River District and Whitewater Park; and

WHEREAS, the Dayton Region Priority Development and Advocacy Committee ("PDAC") designated the West Carrollton River District and Whitewater Park a priority economic development project for the region; and

WHEREAS, the City of West Carrollton assembled a Construction Manager At Risk Selection Committee composed of City Manager Amber Holloway, Miami Conservancy District Chief Engineer Don O'Connor, Assistant City Manager Dan Wendt, Service Director Rich Norton, and Parks and Recreation Director Christian Mattingly; and

WHEREAS, the Construction Manager At Risk Selection Committee received advisory input from Thompson Hine LLP, JT Consulting, and Muller Engineering (Architect / Engineer) in conducting a two stage "best value" selection method, which included a Request for Qualifications (RFQ) and detailed Request for Proposal (RFP) based on 30% design drawings, engineer estimates of quantities, and other preconstruction analyses that were provided to proposers during the evaluation process; and

WHEREAS, the Construction Manager At Risk Selection Committee advertised the Request for Qualifications in a newspaper of general circulation from the period of September 8–October 10, 2025 prior to receiving, reviewing, performing reference checks, and ranking Statements of Qualifications from five (5) construction firms; and

WHEREAS, the Construction Manager At Risk Selection Committee shortlisted 4 firms, which in turn developed and submitted technical and pricing proposals on December 19, 2025; and

WHEREAS, the Construction Manager At Risk Selection Committee reviewed each proposal and interviewed each firm to ask clarifying questions in January 2026; and

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WHEREAS, interviews of each firm that were conducted by the Construction Manager At Risk Selection Committee were not scored nor included in the scoring of proposals pursuant to Ohio Administrative Code 153: 1-6-01; and

WHEREAS, the Construction Manager At Risk Selection Committee evaluated each pricing and technical proposal utilizing the performance criteria and pricing criteria established in the RFP (i.e., proposed staffing, subcontracting plan, estimating strategies, procurement strategies, value added suggestions, schedule and work sequencing, site logistics and safety plan, quality assurance / quality control plan, unique challenges and solutions, project-specific information, demonstration of understanding of and approach to preconstruction services, demonstration of understanding of water control and dewatering requirements, and proposed revisions to the construction manager agreement, preconstruction stage fee, construction stage personnel costs, general conditions costs, construction manager fee (at risk services), and construction manager contingency); and

WHEREAS, the Construction Manager At Risk Selection Committee evaluated the performance criteria separately from pricing criteria and then combined the evaluations to reach a final evaluation of each proposal; and

WHEREAS, proposers submitted preconstruction stage fees of \$271,850 - \$709,450; and

WHEREAS, the Construction Manager At Risk Selection Committee ranked the short-listed firms based on the final evaluation of each proposal to determine the best value; and

WHEREAS, scores of short-listed firms ranged from 87 - 137.8 points, with Prus Construction receiving the highest score by the Construction Manager at Risk Selection Committee; and

WHEREAS, the Construction Manager at Risk Selection Committee has conducted and has received favorable reference checks for Prus Construction relating to the firm's performance and execution of in-river and park projects requiring similar technical expertise; and

WHEREAS, the total cost for preconstruction services is \$271,850 and City of West Carrollton staff is recommending that reimbursable revenues from the \$250,000 pass through grant administered by the Ohio Department of Natural Resources and \$21,850 of unappropriated funds within the cash balance of Fund 419 (i.e., Whitewater Park Capital) be utilized to fund the proposed agreement between Prus Construction and the City of West Carrollton; and

WHEREAS, the Construction Manager at Risk Selection Committee has determined the proposal by Prus Construction to be the best value to the City of West Carrollton; and

WHEREAS, the City Manager recommends that the West Carrollton City Council accept the recommendation of the Construction Manager at Risk Selection Committee for the purpose of completing the detailed design and construction drawings for Phase 1 (i.e., dam hazard mitigation), Phase 2A (i.e., whitewater channel), and Phase 2B (i.e., upland park improvements), as modified by mutual agreement between Prus Construction and the City of West Carrollton, of the Whitewater River Park; and

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WHEREAS, in order to self-perform construction, Prus Construction will first be required to participate in and to share an open book bidding process with the City of West Carrollton in accordance with applicable laws; and

WHEREAS, the City Manager recommends that the West Carrollton City Council authorize the City Manager to negotiate, to enter in to, and to execute the Standard Form of Agreement Between Owner (City of West Carrollton) and Construction Manager as Constructor (Prus Construction) where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price (e.g., based on AIA Document A133 – 2019), attached hereto and incorporated herein by reference as “Exhibit A”, to advance the final design and development of construction documents for the dam hazard mitigation, whitewater channel, and upland park improvement phases of the Whitewater River Park with the City of West Carrollton and Muller Engineering.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WEST CARROLLTON, OHIO:

Section 1: The City Manager or her designee is hereby authorized to negotiate, to enter into, and to execute a Standard Form of Agreement (“Agreement”) Between Owner (i.e., City of West Carrollton) and Construction Manager as Constructor (i.e., Prus Construction) where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, attached hereto and incorporated herein by reference as “Exhibit A”, by and between Prus Construction and the City of West Carrollton. Agreement includes preconstruction cost of \$271,850, construction phase personnel costs of \$829,500, general conditions costs of \$562,500, construction manager’s fee for at risk services of 4.25%, and a 3.00% contingency. The City Manager or her designee is authorized to execute Agreement substantially in the form attached hereto and incorporated herein by reference as Exhibit A, together with any modifications not totaling more than 5.00% of additional Agreement costs as may be necessary and are included within budgetary appropriations, subject to any and all terms and conditions that the City Manager or her designee finds appropriate, to effectuate the purpose of Agreement; provided, that any such modification shall not, in the judgment of the City Manager, be adverse to the City.

Section 2: It is recognized and acknowledged that this project will be funded with a \$250,000 grant that the City of West Carrollton currently has under contract with the Ohio Department of Natural Resources (e.g., ODNR Capital Budget Funds), and \$21,850 from the Whitewater Park Capital Fund (Fund 419), pending appropriation through adoption of subsequent legislation by the West Carrollton City Council.

Section 3: The Finance Director is authorized to establish any necessary accounts or funds as may be required by law to handle the funds associated with the administration of and accounting for funds relating to the execution of Agreement.

Section 4: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

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Section 5: This resolution shall be in full force and effect from and after its date of passage.

Passed: February 10, 2026


Mayor

Attest: 
Clerk of Council

Effective Date: February 10, 2026



AIA® Document A133® – 2019

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

AGREEMENT made as of the 26th day of January in the year 2026
(In words, indicate day, month, and year.)

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

City of West Carrollton
300 E. Central Avenue
West Carrollton, Ohio 45449

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

Prus Construction Company
5325 Wooster Pike
Cincinnati, Ohio 45226

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

To construct improvements to the West Carrollton Whitewater River Park
located on the Great Miami River west of I-75 and along the south bank of
the river parallel to Alex Road (the "Project")

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

Muller Engineering Company, Inc.
7245 West Alaska Drive, Suite 300
Lakewood, Colorado 80226

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 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.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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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, as described in Section 4.1.1:

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

See Owner's request for qualifications, incorporated herein by reference, dated September 8, 2025 (the "RFQ") and Owner's request for proposals, incorporated herein by reference, dated November 14, 2025 (as amended by Amendment #1 to Request for Proposals, incorporated herein by reference, dated November 21, 2025, collectively, the "RFP"). References to the RFQ and RFP include all attachments and Project resources provided or referenced therein.

§ 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 RFQ and RFP.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

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

The Owner's total budget for the construction portion of the Project is \$19,900,000

§ 1.1.4 The Owner's anticipated design and construction milestone dates: as set forth in the Owner's milestone schedule for the Project attached hereto as **Exhibit D** (as adjusted in accordance with the Contract Documents, the "Project Milestone Schedule").

.1 Design phase milestone dates, if any:

See Project Milestone Schedule

.2 Construction commencement date:

See Project Milestone Schedule

.3 Substantial Completion date or dates:

Phase 1 – Dam Hazard Mitigation: See Project Milestone Schedule

Phase 2a – Whitewater Course Improvements: See Project Milestone Schedule

Phase 2b – Upland Site Improvements: See Project Milestone Schedule

.4 Other milestone dates:

See Project Milestone Schedule

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:

(Identify any requirements for fast-track scheduling or phased construction.)

The Project will be designed and constructed in three phases generally described as follows: (1) "Phase 1" which is anticipated to consist of the dam hazard mitigation design and construction as set forth in the RFP; and (2) "Phase 2a" which is anticipated to consist of the design and construction of the whitewater course as well as associated site improvements as set forth in the RFP; and (3) "Phase 2b" which is anticipated to consist of the design and construction of all upland site improvements, to include grading, roadway, parking, trail, buildings, and utilities as set forth in the RFP.

Unless otherwise set forth in this Agreement, all of the terms and conditions of this Agreement (including the defined terms used herein), and all rights and remedies of the parties, shall independently apply to each phase. For example, if a provision of this Agreement refers to "Substantial Completion", it is intended to apply to the Substantial Completion for each phase, as the case may be. The parties shall cooperate in all reasonable ways to adjust the various submission, review and approval dates set forth in this Agreement and the other Contract Documents to accommodate the phased delivery of the Project in a manner consistent with the Project Milestone Schedule.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Not Applicable

§ 1.1.6.1 Intentionally Omitted.

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

As set forth in the Contract Documents.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

(List name, address, and other contact information.)

Dan Wendt, Assistant City Manager
City of West Carrollton
300 East Central Avenue

West Carrollton, Ohio 45449

§ 1.1.9 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.)

None as of the date of this Agreement. The Owner may, however, by notice to the Construction Manager after the date of this Agreement, change (if applicable) or identify one or more additional persons or entities who are required to review submittals under this Section 1.1.9. No persons or entities identified pursuant to this Section 1.1.9 shall have any authority to bind the Owner. Only the Owner's representative identified under Section 1.1.8 (or any replacement thereof designated by the Owner pursuant to Section 4.2, as the case may be) shall have the authority to bind the Owner.

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

.1 Geotechnical Engineer:

By Engineer and through Merrick Engineering Inc.

.2 Civil Engineer:

By Engineer.

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

Not Applicable.

§ 1.1.11 The Engineer's representative:
(List name, address, and other contact information.)

Gray Clark, President
Muller Engineering Company, Inc.
7245 West Alaska Drive, Suite 300
Lakewood, Colorado 80226

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Mike Prus, President
Prus Construction
5325 Wooster Pike
Cincinnati, Ohio 45226
Phone: (513) 321-7774
Email: mprus@prus.us

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan:
(List any Owner-specific requirements to be included in the staffing plan.)

The Construction Manager represents to the Owner that the Construction Manager will employ a sufficient number of employees and personnel to perform the Work required to the Owner under this Agreement within the Contract Time in accordance with the Project Milestone Schedule. The "Key Personnel and Staffing Plan", attached hereto as **Exhibit E**, contains a list of Construction Manager's key personnel to be used by the Construction Manager in providing its services hereunder, and a list of the names, positions and percentages or hours of time devoted to the Project of the Construction Manager's key personnel ("Key Personnel") who will be assigned to the Project. The Key Personnel shall be used during the phases and shall devote the time specified in the Key Personnel and Staffing Plan. Neither the Key Personnel, their positions nor their time devoted to the Project be changed without the prior written consent of the Owner, which consent shall not be unreasonably

withheld. If requested by the Owner, the Construction Manager shall promptly replace any employee, agent or Key Personnel that the Owner determines is not performing satisfactorily. Any of the foregoing replacements shall be at no additional cost to the Owner, and any employee, agent or Key Personnel selected as a replacement shall be mutually agreed to by the Owner and the Construction Manager. The Construction Manager acknowledges that a qualified and timely replacement is crucial to a smooth transition of the services to meet the Owner's schedule requirements.

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

As set forth in the Contract Documents.

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

As set forth in the Contract Documents.

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall, consistent with the Contract Documents, appropriately adjust the Project Milestone Schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and the parties' execution of the Guaranteed Maximum Price Amendment, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Engineer and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.1.1 In the event of any conflict or inconsistency among the Contract Documents, the Contract Documents shall be construed according to the following priorities, with "first priority" being the highest priority and "eighth priority" being the lowest priority:

- | | |
|-------------------|---|
| First Priority: | Change Orders and Construction Change Directives (identified within this Agreement and the A201 General Conditions as "Change Orders") that are dated after execution of the GMP Amendment. Change Orders and Construction Change Directives of more recent dates shall take precedence over older Change Orders and Construction Change Directives |
| Second Priority: | The GMP Amendment to be executed by the parties and any supporting documentation attached thereto |
| Third Priority | Change Orders and Construction Change Directives dated before execution of the GMP Amendment |
| Fourth Priority: | This Agreement; |
| Fifth Priority: | AIA Document A201 – 2017, as modified by the parties |
| Sixth Priority: | Addenda with later date having greater priority; |
| Seventh Priority: | Drawings, with detailed drawings taking precedence over large scale; |
| Eighth Priority: | Specifications (or Project Manual). |

In the event of conflict inconsistencies within a particular Contract Document (such that the conflict or inconsistency cannot be reconciled based on the order of priority set forth above), then the Construction Manager shall satisfy or comply with the most specific requirement, as reasonably determined by the Owner. A "conflict" or "inconsistency" is defined as occurring when two or more Contract Documents contain differing direction on a contractual matter, not when one or more Contract Documents does not address or is silent on an issue.

§ 2.1.3 Notwithstanding the foregoing or anything else in the Contract Documents to the contrary, no term or provision of any qualification, clarification or assumption attached to or included in any Modification shall take precedence over the terms and conditions of the Agreement or these General Conditions unless such qualification, clarification or assumption directly and expressly identifies the section of the Agreement or these General Conditions to be impacted by such qualification, clarification or assumption.

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified for the Project and attached hereto as **Exhibit C**, shall apply except as expressly provided otherwise in this Agreement or otherwise designated by Owner in writing. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.3 Notwithstanding anything in the Contract Documents to the contrary, all references in the Contract Documents to the "AIA Document A201-2017, General Conditions of the Contract for Construction", "AIA Document A201-2017", "A201-2017", "Conditions of the Contract (General)" or "General Conditions" shall mean the AIA Document A201-2017, General Conditions of the Contract for Construction, as modified for the Project and attached hereto as **Exhibit C**.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2 and elsewhere in the Contract Documents. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3 and elsewhere in the Contract Documents. The Owner and Construction Manager may agree, in consultation with the Engineer, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The Construction Manager shall cause all Work to be performed and completed in accordance with and shall exercise the standard of care and skill for contractors and construction managers experienced and specializing in the construction and construction management of projects similar to the Project in comparable metropolitan areas (the "Standard of Care").

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise the Standard of Care in performing its Preconstruction Services. The Owner and Engineer shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price and as to achieve Substantial Completion within the Contract Time as required by the Contract Documents once the Guaranteed Maximum Price is established. Subject to Section 3.2.3 of AIA Document A201-2017 and the Standard of Care, the Construction Manager is not required to ascertain that the

Drawings and Specifications are in accordance with Applicable Laws, but the Construction Manager shall promptly report to the Engineer and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Owner or Engineer may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, including the evaluation of the Project site, together with recommendations on an appropriate Construction Schedule.

§ 3.1.3 Consultation

§ 3.1.3.1 With such cadence as is set forth the RFP, the Construction Manager shall schedule and conduct (a) weekly meetings with the Engineer and (b) monthly meetings with Engineer and Owner, in each case to discuss such matters as procedures, progress, coordination, and scheduling of the Work. Nothing herein is intended to prevent the Owner from attending the weekly meetings between the Construction Manager and the Engineer.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Engineer on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Engineer, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Engineer regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Engineer in establishing building information modeling and digital data protocols for the Project to establish the protocols for the development, use, transmission, and exchange of digital data. Construction Manager shall cooperate with the Owner, Engineer, and any other parties identified by the Owner in connection with further developing any such protocols or agreement. Construction Manager shall cooperate and work with the Engineer to complete and finalize such protocols for the Owner's review and approval.

§ 3.1.3.4 Construction Manager recognizes that its involvement in the design process is critical to the Project's success and that the Construction Manager's thoughtful and timely feedback to the Owner and Engineer, along with Construction Manager's involvement in all phases of the design, is of utmost importance. The Construction Manager shall fully employ and bring to bear its construction and construction management experience along with all appropriate estimating and scheduling during the Preconstruction Phase to further the Owner's goal of designing and constructing a Project in accordance with the Owner's program, schedule and construction budget requirements.

§ 3.1.3.5 Throughout the Preconstruction Phase, the Construction Manager shall review and monitor the various phases of the development of the design documents to determine whether or not the design of the Project remains within the Project Budget. As the Drawings and Specifications are issued by the Engineer, the Construction Manager shall promptly prepare detailed cost estimates of the Work to determine whether or not the design for the Project remains within the Project budget.

§ 3.1.4 Construction Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a construction schedule for the Engineer's review and the Owner's written acceptance, as set forth in Section 3.10 of AIA Document A201-2017 (the "Construction Schedule"). At minimum such updates shall be completed on a monthly basis for submission with the Construction Manager's monthly progress report. The Construction Manager shall obtain the Engineer's approval for the portion of the Construction Schedule relating to the performance of the Engineer's services. The Construction Manager shall notify the Owner in writing of any causes for and corrective action to any deviations to the approved Construction Schedule. In no event shall Owner's written acceptance of an updated Construction Schedule or any report by the Construction Manager of any causes for and corrective action to any deviations to the approved Construction Schedule be deemed an adjustment to the Contract Time, Contract Sum or any dates set forth in the Project Milestone Schedule unless agreed to by the Owner and authorized in writing by GMP Amendment or a Change Order executed by all relevant parties. The then-current Construction Schedule, as approved by Owner, shall be included as an attachment to the Guaranteed Maximum Price Amendment.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Engineer, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction, including coordination of delivery, phased construction in occupied buildings, assisting with maintaining site security, and pre-purchase of long-lead delivery items. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Engineer, the Construction Manager shall prepare, for the Engineer's review and the 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. If the Engineer or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Engineer progresses with the preparation of the Drawings and Specifications, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Engineer, 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 the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work and execute the Guaranteed Maximum Price Amendment. The estimate shall be provided for the Engineer's review and the Owner's approval. The Construction Manager shall inform the Owner and Engineer in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 Intentionally Omitted.

§ 3.1.7 As the Engineer progresses with the preparation of the Drawings and Specifications, the Construction Manager shall consult with the Owner and Engineer and make recommendations regarding constructability and schedules, for the Engineer's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Engineer regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services and Construction Phase services. That staffing plan is included in the Key Personnel and Staffing Plan.

§ 3.1.10 Intentionally Omitted.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in Section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 Construction Manager acknowledges the requirement imposed by the Ohio Revised Code and the Ohio Administrative Code sections that the Construction Manager establish criteria for the prequalification or prospective bidders on subcontracts and that such criteria will follow the Ohio Administrative Code requirements and will also include any specific criteria required by the Owner that are consistent with the scope and needs of the Project.

§ 3.1.11.4 The processes described in Article 9 shall apply if bid packages are issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Engineer's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. Upon the

establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities (collectively, "Applicable Laws").

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.1.14.1 All preconstruction services described in the RFP, including, without limitation, Attachment 2b, all of which are required preconstruction services of Construction Manager under this Agreement as if first written herein.

§ 3.1.14.2 Value Engineering and Analysis

The Construction Manager shall provide value engineering recommendations on major construction components such as, but not restricted to, the dam hazard mitigation, whitewater course, site landscaping, lighting, utilities, ancillary site improvements, the mechanical systems, exterior envelope, structural system, roofing system, lighting and power service. These recommendations shall be summarized in a report and distributed to the Owner and Engineer. Any cost savings from the value engineering process shall accrue to Owner.

§ 3.1.14.3 Design Assist Services

Construction Manager acknowledges that the Owner and/or the Construction Manager (if and when requested by the Owner) may engage various contractors ("Design Assist Subcontractors") to provide design assist services for the Project, which may include reviewing the design documents, preparing plans and specifications, providing for detailed engineering solutions or details (the "Design Assist Documents"), commenting on constructability, providing cost estimating and scheduling services, and providing advice on materials, systems and equipment, labor and material availability, procurement timing and alternative designs ("Design Assist Services"). Such Design Assist Services shall supplement, rather than diminish, the Engineer's services. The Design Assist Subcontractors shall coordinate their services and reasonably assist the Engineer with preparation of the design documents. The Design Assist Subcontractors shall not, subject to the professional standard of care applicable to such Design Assist Subcontractors, be responsible for the errors or omissions of the Engineer. The Design Assist Subcontractors shall, however, promptly notify the Owner and the Construction Manager of any errors or omissions of the Engineer that the Design Assist Subcontractors discover.

§ 3.1.14.4 Design-Build Services

The Construction Manager shall provide the design-build services required under the Contract Documents (the "Design-Build Services"). Such Design-Build Services shall be based on the criteria prepared by the Engineer and approved by the Owner. The design and engineering services for the Design Build Services shall be provided by a design professional agreed to by Owner ("Design-Build Professional"). The Design-Build Professional shall be qualified and duly licensed as required by Applicable Law and shall perform the Design-Build Services in accordance with the professional standard of care applicable to such Design-Build Professional. The Design-Build Professional shall be the engineer-of-record for the Design-Build Services. The Design-Build Professional and its consultants (if any) shall not be changed without the prior written approval of the Owner. Owner shall have the right, upon notice to Construction Manager, to communicate directly with and obtain information from, but not direct, modify or change the work of, Design-Build Professional and its consultants (if any). Under no circumstances shall any such communications or requests be deemed to relieve Construction Manager of its obligations under this Agreement, including, but not limited to, the Design-Build Services. The Design-Build Professional shall, if requested by the Owner, participate in the GMP development process set forth in Section 3.2. Upon execution of either (1) the GMP Amendment or (2) Change Order including Design-Build Services, the Construction Manager shall cause the Design-Build Professional to produce and deliver to the Owner, for its review and approval, final construction drawings and specifications for the Design-Build Services. The final construction drawings and specifications shall be consistent with the approved GMP Documents set forth in the GMP Amendment and those documents provided by the Architect. Notwithstanding any review or approval by the

Owner, the Construction Manager shall be solely responsible for all design and other elements of the Work required as part of the Design-Build Services. The final construction drawings and specifications for the Design-Build Services shall include technical drawings, schedules, diagrams and specifications, setting forth in detail the requirements for construction of the Design-Build Services, and shall: (a) provide information customarily necessary for the use of those in building trades; and (b) include documents customarily required for regulatory agency approvals. The construction drawings and specifications for the Design-Build Services prepared by or through the Construction Manager shall comply with all Applicable Laws. Construction Manager shall, in its agreement with the Design-Build Professional, require Design-Build Professional to provide all the services to Construction Manager that Construction Manager is required to provide the Owner in this Agreement.

§ 3.1.15 GMP Phase and Development

§ 3.1.15.1 The Guaranteed Maximum Price ("GMP") shall be developed in accordance with this Section 3.1.15 and Section 3.2. The GMP shall be based on approximately 60% complete construction drawings and specifications ("GMP Documents").

§ 3.1.15.2 The Construction Manager understands and agrees that the Owner's budget for the Project set forth in Section 1.1.3 constitutes a fixed limit for Construction Cost available for the Project. The Construction Manager shall use its best efforts to achieve a GMP that does not exceed the Owner's budget.

§ 3.1.15.3 The Construction Manager acknowledges the Construction Manager will have had sufficient involvement with the Project to understand the program requirements and Project scope as expressed in the GMP Documents.

§ 3.1.15.4 The GMP, once established, shall be revised only upon the issuance of a properly authorized Change Order.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, promptly following completion of the GMP Documents, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Engineer's review, and the Owner's acceptance pursuant to the process set forth below in this Section 3.2. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's Construction Contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2, all based upon the GMP Documents and the GMP Clarifications and Assumptions (if any, as defined below).

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order, subject to Section 3.1.15.3.

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

- .1 A list of the GMP Documents, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.1 (the "GMP Clarifications and Assumptions");
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's Construction Contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2, all based upon the GMP Documents and the GMP Clarifications and Assumptions; and
- .4 The anticipated date for Substantial Completion upon which the proposed Guaranteed Maximum Price is based.

§ 3.2.4 Construction Contingency

§ 3.2.4.1 The "Construction Contingency" included in the GMP set forth in the GMP Amendment shall be a lump sum amount not to exceed **Three Percent (3%)** of the Cost of the Work. After execution of the GMP Amendment, the Construction Manager's contingency shall be adjusted, as the case may require, to reflect savings or losses resulting from the award of subcontracts. "Buy-Out Savings" shall mean the positive sum determined by subtracting the price of an awarded subcontract from the amount allocated in the GMP Amendment schedule of

values applicable to the Work to be performed under such awarded subcontract. "Buy-Out Losses" shall mean the negative sum determined by subtracting the price of an awarded subcontract from the amount allocated in the GMP Amendment schedule of values applicable to the Work to be performed under such awarded subcontract. The Construction Manager's contingency shall be increased by Buy-Out Savings and decreased by Buy-Out Losses and thereafter the Construction Manager's contingency shall be reduced in accordance with Section 3.2.4.4, unless otherwise agreed by the Owner and Construction Manager in writing prior to the applicable contingency reduction date or event. All Buy-Out Savings and Buy-Out Losses shall be shown on the monthly progress report. Subject to the scheduled Construction Contingency reductions set forth in Section 3.2.4.4, upon completion of a phase, as applicable, the unused Construction Contingency may be reallocated to subsequent phases, provided that such reallocation is expressly identified on the schedule of values. Under no circumstances shall the aggregate amount of the Construction Contingency, inclusive of all reallocations, exceed the original Construction Contingency set forth in the first GMP Amendment.

§ 3.2.4.2 Provided that the Construction Manager obtains the Owner's prior written approval in each instance, the Construction Manager may expend funds from the Construction Contingency for Cost of the Work incurred for completion of the Work, including Buy-Out Losses, scope differences, Subcontractor defaults, overtime, corrective Work, and errors in estimating; provided, however, that with respect to any expenditure of the Construction Contingency relating to a Subcontractor default, the Construction Manager shall first demonstrate, to the Owner's reasonable satisfaction, that the Construction Manager has in good faith exercised reasonable steps to obtain performance by Subcontractor or Subcontractor's surety and that the claim is not covered by insurance. For purposes of this Agreement, the term "covered by insurance" shall mean that the event or claim underlying the Construction Manager's request for the use of Construction Contingency is an insured claim under any policy of insurance carried by the Construction Manager or any subcontractor. Any use of the funds in the Construction Contingency must be for permitted Costs of the Work and any recoveries shall be used to replenish the Construction Contingency.

§ 3.2.4.3 Notwithstanding anything in the contract documents to the contrary, in no event shall the Construction Manager expend funds from the Construction Manager's contingency for or on account of any of the following: (1) items that are not permitted Costs of the Work; (2) liquidated damages; or (3) additional costs or expenses arising from or related to (a) the breach of this Agreement or failure to fulfill a specific responsibility in the Contract Documents by the Construction Manager, (b) the breach of any agreement by the Construction Manager under any subcontract, or (c) the negligence of the Construction Manager or any Subcontractor or Sub-Subcontractor. Notwithstanding any approval by the Owner of contingency use pursuant to the foregoing, and notwithstanding anything else in the Contract Documents to the contrary, in the event that the Owner reasonably determines at any time prior to final payment that any such use was improper, then the Construction Manager shall replenish the Construction Manager's contingency with all such amounts so determined to have been improperly used. The Construction Manager shall show the status of the Construction Manager's contingency in the monthly progress report, with each cost estimate and with each Application for Payment. Unused allowance amounts shall not be added to Construction Contingency but shall be returned to Owner through a deductive Change Order in accordance with the Contract Documents. Upon final completion of the Work, any unused portion of the Construction Manager's contingency shall remain with the Owner.

§ 3.2.4.4 The Construction Contingency shall be reduced as follows:

Contingency Reduction Date/Event	Contingency Amount
Completion of 85% Buy-Out	Construction Contingency shall be reduced to 3% of Cost of the Work, plus Identified Claims (defined in Section 3.2.4.5)
Substantial Completion of 100% of the Work	Construction Contingency shall be reduced to 1% of Cost of the Work, plus Identified Claims
Fourteen (14) days after Substantial Completion of the Work	Construction Contingency shall be reduced to zero, plus Identified Claims

Without impacting the applicability of any future contingency deduction date/event, at the time of any scheduled contingency reduction pursuant to the foregoing, if the then-current Construction Contingency is less than the amount to which the Construction Contingency is to be reduced pursuant to such scheduled contingency reduction, then there shall be no reduction of the Construction Contingency on account of such scheduled contingency reduction. In no event shall any scheduled contingency reduction result in an increase in the Construction

Contingency.

§ 3.2.4.5 Only as used in Section 3.2.4.4, "Cost of the Work" means (1) the actual Cost of the Work for all Work performed through the applicable Contingency Reduction Date/Event to date plus (2) the estimated Cost of the Work for all Work remaining to be performed through the applicable Contingency Reduction Date/Event. Each reduction of the Construction Manager's contingency pursuant to the foregoing shall be evidenced by a Change Order reducing the applicable GMP in accordance with the procedures set forth in the Contract Documents. The Owner reserves the right to use such reductions in the Construction Manager's contingency for add alternates or Owner-initiated Change Orders. The Construction Manager shall use its best efforts to ascertain actual or known potential claims against it or actual or reasonably anticipated events that constitute permissible uses of the Construction Manager's contingency ("Identified Claims") and shall promptly notify the Owner of same.

§ 3.2.5 The Construction Manager shall meet with the Owner and Engineer to review the Guaranteed Maximum Price proposal and reconcile any questions, discrepancies or disagreements relating to the GMP Documents, GMP Clarifications and Assumptions, or any other information submitted with such proposal. In the event that the Owner or Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. Promptly following the meeting, the Construction Manager shall revise and resubmit its Guaranteed Maximum Price proposal, based on the reconciliations discussed at the meeting, for Owner's review and approval. If the Owner does not approve the revised Guaranteed Maximum Price proposal, then the Owner shall notify the Construction Manager and the parties shall recommence the process set forth in this Section 3.2.5 or the Owner may terminate (at Owner's sole option) pursuant to Article 13.

§ 3.2.6 Following the Owner's acceptance of the Guaranteed Maximum Price set forth in the Construction Manager's Guaranteed Maximum Price proposal, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment (in the form of **Exhibit A** attached hereto) thereby amending this Agreement. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. Notwithstanding anything herein to the contrary, if at any time the Owner disapproves of the Guaranteed Maximum Price set forth in the Construction Manager's Guaranteed Maximum Price proposal, then the Owner may, in the Owner's sole discretion, terminate this Agreement for its convenience and without cause pursuant to Section 14.4 of AIA Document A201-2017.

§ 3.2.7 Early Release Work

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

§ 3.2.7.2 Prior to execution of the applicable GMP Amendment, the Owner may direct the Construction Manager to procure long lead materials and equipment and/or perform certain preliminary site work, mobilization, and other preparatory work at the site ("Early Release Work"). The Owner, Engineer and Construction Manager shall cooperate with each other and identify the bid packages to be prepared in anticipation of any Early Release Work. The Early Release Work is included in the definition of "Work" under the Contract Documents and all obligations and responsibilities of the Construction Manager related to the Work shall apply to the same extent to the Early Release Work. The Owner and Construction Manager may establish one or more guaranteed maximum prices for the Early Release Work (each an "Early Release Work GMP"). The Early Release Work GMP shall be based on the complete Construction Drawings and Specifications prepared by Engineer for the Early Release Work (the "Early Release Work Drawings and Specifications"). The Early Release Work GMP shall be established in a written authorization executed by Owner and Construction Manager (the "Early Release Work Authorization"), which shall reference and incorporate the applicable Early Release Work Drawings and Specifications. The Early Release Work GMP and its related components shall be included in the GMP for the applicable Project Component that is established by the applicable GMP Amendment. Construction Manager shall provide an estimate of the Construction Cost related to the Early Release Work and shall submit subcontractor bids for the Early Release Work (in accordance with the applicable provisions of this Agreement) promptly so that the Early Release Work GMP can be evaluated and established by the date listed in the then-current Project Milestone Schedule approved by Owner in writing and so that the Early Release Work may be commenced in accordance with the then-current Project Milestone Schedule approved by Owner in writing.

§ 3.2.7.3 For each portion of Early Release Work, the following shall apply (except to the extent agreed otherwise by Owner in advance and in writing): (1) Engineer shall have prepared completed the Early Release Work

Drawings and Specifications for such Early Release Work; (2) all permits and other approvals necessary to commence performance of such Early Release Work shall have been issued; (3) the procedures of the Contract Documents related to Subcontractor procurement shall have been followed in the selection of the Subcontractor or supplier at issue; (4) the Construction Manager and Owner shall have executed an Early Release Work Authorization for such Early Release Work; (5) Construction Manager shall have submitted, for Owner's prior review and written approval, a detailed construction schedule and/or a detailed procurement schedule for such Early Release Work; (6) subject to the applicable Early Release Work GMP approved by Owner pursuant to the foregoing, Construction Manager shall be reimbursed the Cost of the Work incurred by Construction Manager in connection with proper execution of such Early Release Work plus an amount for Construction Manager's Fee calculated upon such Cost of the Work at the same percentage rate and the same basis as is set forth in Section 6.1.2 (such amounts shall be subject to the GMP for the applicable Project Component once the GMP Amendment for such Project Component is executed); and (7) performance of such Early Release Work shall be deemed to have occurred during the Construction Phase and shall be subject to all other terms and conditions of the Contract Documents that apply to Work performed during the Construction Phase (including, without limitation, insurance and bonding, indemnification, restrictions and limitations on advance payments and cancellation costs, responsibility for Work performed by Subcontractors). The Construction Manager agrees that the Owner shall not be responsible for advance payments for Early Release Work unless the Owner agrees otherwise in advance and in writing. Further, the Construction Manager agrees that any cancellation schedules or early termination fees applicable to early release packages or long lead items procured shall be subject to the Owner's prior review and written approval and the Construction Manager shall use commercially reasonable efforts to negotiate favorable and flexible terms on such issues for the benefit of the Owner to minimize the Owner's risk on pricing prior to establishment of the applicable GMP.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Engineer and Construction Manager. The Construction Manager shall notify the Owner and Engineer of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

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

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase. Notwithstanding the foregoing to the contrary, all work or services provided by or through the Construction Manager for the Project prior to the date of this Agreement shall be deemed to have been performed hereunder and are subject to all terms and conditions of the Contract Documents.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.1.3 The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date stated for Substantial Completion, as it may be adjusted under the Contract Documents, and shall achieve final completion of the entire Work not later than sixty (60) days after Substantial Completion.

§ 3.3.1.4 In the event the Owner determines that the Construction Manager cannot meet the required Substantial Completion date without additional labor or effort, Owner shall be entitled to direct Construction Manager to accelerate the performance of the Work so as to meet the Substantial Completion date. Construction Manager agrees to so accelerate the Work and waives any claim against Owner for the cost of the acceleration activity unless the Construction Manager's inability to meet the Substantial Completion date was caused solely by the Owner.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Engineer.

§ 3.3.2.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Engineer a Construction Schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201-2017.

§ 3.3.2.3 Monthly Report

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 Engineer, showing percentages of completion and other information required by the Owner. Each monthly report shall also contain an updated Construction Schedule showing (1) progress since the last month's Construction Schedule; (2) the current projected end date; and (3) all float remaining in the schedule.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep at the Project site and via electronic means, and make available to the Owner and Engineer, a current daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner or otherwise required by the Contract Documents (including, without limitation, as required by the Drawings and/or Specifications).

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes (such as, without limitation, cost monitoring relating to any Unit Price Work requirements set forth in the Contract Documents). The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Engineer, and shall provide this information in its monthly reports to the Owner and Engineer, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Intentionally Omitted.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs (all as determined by Owner in its sole discretion). 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 Engineer.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the information or services required under this Section 4.1.4 with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. Subject to the Standard of Care, the Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties in writing, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 To the extent in Owner's possession, the Owner shall furnish surveys describing 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.

§ 4.1.4.3 The Owner, when such services are requested (provided that, after any such request, the Engineer has determined in writing that such services are necessary and appropriate for the Project), 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.

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

§ 4.1.6 Notwithstanding anything to the contrary in the Contract Documents, the Owner shall be required to furnish information or services described in this Article 4 only to the extent that such information or service (1) is reasonably requested by the Construction Manager in writing, (2) is required to perform the Work under the Contract Documents, and (3) is not otherwise required to be furnished by or through the Construction Manager under the Contract Documents.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Engineer does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. The Owner reserves the right to change its representative at any time with notice to the Construction Manager.

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

§ 4.3 Engineer

The Owner shall retain an Engineer to provide services, duties and responsibilities as described in the manuscript agreement between Owner and Engineer.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2 (excluding any Early Release Work), the Owner shall compensate the Construction Manager as follows: *(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

A lump sum amount of **Two Hundred Seventy-One Thousand Eight Hundred Fifty Dollars and 0/100 Cents (\$271,850.00)**, including reimbursable expenses, for Construction Manager's Preconstruction Phase.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Hourly billing rates, if any, shall be set forth in the "Hourly Billing Rates Schedule", attached hereto as **Exhibit F**.

§ 5.1.2.1 The rates set forth in the Hourly Billing Rates Schedule include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions,

assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 Intentionally Omitted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed under this Article 5, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 To the maximum extent permitted by law, payments are due and payable thirty (30) days after Owner's approval of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice due date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

1.5 % per month

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 (including the General Conditions Amount as defined in Section 6.1.6) plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

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

The Construction Manager's Fee shall be equal to **Four and One Quarter of One Percent (4.25%)** of the Cost of the Work.

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

If the Construction Manager's Fee is not fixed as a lump sum in the Guaranteed Maximum Price Amendment, Construction Manager's fee shall be calculated upon the same basis as is set forth in Section 6.1.2 notwithstanding any change in the Work.

If the Construction Manager's Fee is fixed as a lump sum in the Guaranteed Maximum Price Amendment, then the Construction Manager's Fee shall be increased or decreased (as the case may be) by the amount equal to Four and One Quarter of One Percent (4.25%) of the net change in the Cost of the Work occasioned by the change in the Work.

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

10% combined for overhead and profit. In no event shall there be more than two (2) tiers of Subcontractor mark-up for any portion of the Work.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed eighty percent (80 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 The GMP set forth in the GMP Amendment shall include a not to exceed amount of **Five Hundred Sixty-Two Thousand Five Hundred Dollars and 00/100 Cents (\$562,500.00)** to be paid to the Construction Manager as its sole payment for the General Conditions Items (as hereinafter defined) (the "General Conditions Amount"). The "General Conditions Items" include, without limitation, all items, material, equipment, services, work and labor identified in **Exhibit G**, attached hereto and made a part hereof, or otherwise typically encompassed within any of the categories or classifications listed in such exhibit.

Notwithstanding anything to the contrary in the Contract Documents, (1) the total amount to be paid to the Construction Manager for the General Conditions Items shall not exceed the General Conditions Amount, (2) the Construction Manager shall not use any Construction Contingency funds for any General Conditions Items, and (3) the Construction Manager shall not be entitled to separate payment for any Cost of the Work or other costs or expenses related to the General Conditions Items other than payment of the General Conditions Amount. The General Conditions Amount shall be allocated and paid to the Construction Manager on the basis of the percentage of completion of the overall schedule duration as certified by the Engineer.

§ 6.1.7 Liquidated damages, if any:

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

§ 6.1.7.1 Time is of the essence in the performance of this Contract. If Substantial Completion of the entire Work is not achieved on or before the guaranteed date of May 31, 2029 for Substantial Completion of the entire Work (as such date may be adjusted pursuant to Change Order in accordance with the Contract Documents, the "Guaranteed SC Date"), then the amount of the Owner's actual damages will be difficult, impractical or impossible to determine. Accordingly, if the Construction Manager fails to achieve Substantial Completion of the entire Work on or before the Guaranteed SC Date, then the Construction Manager shall pay to the Owner (by direct payment or offset from the Contract Sum) the per diem amount of **Ten Thousand Dollars and 00/100 Cents (\$10,000.00)** for each day that occurs after the Guaranteed SC Date until (and including) the day that the Construction Manager achieves Substantial Completion of the entire Work thereafter. For avoidance of doubt, the foregoing liquidated damages shall not be reduced by any partial completion of the Work prior to the Guaranteed SC Date.

§ 6.1.7.2 The foregoing liquidated damages are reasonable and bear a relationship to the damages the Owner may sustain in the event of the Construction Manager's failure to timely achieve Substantial Completion of the entire Work. Such liquidated damages are not intended to be, and in no event shall be construed to be, a penalty, but are intended as fixed damages agreed to by the parties as settlement of damages in advance in the event of the Construction Manager's failure to timely complete the Work. Notwithstanding anything in the Contract Documents to the contrary, the foregoing liquidated damages are intended only to cover damages suffered by the Owner as a result of Construction Manager's delay in obtaining Substantial Completion of the Work and shall not be deemed to include any other damages, such as, but not limited to, costs incurred by the Owner to complete the Work, or damages resulting from defective Work, damages suffered by others who then seek to recover damages from the Owner (for example, delay claims of other contractors or subcontractors) or defense costs thereof.

§ 6.1.7.3 This Section 6.1.7 shall survive final completion or termination of this Agreement.

§ 6.1.8 Other:

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

Not Applicable.

§ 6.2 Guaranteed Maximum Price

§ 6.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents.

§ 6.2.2 Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Any Costs of the Work that cause the GMP (as modified by any Change Orders) to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Engineer, after due coordination with Owner, may order minor changes in the Work as provided in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts, subject to Section 6.1.4 hereof.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 Intentionally Omitted.

§ 6.4 Unit Price Work

§ 6.4.1 Unit prices shall be determined as set forth in Section 9.12 of the General Conditions and this Section 6.4. Unit Price Work (as hereinafter defined) shall be performed and paid in accordance with unit prices in accordance with the Contract Documents. A schedule of unit prices (including estimated quantities and rates upon which such unit prices are based) for any Unit Price Work included in the GMP shall be attached as an exhibit to each GMP Amendment (“Unit Price Schedule”). In no event shall the cost per unit included in each GMP Amendment exceed the applicable unit rate in the Unit Price Schedule. The Unit Price Schedule, once agreed and attached to a GMP Amendment shall not be modified. Such unit prices shall include (a) all materials, equipment, labor, delivery and installation, (b) any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply (collectively “Unit Price Work”).

§ 6.4.2 Unit prices shall not include Construction Manager’s Fee or General Conditions Items. Costs of the Work incurred for Unit Price Work shall only be reimbursable through the applicable unit prices to the extent of quantities authorized by Owner in writing in advance, except that General Conditions Items shall be separately reimbursable as Costs of the Work to the extent permitted under the Contract Documents. Notwithstanding the foregoing to the contrary, in the event that it is determined that unit prices for any Unit Price Work include Construction Manager’s Fee, General Conditions Items, Construction Manager shall not be permitted to invoice or be entitled to payment for any Construction Manager’s Fee or General Conditions Items on account of any such Unit Price Work and the GMP shall be appropriately reduced by deductive Change Order.

§ 6.4.3 Intentionally Omitted.

§ 6.4.4 If at any time Construction Manager proposes any change to unit prices, rates or quantities (including, without limitation, as provided in Section 6.4.6), Construction Manager shall furnish to Owner all supporting documentation and all other information requested by the Owner so that Owner may evaluate the proposed change. In no event shall Owner be required to accept any such proposed changes, except to the extent specifically provided under the Contract Documents.

§ 6.4.5 By inclusion of Unit Price Work in the GMP, Construction Manager represents and warrants to Owner that (a) any unit price or quantity proposed by Construction Manager in connection with the applicable Unit Price Work is a reasonable estimate and reasonable price, using Construction Manager’s best skill and judgment based upon the typical cost and quantities for such Unit Price Work and accounting for the unique features of this Project, its location, information available and local labor rates, and based on quantities and other information identified in the Contract Documents, as well as Construction Manager’s knowledge and information about the Project site (including, but not limited to, information that was or should have been disclosed by the inspections, tests, reviews and other design-assist and Preconstruction Services that the Construction Manager is required to perform in connection with the Project), and (b) the GMP Drawings and Specifications upon which such Unit Price Work is based are sufficiently detailed for the purpose of providing such Unit Price Work.

§ 6.4.6 Notwithstanding anything in the Contract Documents to the contrary, in the event that Construction Manager believes that quantities for particular Unit Price Work will exceed those set forth in any GMP Amendment, then Construction Manager must provide Owner with advance notice and a written explanation for the additional costs, and seek a Change Order for the additional costs, pursuant to the relevant provisions of the

Contract Documents. In such event, Construction Manager acknowledges and agrees that it will not be entitled to any increase in the GMP, except to the extent specifically provided under the Contract Documents.

§ 6.4.7 Payments for Unit Price Work will be based on the number of units completed during the pay period, as determined pursuant to Section 6.4. In the event Construction Manager's invoice includes compensation for Unit Price Work, Construction Manager shall submit its determination of the units of Work performed, determined in accordance with this Agreement, and supported by documentation satisfactory in form and content to Owner. After review of the supporting documentation, Owner will advise Construction Manager either of acceptance of Construction Manager's documentation of units of Work or of Company's determination of such units. If Construction Manager disagrees with Owner's determination, then it shall be entitled to proceed in accordance with the dispute resolution procedures set forth in the Contract Documents.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior written approval of the Owner.

§ 7.1.4 Where certain items of Work are identified in the applicable GMP Amendment as being Unit Price Work, the Cost of the Work shall be determined based upon quantities furnished at the associated unit rates set forth in such GMP Amendment, all as described further in Section 6.4 above, and such Unit Price Work shall not be separately reimbursable otherwise.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

The staff and personnel identified in the Key Personnel and Staffing Plan at the hourly rates provided in the Hourly Billing Rates Schedule.

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

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 Notwithstanding anything herein to the contrary, (1) the wages or salaries referenced in this Section 7.2 shall be reimbursed at the applicable fixed rates defined in the Hourly Billing Rates Schedule for the duration of the Project (without increase), (2) all such rates are inclusive of those costs described in Section 7.2.4 (and Construction Manager shall not be entitled to separate reimbursement for such costs) and such rates shall remain

unchanged throughout the duration of this Agreement, unless the parties execute a Modification, and (3) reimbursement on account of the Construction Manager's supervisory and administrative personnel is limited to those personnel identified in the Key Personnel and Staffing Plan.

§ 7.3 Subcontract Costs

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

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

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior written approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract but are not included in the General Conditions Amount, without overhead or profit markup.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. However, reimbursement for any self-insurance included in the General Conditions Amount and self-insured retention is excluded.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

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

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or

nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Engineer as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior written approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work; provided, that any travel in excess of 100 miles shall have been approved by Owner in advance.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval if, and only to the extent, identified in writing as an actual cost under this Section 7.7.1.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017; provided that such emergency is not caused by the negligence or failure to fulfill a responsibility of the Construction Manager to the Owner set forth in the Contract Documents or the failure of the Construction Manager's personnel to supervise the Work of the Subcontractors or suppliers or otherwise capable of being prevented through timely notice of an unsafe condition to the Owner.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, or the failure of the Construction Manager's personnel to supervise the Work, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term “related party” shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party (including any Self-Performed Work pursuant to Section 14.5.1), the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed (subject to Section 14.5.1), and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9 and Section 14.5.1. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase (other than Cost of the Work for Early Release Work performed in strict accordance with Section 3.2.7.1 within the “not-to-exceed” amount agreed upon in writing by Owner);
- .10 Costs relating to the General Conditions Items, except via payment of the General Conditions Amount; and
- .11 Costs of any Unit Price Work for quantities in excess of those that have been authorized by the Owner in advance in writing.

§ 7.9.2 Notwithstanding the breakdown or categorization of any costs to be reimbursed elsewhere in the Contract Documents, there shall be no duplication of payment if any particular item for which payment is requested can be characterized as falling into more than one of the types of categories of Cost of the Work set forth in this Article 7.

§ 7.9.3 Notwithstanding anything in this Article 7 to the contrary, for avoidance of doubt, the Construction Manager shall not be entitled to separate payment beyond the General Conditions Amount (as adjusted pursuant to the Contract Documents) for any General Conditions Items, as the cost and expense of all such General Conditions Items are to be reimbursed only through payment of the General Conditions Amount in accordance with Section 6.1.6.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the

Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. Construction Manager shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work prior to providing Owner with seven (7) days prior written notice of the potential discount, rebate or refund and an opportunity to furnish funds necessary to obtain such discount, rebate or refund on behalf of the Owner in accordance with the requirements of this Section.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. Notwithstanding the foregoing to the contrary, except as may be otherwise directed or approved by the Owner and wherever reasonably possible, all subcontracts and purchase orders shall be awarded pursuant to competitive bids and according to the procedure described in this Article 9 and elsewhere in the Contract Documents. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. Unless a lesser amount is authorized by Owner, Construction Manager shall obtain not less than three (3) competitive bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Engineer and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Engineer and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Engineer, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 Intentionally Omitted.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10. Construction Manager shall use the subcontract form developed by the Ohio facilities construction commission pursuant to OAC 153:1-2-01 and shall comply with OAC 153:1-3-01 and OAC 153:1-3-02.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries (including accounting records), books, policies and procedures, job cost reports, correspondence, instructions, drawings, receipts, Subcontractor files (including subcontracts, Subcontractor's proposals, Subcontractor's invoices, and proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, purchase orders, vouchers, memoranda, change order files (including documentation covering negotiated settlements), and other data relating to this Contract and other supporting evidence necessary to substantiate charges related to this Contract, including any other documents, data or records deemed necessary by Owner to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Contract. The Construction Manager shall preserve these records for a period of three (3) years after final payment, or for such longer period as may be required by law. Owner and its agents and authorized representatives shall have access to said records from the date of this Agreement for the duration of the Work and until three (3) years after the date of the final payment by the Owner. The Owner and its agents and authorized representatives shall all be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this Article 10 and elsewhere in the Contract Documents. If an audit, inspection or examination in accordance with this Article 10 or otherwise pursuant to the Contract Documents discloses

overcharges (of any nature) by the Construction Manager to the Owner, such overcharges shall be refunded to Owner.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Provided that the Construction Manager has submitted a schedule of values in such form and detail as may be required by the Owner and Engineer, and provided that such schedule of values has been approved by the Owner, then based upon Applications for Payment submitted to the Engineer (with a copy of same to the Owner) by the Construction Manager, and Certificates for Payment issued by the Engineer and approved by the Owner, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 11.1.3 Provided that an Application for Payment, in form and substance required by the Contract Documents and satisfactory to the Owner, together with all backup and supporting documentation required by the Contract Documents (including lien waivers) and reasonably requested by Owner, is received by the Engineer (with a copy of same to the Owner) not later than the first day of a month, the Owner shall make payment not later than thirty (30) days after the Owner approves the Application for Payment. Notwithstanding the foregoing to the contrary, the Owner's obligation to make payment of the amount certified as set forth above is subject to the Owner's right to withhold payment under Section 9.5 of AIA Document A201-2017.

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

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, lien waivers in a form mutually agreed upon by the parties, and any other evidence required by the Owner or Engineer to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.4.1 The Construction Manager shall submit, with any Application for Payment, evidence that the Construction Manager paid to Subcontractors and material suppliers the amounts that they were entitled to receive out of the previous progress payment received from the Owner and lien waivers for all amounts required in a form and subject to the Owner's approval. If any Subcontractor, Sub-subcontractor of any tier, material supplier, laborer, or other person performing services or providing labor or materials under the Construction Manager files a lien claim against the Project site, and such lien claim does not result from the Owner's failure to make payment when due or other default by the Owner under this Agreement, then the Construction Manager shall promptly settle or bond such lien claim. All expenses reasonably incurred by Construction Manager in bonding, defending against, paying or settling any such lien claim shall not be included in the Cost of the Work, and the Construction Manager shall be responsible for any such expenses; provided, however, that the Guaranteed Maximum Price shall be increased by the amount of any such expenses incurred due to the Owner's failure to make payment when due or any other default by the Owner under this Agreement. Construction Manager shall reimburse the Owner of all costs incurred by the Owner in connection with such lien claims, including without limitation costs of the Engineer, Engineer's consultants, and reasonable fees therefor.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work, including specific call outs as required by Owner and, as applicable, separate line items for each portion of the Work that is subject to a lump sum or not-to-exceed agreement between the parties (such as, without limitation, General Conditions Items, Early Release Work, Self-Performed Work, or insurance); (2) the Construction Contingency; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Engineer or Owner may require. The most recent Owner-approved schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values, unless

otherwise agreed for a specific line item (e.g., costs of General Conditions Items, Early Release Work, Self-Performed Work, insurance, or any other item subject to a lump sum or not-to-exceed agreement between the parties).

§ 11.1.5.3 When the Construction Manager allocates costs from the Construction Contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Owner. Submission of such supporting documents shall not be deemed to modify the conditions precedent to proper use of the Construction Contingency set forth in Section 3.2.4.

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

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent Owner-approved schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Owner determines, in the Owner's judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected or to otherwise protect Owner and for which the Owner has previously withheld payment or the Engineer has previously withheld or nullified a Certificate for Payment, in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application or to otherwise protect Owner, any amount for which the Owner withholds payment or the Engineer withholds or nullifies a Certificate of Payment, in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation;
- .6 Retainage withheld pursuant to Section 11.1.8; and
- .7 Amounts, if any, reasonably necessary to protect the Owner from loss because of (1) defective Work not remedied, (2) third party claims filed or reasonable evidence indicating probable filing of such claims; (3) failure of the Construction Manager to make payments properly to Subcontractors or for labor, materials, or equipment; (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price; (5) damage to the Owner or another contractor; or (6) failure to carry out the Work in accordance with the Contract Documents.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Labor: 4% for the duration of the Project.

Materials: 8% of invoice costs for materials delivered to the Project site and off-site storage locations approved by Owner. Retainage shall be reduced to 0% for certain materials only when such certain materials are incorporated into and become a part of the Project.

§ 11.1.8.1.1 The following items are not subject to retainage:

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

None.

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

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

To the maximum extent permitted by law, upon written notice to the Construction Manager, the Owner may, in its sole discretion and without obligation, elect to reduce the retainage requirements of this Agreement or release any portion of previously withheld retainage prior to the date specified in the Contract Documents; provided that, notwithstanding any such election by the Owner, upon subsequent written notice to the Construction Manager, the Owner may, in its sole discretion and without obligation, elect to reinstate the retainage requirements of this Agreement at any time thereafter. Any reduction or release of retainage, or portion thereof shall not be deemed a waiver of (a) any of the Owner's rights to retainage in connection with other payments to the Construction Manager or (b) any other right or remedy that the Owner has pursuant to the Contract Documents.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

When Construction Manager has achieved Substantial Completion for all Work and there is no reason to retain funds, the retained funds shall be paid to Construction Manager within thirty (30) days of the Construction Manager's request, except Owner may retain an amount equal to 150% of the aggregate amount determined by the Owner for unsettled claims, punchlist work and other incomplete Work. Thereafter, the Owner shall pay the Construction Manager monthly the amount retained for such items as each item is completed and included in an Application for Payment. All retainage shall be paid not later than thirty (30) days after final completion of the Project.

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

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

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Engineer and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Engineer or Owner has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Engineer or Owner has made exhaustive or continuous on-site inspections; or

(3) that the Engineer or Owner has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.1.13 Ohio Commercial Activity Tax Provisions

§ 11.1.13.1 For purposes of payments to be made to Subcontractors, it is understood that the Construction Manager shall be the "agent" of Owner, as "agent" is defined in division (N) of section 5751.01 of the Ohio Revised Code to include a person authorized by another to act on its behalf to undertake a transaction for the other. Solely for purposes of payments to be made to Subcontractors under this Agreement only, Construction Manager shall act (1) as Owner's agent for such payments and not as an agent of any such Subcontractor; (2) in the Owner's best interest; and (3) as a conduit for payment. Such agency relationship between Owner and Construction Manager is limited to Construction Manager's obligation to make payments which are owed to Subcontractors with funds received from Owner. Without limiting any other subcontract requirements set forth in the Contract Documents, the Construction Manager shall cause each subcontract agreement to contain a provision stating that, solely with respect to Ohio's Commercial Activity Tax, for purposes of Ohio Revised Code 5751.01 and Ohio Adm. Code 5703-29-13, Contractor is acting as Owner's agent and not as an agent of the Subcontractor.

§ 11.1.13.2 Provided that the Construction Manager complies with the requirements of Section 11.1.13.1, it is acknowledged that Construction Manager is intended to be the "agent" of Owner (as described in Section 11.1.13.1) because the following factors are present, as set forth in Ohio Adm. Code 5703-29-13 (C)(2)(c): (1) Construction Manager is required to act in Owner's best interest; (2) Construction Manager has stated in its Subcontracts that Construction Manager is acting as Owner's agent and not as an agent of the Subcontractors; and (3) Construction Manager is required to act as a conduit with respect to payments made to Subcontractors under the Contract Documents. Therefore, it is further acknowledged that certain amounts received by Construction Manager as "agent" (under the aforementioned provisions of the Ohio Revised Code and Ohio Administrative Code) may be excluded from the definition of "gross receipts" under division (F) of section 5751.01 of the Revised Code. Accordingly, reimbursement for Ohio's Commercial Activity Tax may be charged as a Cost of the Work only on the value of the Construction Manager's Fee and the General Conditions Amount paid to the Construction Manager and not on any other Cost of the Work. Notwithstanding anything in the Contract Documents to the contrary, in no event shall the Construction Manager's Fee or insurance charges be calculated upon amounts included within the Cost of the Work for Ohio's Commercial Activity Tax.

§ 11.2 Final Payment

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

1. the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
2. the Construction Manager has submitted to Engineer (with a copy of the same to Owner) a final accounting for the Cost of the Work and a final Application for Payment and items listed in Section 9.10 of AIA Document A201-2017;
3. the Construction Manager has submitted all final closeout documentation as required by the Contract Documents; and
4. a final Certificate for Payment has been issued by the Engineer in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner may conduct an audit of the Cost of the Work. Owner's right to audit Construction Manager's final accounting is in addition to and shall not limit Owner's audit rights set forth in Article 10.

§ 11.2.2.1 If the Owner conducts an audit of the Construction Manager's final accounting for the Cost of the Work as set forth in Section 11.2.2, the Owner shall, within 30 days after completion of the audit, submit a written report based upon the auditors' findings to the Engineer.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit of Construction Manager's final accounting pursuant to Section 11.2.2, and provided that the other conditions of Section 11.2.1 have been met, the Engineer will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Engineer's reasons for withholding a certificate as provided in Article 9 of AIA Document

A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Engineer is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, and the Construction Manager disputes the determination, the Construction Manager shall be entitled to submit the dispute through the dispute resolution process set forth in the Contract Documents within 30 days after the Construction Manager's receipt of a copy of the Engineer's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Engineer's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Engineer's final Certificate for Payment. Notwithstanding the foregoing to the contrary, the Owner's obligation to make final payment as set forth above is subject to the Owner's right to withhold payment under Section 9.5 of AIA Document A201-2017.

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

§ 11.3 Interest

Undisputed payments due and unpaid under the Contract shall bear interest of:
(Insert rate of interest agreed upon, if any.)

1.5 % per month

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 General

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201-2017.

§ 12.1.2 Intentionally Omitted.

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

☐ Arbitration pursuant to Article 15 of AIA Document A201-2017

☒ 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, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written

notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201-2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Preconstruction or Construction Phase services and other amounts withheld by Owner pursuant to the Contract Documents.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1 (and not otherwise excluded therefrom pursuant to any agreements reached under Section 3.2.7.1). To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

§ 13.1.7 Notwithstanding anything in the Contract Documents to the contrary, (1) nothing in this Section 13.1 is intended to provide or allow for any duplication of payment to the Construction Manager or any payment that would cause the Owner's budget or GMP to be exceeded, and (2) in no event shall the Construction Manager be entitled to payment of lost profit or overhead or profit on unperformed Work.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201-2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201-2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner;
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201-2017; and
- .5 Subtract any other amounts withheld by Owner or for which a Certificate of Payment has been withheld or nullified by the Engineer, in whole or in part, as set forth in Article 9 of AIA Document A201-2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1 (and not otherwise excluded therefrom by operation of the limitations and/or subtractions required under Section 13.2.2.1). To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.2.3 Notwithstanding anything in the Contract Documents to the contrary, (1) nothing in this Section 13.2 is intended to provide or allow for (a) any duplication of payment, (b) any payment that would cause the Guaranteed Maximum Price to be exceeded, or (c) any payment (including any payments referenced in Section 13.2.2.2) that would cause the amount calculated via the formula set forth in Sections 13.2.2.1.1 through 13.2.2.1.5 to be exceeded, and (2) in no event shall the Construction Manager be entitled to payment of lost profit or overhead or profit on unperformed Work.

§ 13.2.3 Termination by the Owner for Convenience

The Owner may terminate the Contract for convenience in accordance with Article 14 of AIA Document A201-2017.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201-2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201-2017. Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Construction Manager shall not assign the Contract in whole or in part without written consent of the Owner. If Construction Manager attempts to make an assignment without such consent, then such assignment shall be void and the Construction Manager shall remain legally responsible for all of its obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to any person or entity, if such person or entity assumes the Owner's rights and obligations under the Contract Documents. The

Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Phase services performed under this Agreement. This Section 14.3.1 shall not be deemed to limit any insurance requirements of the Contract Documents applicable to Early Release Work performed during the Preconstruction Phase.

§ 14.3.1.1 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, Two Million Dollars (\$ 2,000,000) for products/completed operations aggregate, One Million Dollars (\$ 1,000,000) for personal and advertising injury, One Hundred Thousand Dollars (\$ 100,000) for fire damage liability, and Five Thousand Dollars (\$5,000) for medical payments per person.

§ 14.3.1.2 Business Automobile Liability, covering vehicles owned, hired, leased 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.

§ 14.3.1.3 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 that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, 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.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than One Million Dollars (\$ 1,000,000) each accident, One Million Dollars (\$ 1,000,000) each employee, and One Million Dollars (\$ 1,000,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and Three Million Dollars (\$ 3,000,000) in the aggregate.

§ 14.3.1.6 Other Insurance

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

Coverage	Limits
Umbrella or Excess Liability	\$5,000,000 General Aggregate
Pollution Liability	\$1,000,000 Each Occurrence
Employer's Liability (Ohio Stop Gap Limits)	\$1,000,000 Each Occurrence

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner, Owner's agents and employees, and all other parties reasonably requested by Owner as an Additional Insured (as defined in **Exhibit B**) for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Additional Insureds' insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, **Exhibit B**, Insurance and Bonds, and elsewhere in the Contract

Documents.

§ 14.3.2.1 The Construction Manager shall provide payment and performance bonds for the Project as required by **Exhibit B** and OAC 153:1-4-02.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given as set forth below:

Notice may be provided by email to the addresses set forth in Sections 1.1.8, 1.1.11, and 1.1.12 herein, provided that a copy of any notice shall also be 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 in accordance with Section 1.6 of the AIA Document A201-2017.

§ 14.5 Other provisions:

§ 14.5.1 Self-Performed Work

§ 14.5.1.1 Neither the Construction Manager nor any affiliate of it shall self-perform any Work ("Self-Performed Work") without the Owner's prior written approval. For any Work that the Construction Manager intends to self-perform, the Construction Manager shall notify the Owner at least one week prior to the issuance of any such bid package of its intent to bid on such bid package. If the Owner approves such bidding by the Construction Manager or any of its affiliates, then the Construction Manager or its affiliate shall be permitted to submit a sealed bid for such Self-Performed Work pursuant to the competitive bidding procedures applicable to all bidders. In such instance, the opening, review and advice with respect to award or rejection of such bids shall be managed by the Owner.

§ 14.5.1.2 In such instances, the following requirements shall also apply: (a) if the Construction Manager or its affiliate desires to bid on Self-Performed Work, then the Construction Manager or its affiliate shall review such Work (including the bid packaging plan) with the Owner and Engineer prior to finalizing the bid package; (b) there shall be a strict separation of the personnel involved with bidding the Self-Performed Work and Construction Manager's other personnel involved in the Project, and the Construction Manager shall, by written policy distributed to all affected personnel (a copy of which shall be distributed to the Owner), strictly prohibit any communication prior to bid award among personnel involved with the estimating, bidding, management or other services in connection with the Self-Performed Work and personnel working on other aspects of the Project pursuant to this Agreement (other than such communication as is permitted by all bidders); (c) if less than two other bids from responsible bidders are submitted for Self-Performed Work, the Owner, at its option, may disqualify the Construction Manager or its affiliates from award of the bid for Self-Performed Work and, in the Owner's discretion, may cause the bid package with respect to the Self-Performed Work to be rebid; (d) Construction Manager shall not participate in the analysis and/or recommendations with respect to the award of the Subcontract for any Self-Performed Work, and all inquiries shall be forwarded to the Owner or Engineer; (e) Construction Manager or its affiliates shall not be permitted to use Construction Contingency for Self-Performed Work on any terms or conditions different from the terms or conditions on which such items are made available to all other bidders; (f) Construction Manager or its affiliates shall not, in its bid, use any of the General Conditions Items (including, without limitation, any staff that are part of the General Conditions Items) to support the Self-Performed Work or use the same for Self-Performed Work on any terms or conditions different from the terms or conditions on which such items are made available to all other bidders; and (g) the advertisement for bids on Self-Performed Work shall specifically state that the Construction Manager or its affiliates shall have the right to submit a sealed bid on Self-Performed Work.

§ 14.5.1.3 If the foregoing procedures are not strictly followed, then the Owner shall have the right to reject the bid of the Construction Manager or its affiliates for Self-Performed Work. In addition, if the bid by the Construction Manager or its affiliates for any Self-Performed Work is higher than the most recent estimate of the Cost of the Work for such Self-Performed Work, as of the day before the applicable bid opening, then the Owner shall have the right to reject the Construction Manager's or its affiliate's bid. Any rejection of a bid or required rebid under this Section 14.5.1 shall not be the basis for an increase in the Guaranteed Maximum Price or adjustment to Contract Time.

§ 14.5.2 Equal Opportunity

Construction Manager agrees to (a) comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including but not limited to ORC 153.59; and (b) comply

with all other Applicable Laws regarding contracting, hiring and employment.

§ 14.5.3 Drug-Free Workplace

Construction Manager shall comply with all applicable state and federal laws regarding keeping a drug-free workplace. Construction Manager shall make a good faith effort to ensure that all its employees, while working on Owner's property, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

§ 14.5.4 Ethics and Findings and Recovery

Construction Manager is aware of the ethics responsibilities in Ohio Revised Code Section 3517.13 and is in compliance with this section of the Ohio Revised Code. Construction Manager represents and warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24. If this representation and warranty is deemed to be false, this Agreement is void ab initio, and Construction Manager must immediately repay to Owner any funds paid under this Agreement and must make the Owner whole for any damages sustained by the Owner.

§ 14.5.5 Annual Appropriations

All of the Owner's obligations under the Agreement are contingent upon the Owner appropriating the funds on an annual basis necessary for the continuation of this Agreement in any Agreement year. In the event the funds necessary for the continuation of this Agreement are not appropriated or approved, the Owner will notify Construction Manager of such occurrence in writing. This Agreement shall thereafter terminate and be rendered null and void on the last day of the last fiscal period for which appropriations were made. Such termination is made pursuant to and in accordance with the terms of this Agreement and shall not be considered to be a breach or default on the part of the Owner.

§ 14.5.6 Public Records

All parties hereto acknowledge that Owner is a political subdivision in the State of Ohio and as such is subject to the Ohio Revised Code and other law related to the keeping and access to public records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the Owner and any and all documents in any format or media. Construction Manager and the Owner agree that all records and reports that Construction Manager provides to the Owner pursuant to this Agreement or that the Owner obtains from Construction Manager pursuant to this Agreement shall be considered public records unless exempted from disclosure pursuant to Ohio's public record laws (including O.R.C. 149.43, O.R.C. 1333.61(D) and applicable common law), and that the Owner shall have the right to copy and disclose the same.

§ 14.5.7 Public Funding

Construction Manager acknowledges that the Project may be funded in part by federal agencies and the State of Ohio through certain grant agreements (collectively "Grant Agreements"). Upon request of the Construction Manager, Owner shall provide a redacted copy of such Grant Agreements (or relevant excerpts thereof) to the Construction Manager, if applicable. Construction Manager shall comply with all such requirements, restrictions, limitations and related policies established by the federal agencies and State of Ohio as set forth in the Grant Agreements, incorporated herein by reference.

§ 14.5.8 Project Funding

Construction Manager shall provide such assistance as Owner may reasonably request in connection with obtaining funding, financing, incentives or similar activities for the Project. Construction Manager shall furnish such consents to assignments and certifications addressed to Owner, its lenders, any bond trustees or rating agencies, and other financial, funding, or incentive stakeholders as may be reasonably requested. Owner shall endeavor to provide any proposed consents or certifications to the Construction Manager for review at least seven (7) days prior to the requested date of execution. Construction Manager shall comply with all rules, policies, procedures and requirements, imposed by the Owner's financiers or other incentive or financial stakeholders involved with the Project (including, without limitation, all Applicable Laws relating to subcontractor bidding and the payment of State of Ohio or Davis Bacon prevailing wages and fringe benefits, as the case may be).

§ 14.5.9 Use of Domestic Steel

The Construction Manager is required by law to supply domestically produced steel products used for load-bearing structural purposes on all projects funded in whole or in part with State funds. The Construction Manager and Subcontractors shall comply with ORC Section 153.011 regarding the use of domestically produced steel

products required for load bearing structural purposes on all projects funded in whole or in part with State funds.

§ 14.5.10 Counterparts; Copies of Signatures

This Agreement may be executed in counterparts and may be executed by DocuSign or such other electronic execution program required by Owner. All executed counterparts shall constitute one Agreement, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that facsimile signatures, DocuSign signatures (or other electronic signatures), or signatures transmitted by electronic mail in so-called "pdf" format shall be legal and binding and shall have the same full force and effect as if an original of this Agreement had been delivered. The Owner and the Construction Manager (1) intend to be bound by the signatures on any document sent by facsimile or electronic mail or effected through DocuSign or such other electronic signature program, (2) are aware that the other party will rely on such signatures, and (3) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature.

§ 14.5.11 Additional Representations and Warranties

The Construction Manager represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work: (1) that it is financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder; (2) that it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder; (3) that it is authorized to do business in the state in which the Project is located and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project; (4) that its execution of this Agreement and its performance thereof is within its duly authorized powers; and (5) that it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, locale, and nature of this particular Project. The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Construction Manager by Applicable Laws, obligations and performance hereunder. The Construction Manager acknowledges that the Owner is relying upon the Construction Manager's skill and experience in connection with the Work called for hereunder.

§ 14.5.12 Prior Work

This Agreement covers all Work and services provided by the Contract for the Project, whether provided before or after execution of this Agreement. The Construction Manager acknowledges and agrees that certain work and services may have already been performed by the Construction Manager or by subcontractors or suppliers prior to execution of this Agreement. The Construction Manager shall not be entitled to any additional compensation for such work and services (other than the as part of the Contract Sum specified herein), and the Owner shall be entitled to a credit against the Contract Sum for any amounts paid by the Owner prior to execution of this Agreement.

§ 14.5.13 Work Product

The Construction Manager hereby grants to the Owner all of the Construction Manager's common law, statutory and other reserved rights (including, without limitation, copyrights) in all documents, reports and other work product prepared by or through the Construction Manager in connection with the performance of the Work under the Contract Documents (including, without limitation, designs or specifications prepared by Design Assist Subcontractors or the Design-Build Professionals), whether hard copy or on electronic media (collectively, the "Work Product"). Upon any termination of this Agreement, the Construction Manager shall within three business days after such termination, deliver (or cause to be delivered) to the Owner copies of all Work Product in both hard copy and suitable electronic form. The Construction Manager shall cause all Subcontractors and Sub-subcontractors to make similar grants as necessary to fully effectuate the foregoing.

§ 14.5.14 Entire Agreement

This Agreement represents the entire and integrated agreement between Owner and Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral.

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement, each as modified for the Project and attached hereto (as applicable):

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, **Exhibit A**, Guaranteed Maximum Price Amendment, upon execution thereof by the parties hereto
- .3 AIA Document A133™-2019, **Exhibit B**, Insurance and Bonds
- .4 AIA Document A201™-2017, **Exhibit C**, General Conditions of the Contract for Construction, as modified for the Project
- .5 Intentionally Omitted.
- .6 Other Exhibits:

EXHIBIT D	Project Milestone Schedule
EXHIBIT E	Key Personnel and Staffing Plan
EXHIBIT F	Hourly Billing Rates Schedule
EXHIBIT G	General Conditions Items

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

Request for Qualifications and all amendments thereto, dated September 8, 2025, and incorporated herein by reference

Request for Proposals and all amendments thereto, dated November 14, 2025, and incorporated herein by reference

[Signature Page to Follow]

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

**CERTIFICATE OF AVAILABLE FUNDS
(ORC Section 5705.41)**

The undersigned, fiscal officer of the West Carrollton City Council, hereby certifies that the amount required to meet the obligations under the contract, obligation, expenditure for the services described in the preceding agreement, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

By: _____
Name: _____
Its: _____
Date: _____

Exhibit A

Form of GMP Amendment

Exhibit A

AIA® Document A133® – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the ____ day of ____ in the year 202__, is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the 26th day of January in the year 2026 (the "Agreement")

(In words, indicate day, month, and year.)

for the following **PROJECT:**

(Name and address or location)

To construct improvements to the West Carrollton Whitewater River Park located on the Great Miami River west of I-75 and along the south bank of the river parallel to Alex Road (the "Project")

THE OWNER:

(Name, legal status, and address)

City of West Carrollton
300 E. Central Avenue
West Carrollton, Ohio 45449

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Prus Construction Company
5325 Wooster Pike
Cincinnati, Ohio 45226

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.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE**
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS**

- | | |
|-------------------|---|
| SCHEDULE 1 | INDEX OF DRAWINGS AND SPECIFICATIONS |
| SCHEDULE 2 | GMP CLARIFICATIONS AND ASSUMPTIONS |
| SCHEDULE 3 | SCHEDULE OF VALUES |
| SCHEDULE 4 | ALTERNATES AND ALLOWANCES |
| SCHEDULE 5 | KEY PERSONNEL AND SUBCONTRACTORS |
| SCHEDULE 6 | CONSTRUCTION SCHEDULE |
| SCHEDULE 7 | SCHEDULE OF UNIT PRICE WORK RATES |

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed _____ Dollars (\$_____) (the "Guaranteed Maximum Price" or "GMP"), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.1.1 The GMP includes the General Conditions Amount of Five Hundred Sixty-Two Thousand Five Hundred Dollars (\$562,500.00).

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.

(Provide itemized statement below or reference an attachment.)

Pursuant to **Schedule 3**, Schedule of Values

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 Alternates

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
See Schedule 4 , Alternates and Assumptions	

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
See Schedule 4 , Alternates and Assumptions		

§ A.1.1.6 Unit prices, if any, included in the estimated Cost of the Work forming part of the Guaranteed Maximum Price:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
See Schedule 7 , Schedule of Unit Price Work Rates		

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

(Check one of the following boxes.)

☐ The date of execution of this Amendment.

☐ Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

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

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion

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

(Check one of the following boxes and complete the necessary information.)

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

☒ By the following date: As set forth in Section 1.1.4 of the Agreement

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

Portion of Work	Substantial Completion Date
Dam Hazard Mitigation (Phase 1)	
Whitewater Course (Phase 2a)	
Upland Improvements (Phase 2b)	

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.7 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ A.3.1.2 The following Specifications:

(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

Section	Title	Date	Pages
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§ A.3.1.3 The following Drawings:

(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

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

§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures;

implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

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

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price
See Schedule 4 , Alternates and Allowances	

Construction Manager represents and warrants that no other allowance of any kind exists in any other GMP Document except as set forth on **Schedule 4**.

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

See **Schedule 2**, GMP Clarifications and Assumptions

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

SCHEDULE 1	Index of Drawings and Specifications
SCHEDULE 2	GMP Clarifications and Assumptions
SCHEDULE 3	Schedule of Values
SCHEDULE 4	Alternates and Allowances
SCHEDULE 5	Key Personnel and Subcontractors
SCHEDULE 6	Construction Schedule
SCHEDULE 7	Schedule of Unit Price Work Rates

ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

(List name, discipline, address, and other information.)

[Signature Pages to Follow]

Init.

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

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

(Printed name, title, and license number, if required)

CERTIFICATE OF AVAILABLE FUNDS
(ORC Section 5705.41)

The undersigned, fiscal officer of the West Carrollton City Council, hereby certifies that the amount required to meet the obligations under the contract, obligation, expenditure for the services described in the preceding agreement, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

By: _____
Name: _____
Its: _____
Date: _____

Init.

Exhibit B
Insurance and Bonds

Exhibit A



AIA® Document A133® – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated 26th day of January in the year 2026
(In words, indicate day, month and year.)

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

To construct improvements to the West Carrollton Whitewater River Park located on the Great Miami River west of I-75 and along the south bank of the river parallel to Alex Road (the "Project")

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

City of West Carrollton
300 E. Central Avenue
West Carrollton, Ohio 45449

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

Prus Construction Company
5325 Wooster Pike
Cincinnati, Ohio 45226

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 OWNER'S INSURANCE
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS
- B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

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

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

The Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 upon the Contractor's request.

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 Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

§ B.2.2 Liability Insurance

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

§ B.2.3 Required Property Insurance

§ B.2.3.1 Pursuant to Section B.3.3.2.1, the Construction Manager shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Construction Manager's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion of the entire Work or such longer time as may be set forth in the Contract Documents or otherwise agreed to by the parties in writing. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

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

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

Causes of Loss	Sub-Limit

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

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

Coverage	Sub-Limit

§ B.2.3.1.3 Intentionally omitted.

§ B.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Contractor shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Intentionally omitted.

§ B.2.4

(Paragraphs deleted)

Intentionally omitted.

(Paragraphs deleted)

§ B.2.5

(Paragraphs deleted)

Intentionally omitted.

Init.

(Paragraphs deleted)

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner and all other required Additional Insureds (as defined below in Section B.3.1.3) as additional insureds on the Construction Manager's Commercial General Liability, Automobile Liability, Pollution Liability and excess or umbrella liability policy or policies. The Construction Manager's required insurance shall be subject to the approval of Owner, but any acceptance of insurance certificates by Owner shall in no way limit or relieve Construction Manager of the duties and responsibilities under the Contract Documents.

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

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage, automobile liability, pollution liability and excess or umbrella liability policy or policies to include the Owner, the State of Ohio, Miami Conservancy District, Engineer, and each of their respective agents, officers, directors, officials, council members, consultants, and employees and any other parties reasonably specified by Owner (collectively, "Additional Insureds") as additional insureds for claims caused in whole or in part by the Construction Manager's acts or omissions during the Construction Manager's operations; and for claims caused in whole or in part by the Construction Manager's acts or omissions for which loss occurs during completed operations. Construction Manager shall include other Additional Insureds as reasonably requested by Owner. 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. 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 Engineer and the Engineer's consultants, CG 20 32 07 04. All policies shall include a waiver of subrogation in form and substance acceptable to Owner.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below: *(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

Coverages (including completed operations) shall be maintained without interruption from the date of the commencement of the Work until three (3) years after the date of Substantial Completion, unless expressly stated otherwise herein, or expiration of the statute of repose for defective work in the applicable jurisdiction, whichever is longer.

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$ 1,000,000) each occurrence, Five Million Dollars (\$ 5,000,000) general aggregate, and Five Million Dollars (\$ 5,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;

- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

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

§ B.3.2.3 Business 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.

§ B.3.2.4 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 insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000) each accident, One Million Dollars (\$ 1,000,000) each employee, and One Million Dollars (\$ 1,000,000) policy limit.

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

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and Three Million Dollars (\$ 3,000,000) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and Two Million Dollars (\$ 2,000,000) in the aggregate.

§ B.3.2.10 Umbrella/Excess Liability coverage, providing follow-form coverage over the Commercial General Liability and Automobile Liability with limits of not less than Five Million Dollars (\$5,000,000) for each occurrence and Ten Million Dollars (\$10,000,000) in the aggregate.

§ B.3.2.11 Intentionally omitted.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per claim and Two Million Dollars (\$ 2,000,000.00) in the aggregate.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

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

Until expiration of the applicable statute of repose in the jurisdiction where the Project is located.

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

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

- [X] § B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible. Prior to commencement of any Work required by the Contract Documents to be covered by such property insurance or, if earlier, within three (3) business days after execution of the GMP Amendment, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall be the first named insured and shall have the right to adjust and settle the loss with the insurer in accordance with Article 11 of the General Conditions.
- [] § B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.
- [] § B.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- [X] § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.
- [X] § B.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.
- [] § B.3.3.2.6 Other Insurance
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

Init.

§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	As Provided Below
Performance Bond	As Provided Below

Construction Manager shall, prior to the commencement of the Work, submit to the Owner an irrevocable performance and payment bond ("Bond") for the Work issued by a surety company acceptable to the Owner as security for the proper and complete fulfillment of the Construction Manager's obligations under the Contract Documents in an amount equal to one hundred percent (100%) of the Guaranteed Maximum Price. The Bond shall cover all warranty obligations of the Construction Manager. The bond shall be in a form reasonably acceptable to the Owner and as required by the Ohio Revised Code. The minimum requirement for approval of a 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 Construction Manager and the bonding agent or agency. If the Guaranteed Maximum Price is increased by a duly executed Change Order, then the face amount of the Bond shall also increase and the Owner shall pay the premium cost charged due to such increase.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

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

§ B.4.1 Subcontractor Insurance. The Construction Manager shall require each of its Subcontractors to maintain the insurance set forth in Section B.3.2 or as required by law, whichever is greater, and such Subcontractor shall name each of the Additional Insureds as an additional insured on its commercial general liability, business automobile and umbrella policies. Such insurance shall be maintained throughout the duration of the Project and until expiration of the applicable statute of repose in the jurisdiction where the Project is located. Such insurance shall have a retroactive date no later than the Effective Date of this Agreement.

§ B.4.2 General. All policies shall: (1) be written by insurance companies with an AM Best's Rating of no less than "A:VII" by companies qualified to do business in the state where the Project is located; and (2) provide that coverage shall not be suspended, voided, canceled, non-renewed, reduced in scope or limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Owner.

Exhibit C

General Conditions of the Contract for Construction

Exhibit A

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

To construct improvements to the West Carrollton Whitewater River Park located on the Great Miami River west of I-75 and along the south bank of the river parallel to Alex Road (the "Project")

THE OWNER:

(Name, legal status and address)

City of West Carrollton
300 E. Central Avenue
West Carrollton, Ohio 45449

THE ENGINEER:

(Name, legal status and address)

Muller Engineering Company, Inc.
7245 West Alaska Drive, Suite 300
Lakewood, Colorado 80226

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12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS

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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, *Guide for Supplementary Conditions*.

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15 CLAIMS AND DISPUTES

Exhibit A

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the "Agreement") and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement or identified therein as Contract Documents, 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 Engineer. 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. "Addenda" refers to written or graphic instruments issued by Engineer or Owner prior to execution of the Agreement that modify, clarify, or supplement the original Construction Documents and Specifications or bidding documents.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction (the "Contract"). 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 Engineer or the Engineer's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, except as otherwise set forth in Sections 5.3 and 5.4, (3) between the Owner and the Engineer or the Engineer's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Engineer's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Contractor acknowledges and agrees that the Contract Documents are adequate and sufficient to provide for the completion of the Work within the Contract Sum and the Contract Time.

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

There is no Initial Decision Maker for the Project.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as

binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents (that is not otherwise resolved by application of Section 2.1.1 of the Agreement), or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall provide the better quality or greater quantity of Work and comply with the more stringent requirement, unless otherwise agreed to by Owner. The terms and conditions of this Section 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7.

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

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

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

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined herein or in the Agreement, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Engineers. Articles, sections, and exhibits referenced in these General Conditions are internal references within these General Conditions unless otherwise specified.

§ 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. "Include" means "include but is not limited to," "includes" means "includes but is not limited to," and "including" means "including but not limited to," whether or not expressly stated as such. The Contractor shall be responsible to the Owner in all respects for the proper performance of the Subcontractors. References in the Contract to the "fault" or "responsibility" of the Contractor or problems "caused" by the Contractor shall be deemed to include, but not be limited to, the Contractor's responsibility to Owner for all negligence, errors, omissions, breaches of contract, breaches of warranty (express or implied), or other improper conduct of the Subcontractors and any other person or entity for whom Contractor or a Subcontractor is responsible. The term "Contractor" as used in these General Conditions shall mean and refer to Construction Manager.

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

§ 1.5.1 The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service, including, without limitation, the Drawings and Specifications. 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 Owner's, Engineer's or Engineer's consultants' reserved rights in the Instruments of Service.

§ 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, Engineer, or the Engineer's consultants, as applicable.

§ 1.6 Notice

§ 1.6.1 Any notice, demand, offer, consent, waiver or other communication or written instrument required or permitted to be given pursuant to the Contract Documents under this Section 1.6 shall be in writing and shall be effective upon any of the following: (a) personal delivery to the recipient; (b) one business day after being sent by

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email to the recipient, with hard copy sent to the recipient by reputable overnight courier service (including the United States Postal Service) that same day or the next business day (charges prepaid); (c) one business day after being sent to the recipient by reputable overnight courier service, including the United States Postal Service (charges prepaid); or (d) three business days after being deposited in the mail (first class or airmail postage prepaid). Notices under this Section 1.6.1 shall be sent to the other parties at the addresses and/or email addresses set forth in Sections 8.2 and 8.3 of the Agreement, as applicable.

§ 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 pursuant to Section 1.6.1.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use a written protocol approved by Owner, to establish the protocols for the development, use, transmission, and exchange of digital data. If no such protocols are established and agreed upon by the parties, then the parties shall use and transmit such data using commercially reasonable methods appropriate for projects of similar magnitude and sophistication.

(Paragraphs deleted)

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 Engineer does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 2.2 Confidential Information

The Contractor shall keep Project and Owner information confidential and shall not disclose it to any other person. However, the Contractor may disclose such "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. The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, Drawings, Specifications, and mock-ups and any other documents furnished by the Owner or the Engineer to the Contractor. Contractor shall require the Subcontractors and Sub-subcontractors to comply with this Section 2.2. The Contractor may retain copies of any information, at the Contractor's expense, that the Contractor deems necessary for business records or for any regulatory, financing, tax or insurance requirements, or that are necessary to service warrantee obligations after completion; provided, however, the Contractor shall bear appropriate responsibility for any data breach that results in disclosure of such retained copies in breach of this Section. The obligations, representations and warranties contained in this Section 2.2 shall survive the complete performance of the Work or earlier termination of this Agreement.

(Paragraphs deleted)

§ 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. Notwithstanding anything in the Contract Documents to the contrary, the parties agree that the Contractor shall manage the entire permitting process, including but not limited to, coordinating the permit

applications to be prepared and filed by the Owner, and shall coordinate with the Owner and other parties as necessary to accomplish the foregoing.

§ 2.3.2 The Owner shall retain an architect or engineer lawfully licensed to practice such professional service in the jurisdiction where the Project is located. That person or entity is identified as the Engineer in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Engineer terminates, the Owner may employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Engineer. Owner reserves the right to handle directly, rather than through Engineer, any of the roles designated in the Contract Documents for the Engineer, including, without limitation, inspections of the Work and review and certification of Applications for Payment.

§ 2.3.4 To the extent in Owner's possession, 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. Subject to the applicable Standard of Care, 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.

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

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

§ 2.3.7 Notwithstanding anything to the contrary in the Contract Documents, the Owner shall be required to furnish information or services described in this Section 2.3 only to the extent that such information or service (1) is reasonably requested by the Contractor in writing, (2) is required to perform the Work under the Contract Documents, and (3) is not otherwise required to be furnished by or through the Contractor under the Contract Documents.

§ 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 fails to carry out Work in accordance with the Contract Documents; or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials or equipment so as to be able to complete the Work within the Contract Time; or fails to release or discharge (by paying, bonding, or otherwise) within fifteen (15) days any lien filed upon the Project property by anyone claiming by, through, or under the Contractor; or disregards the instructions of the Engineer or Owner when based upon the requirements of the Contract Documents, then 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 and any delay resulting from such Work stoppage shall not extend the Contract Time or any interim schedule milestone dates set forth in the Contract Documents.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults, fails or neglects to carry out the Work in accordance with the Contract Documents or otherwise breaches its obligations under the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default, failure, breach or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default, failure, breach or neglect. The right of the Owner to correct deficiencies in the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. As applicable, the Owner or Engineer may, pursuant to Section 9.5, withhold payment or 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, without limitation, Owner's reasonable attorneys' fees and Owner's expenses and compensation for the Engineer's additional services made necessary by such default, neglect, breach or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the

Owner. If the Contractor disagrees with the actions of the Owner or the Engineer, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6 Owner's Audit Rights

The Owner's audit rights are set forth in the Agreement. The Contractor acknowledges and agrees that it shall require all Subcontractors, Sub-Subcontractors, and suppliers to comply with the applicable terms of the audit provisions in the Agreement, all as more particularly set forth therein.

§ 2.7 Extent of Owner's Rights

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted in the Contract Documents, at law, or in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights or authority granted the Owner in the Contract Documents. In no event shall any present or future council member, director, employee, or agent of Owner have any personal liability, directly or indirectly, and recourse shall not be had against any such council member, director, employee, or agent under or in connection with same.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as "Construction Manager" 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 and Applicable Laws.

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, each of the following: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) technical reports, (3) generally prevailing climatic conditions, (4) anticipated labor supply and costs, (5) availability and cost of materials, tools and equipment, and (6) other similar issues. The Owner assumes no responsibility or liability for the safety of the Project site or other improvements located on or near the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work.

§ 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 or through the Owner pursuant to Section 2.3.4 or by Engineer or Engineer's Consultants, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe and verify 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 notify the Owner and report to the Engineer and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Engineer 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. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Engineer or Engineer's consultants, or the work installed by other contractors, is not guaranteed by the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, the Contractor shall verify at the site all dimensions

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relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly corrected by the Contractor at no additional cost to Owner.

§ 3.2.3 Subject to the applicable Standard of Care, the Contractor is not required to ascertain that the Contract Documents are in accordance with Applicable Laws (except for documents prepared by or through the Contractor), but the Contractor shall promptly notify the Owner and report to the Engineer any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Engineer may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Engineer 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 Engineer 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.

§ 3.2.5 The Contractor acknowledges and agrees that it is familiar with the conditions under which the Work is to be performed. The Contractor represents and warrants that it is experienced in performing work on or in adjacent to riverine environments and is fully aware of and accepts the inherent risks associated therewith, including, but not limited to, the normal and expected: fluctuations, flow variations, velocity, and course due to natural causes or upstream management activities. No such causes or activities or other events associated with such inherent risk shall be cause for adjustments to Contract Time or Contract Sum.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Engineer, and shall propose alternative means, methods, techniques, sequences, or procedures. The Engineer shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Engineer 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. Without limiting the foregoing, each Subcontractor shall be responsible for acts and omissions and safety of its own agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, each such Subcontractor.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. If any of the Work is required to be inspected or approved by any public authority, then the Contractor shall cause such inspection or approval to be performed.

§ 3.3.4 The Contractor shall develop procedures acceptable to the Owner for implementing, documenting, reviewing and processing field questions and responses, field variance authorizations and directives, minor changes, Change Orders and Construction Change Directives. The Contractor shall review requests for changes submitted by the Subcontractors, negotiate Subcontractors' proposals, submit recommendations to the Owner and, if they are accepted by the Owner in writing, prepare and submit Change Orders for the approval and signature of the Owner. All requests for information by the Contractor or any Subcontractor shall be submitted in good faith and shall contain the Contractor's or the Subcontractor's, as applicable, proposed answer to the request. If the Contractor proposes a substitution from materials or equipment specified in the Contract Documents, then, if such substituted material or equipment is accepted by the Owner, the Contractor shall pay for any redesign or re-engineering costs incurred to accommodate the substitution.

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§ 3.3.5 The Contractor shall keep accurate and detailed written records of the progress of the Work and, on a monthly basis, shall submit a progress report to the Owner that includes information concerning the Work of each Subcontractor, the percentage of completion, the status and nature of pending requests for information, the Construction Schedule, and the number and amount of Change Orders, in addition to other information relevant to the progress of the Work. The Contractor shall also provide the required and actual staffing requirements necessary to complete the Work within the time limits current under the Contract Documents. The format of the Contractor's monthly progress reports is subject to Owner's approval. Delivery of a monthly progress report shall be a condition precedent to the Owner's obligation to make payment to the Contractor.

§ 3.3.6 Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor is solely responsible for locating (and shall locate prior to performing any Work) all above- and below-ground utilities on or about the Project, and shall perform all Work in such a manner so as to avoid damaging any such utilities, including, but not limited to, service and transmission facilities for electricity, communication, water, sewer, and gas.

§ 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 Engineer in accordance with Section 3.12.8 or ordered by the Engineer in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Engineer and Owner 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. The Contractor acknowledges that it is the Contractor's responsibility to hire all personnel for the proper and diligent performance of the Work. The Contractor shall use its best efforts to maintain labor peace for the duration of the Project.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Engineer 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 be performed in a good and workmanlike manner, shall conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Other warranties or guarantees may be detailed elsewhere in the Contract Documents with specified coverages or time periods, but these shall not be construed to negate or diminish the warranty detailed in this Section 3.5.1. In addition to the foregoing, the Contractor shall comply with all other warranties referenced in the Contract Documents or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirements shall govern. Nothing in the Contract Documents shall operate to waive, release or compromise the statutory implied warranties of the Contractor or any Subcontractor or Sub-subcontractor.

§ 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. The Contractor shall, upon the earlier of (1) termination of the Agreement or (2) the time of final completion of the Work, assign to the Owner, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. If necessary as a matter of law, the Contractor may retain the right to enforce directly any such manufacturers' warranties during the one-year period following the date of Substantial Completion referred to in Section 12.2.2. If transferable warranties and guarantees cannot be provided, then the Contractor shall provide separate warranties and guarantees extending to the Owner as the ultimate owner of the material and equipment.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Contractor acknowledges that the Owner is a subdivision of the State of Ohio and qualifies for state sales and use tax exemptions. Upon Contractor's request, Owner will provide Contractor with any appropriate tax certificates of exemption.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to Applicable Laws the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Engineer before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Engineer will promptly investigate such conditions and, if the Engineer 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 Engineer 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 Engineer shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Engineer's determination or recommendation, that party may submit a Claim as provided in Article 15. Notwithstanding anything in the Contract Documents to the contrary, no adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the inspections, tests, reviews, and preconstruction services that the Contractor performed or should have performed for or in connection with the Project.

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

- .3 whenever costs are more than or less than allowances, Contractor must obtain Owner's approval, which shall not be unreasonably withheld. Upon obtaining Owner's approval, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Engineer of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner or Engineer may notify the Contractor, stating whether the Owner or the Engineer (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Engineer 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.

§ 3.9.4 If Owner, in Owner's reasonable discretion, finds that the superintendent or project manager are not competent or satisfactory, such superintendent or project manager will be removed and replaced pursuant to this § 3.9.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Owner's Project Milestone Schedule is attached to the Agreement as **Exhibit D**. Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Engineer's review and the Owner's written approval a Contractor's Construction Schedule for the Work in critical path method format. Such Construction Schedule shall be in accordance with the Owner's Project Milestone Schedule. 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 in accordance with, and shall not exceed, time limits current under the Contract Documents. Subject to Owner's written approval, the schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project and, at minimum, on a monthly basis for submission with the Contractor's monthly progress report. In no event shall any update to the Construction Schedule or approval thereof by Owner be deemed to modify the Contract Time, Contract Sum, or any interim schedule milestone dates set forth in the Contract Documents unless agreed to by the Owner and authorized in writing by a Change Order executed by all relevant parties.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Owner's and Engineer's review and the Engineer's approval, which 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 Engineer reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted the Owner and Engineer that have been approved as required under the Contract Documents.

§ 3.10.4 The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner and the Engineer of any delays or potential delays. The most recent Owner-approved Construction Schedule shall be updated to reflect actual conditions as set forth in Section 3.10.1 or if otherwise requested by the Owner. If Contractor indicates any delays, the Contractor shall propose a plan to correct the delay, including overtime and additional labor, if necessary. In no event shall any report by the Contractor of any delay be deemed an adjustment to the Contract Time, Contract Sum or any dates set forth in the

Project Milestone Schedule unless agreed to by the Owner and authorized in writing by a Change Order executed by all relevant parties.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals, materials, equipment, applicable handbooks, commercial and technical standards and specifications, and any revisions that arise out of the Contract Documents or the Work, all of which shall be the property of the Owner. These shall be in electronic form or paper copy, available to the Engineer, Owner and any governmental authorities with jurisdiction over the Project, and delivered to the Engineer 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 Engineer is subject to the limitations of Section 4.2.7. Informational submittals upon which the Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Engineer without action.

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

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Engineer's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Engineer and Owner of such deviation at the time of submittal and (1) the Engineer 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 Engineer's approval thereof. Contractor shall stamp and/or sign all Shop Drawings, Product Data, Samples and other submittals to verify Contractor's review and approval thereof, which stamp shall constitute a representation by Contractor to Owner that the submitted item conforms with the Contract Documents and is coordinated with other related Work. In collaboration with the Engineer, Contractor

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shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals.

§ 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 Engineer on previous submittals. In the absence of such notice, the Engineer'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 required by the Contract Documents for a portion of the Work (including, without limitation, as required to perform any design-build or design-assist services) 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 Engineer 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 Engineer. The Owner and the Engineer shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Engineer will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by Applicable Laws and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Only materials and equipment that are to be used directly in the Work shall be brought and stored on the Project site. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall provide a secure site so as to limit Project site damage from vandalism, theft, and other occurrences. The Contractor shall develop and monitor programs to control dust, dirt, noise, vibration, odor, or any other attributes of the construction process which might adversely affect any use of any property areas adjacent to or in the vicinity of the Project site.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly in accordance with the requirements of the Contract Documents (including, without limitation, as required by the Drawings and/or Specifications). 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 (including, without limitation, as required by the Drawings and/or Specifications).

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

§ 3.15 Cleaning Up

§ 3.15.1 In accordance with the requirements set forth in the Contract Documents (including, without limitation, as required in the Drawings and/or Specifications, the Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and, 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. Unless otherwise provided in the Contract Documents (including, without limitation, as required in the Drawings and/or Specifications), the Contractor shall (1) maintain streets and sidewalks around the Project site in a good repair and a clean and traversable condition and (2) the Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas.

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Engineer harmless from loss on account thereof (including, but not limited to, attorneys' fees incurred by Owner), but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Engineer. 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 Owner and Engineer in writing.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, the State of Ohio, Miami Conservancy District, Engineer, and each of their respective agents, officers, directors, officials, council members, consultants, and employees and all other parties required by the Contract Documents to be additional insured ("Indemnitees") from and against claims, damages, fines, penalties, costs, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from (1) performance of the Work, provided that such claim, damage, fine, penalty, cost, loss, or expense is attributable to bodily injury, sickness, disease or death, violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work, the means, methods, procedures, techniques or sequences of execution or performance of the Work which is the responsibility of the Contractor under the Contract Documents, the failure to secure and pay for permits, fees, approvals, licenses, and inspections as required by the Contractor under the Contract Documents, the violation of any permit or other approval of a public authority applicable to the Work, or to injury to or destruction of tangible property (other than the Work itself to the extent covered by builder's risk property insurance) including, but not limited to, loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions, willful misconduct, or strict liability of the Contractor, a Subcontractor, a Sub-subcontractor, or supplier, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, or (2) breach under the Contract Documents by the Contractor, a Subcontractor, Sub-subcontractor, or supplier, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, fine, penalty, cost, 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. For purposes of this indemnity, the Contractor, Subcontractors and any Sub-subcontractors each waive against the Owner as a defense any immunity that they may otherwise have or

claim under the State Constitution, or any laws, regulations, orders or benefits related to workers' compensation, as the same may be amended from time to time. The foregoing waiver is for the sole benefit of the Owner.

§ 3.18.3 Nothing in the Contract Documents is intended to require any indemnification that is void or unenforceable under Applicable Law in the jurisdiction where the Project is located. Accordingly, the indemnification provisions set forth in the Contract Documents shall be reformed and amended as necessary to comply with any legal limitations now or hereafter in effect and affecting the validity or enforceability of such provisions, but only to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

ARTICLE 4 ENGINEER

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

§ 4.2.1 Unless otherwise specified by Owner pursuant to its agreement with the Engineer, Engineer will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Engineer issues the final Certificate for Payment. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. Owner reserves the right to perform the administrative functions of the Engineer directly or through Owner's project manager or other representative designated by Owner. The exercise of such right by the Owner shall not relieve, excuse or otherwise absolve the Contractor of any responsibilities or obligations under the Contract Documents.

§ 4.2.2 The Engineer 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 Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Engineer will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

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

§ 4.2.4 Communications

The Owner and Contractor shall endeavor to include the Engineer in all communications that relate to or affect the Engineer's services or professional responsibilities. Communications by and with the Engineer's consultants shall be through the Engineer. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols. Notwithstanding the foregoing, nothing in these General Conditions or any other Contract Document shall be construed to prohibit the Owner from communicating directly with any person or entity who is providing materials or services to the Project.

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

§ 4.2.6 The Engineer and the Owner each have authority to reject Work that does not conform to the Contract Documents. Whenever the Engineer or Owner considers it necessary or advisable, the Engineer or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Engineer or the Owner 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 Engineer or the Owner to the Contractor, Subcontractors, Sub-subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

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

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

§ 4.2.12 Interpretations and recommendations of the Engineer 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.

§ 4.2.13 Intentionally omitted.

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work or to supply materials, equipment, or services in connection with the Work. 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. The term "Sub-subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Engineer 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. Copies of all bids or other proposals from Subcontractors and Sub-subcontractors shall, upon the request of the Owner, be submitted to Owner for review. Within 14 days of receipt of the information, the Engineer or Owner may notify the Contractor whether the Owner or the Engineer (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review.

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

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Engineer makes reasonable objection to such substitution. The Owner may require the Contractor to change any Subcontractor or Sub-subcontractor previously approved and, if at such time the Contractor is not in default hereunder, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change.

§ 5.3 Subcontractual Relations

By appropriate written agreement in a form agreed to by the Owner, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with 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. The Contractor shall provide the Owner with copies of all Subcontracts, and all Subcontracts shall be on a lump-sum basis, unless otherwise agreed by Owner in writing and subject to Section 9.2 of the Agreement.

§ 5.3.2 Without limiting the foregoing, each subcontract agreement shall contain provisions that: (1) require that such Work be performed in accordance with the requirements of the Contract Documents; (2) require the Subcontractor to carry and maintain insurance coverage in accordance with the Contract Documents and to file certificates of such coverage with the Contractor; and (3) require the Subcontractor to submit certificates and waivers of liens for Work completed and paid to it and by its Sub-subcontractors paid in a prior payment application as a condition to the disbursement of the progress payment next due and owing.

§ 5.3.3 The Contractor acknowledges and agrees that the Owner is and shall be an intended third-party beneficiary of all subcontract agreements. The Owner shall have the right to assert claims directly against any Subcontractor for breach of contract, breach of express warranties, breach of implied warranties (including, but not limited to, warranties of merchantability and of fitness for a particular purpose), negligence, and other claims arising out of or related to the Work or the Project. The Owner and Contractor acknowledge and agree that the purpose of the foregoing is to enable the Owner, in addition to the Contractor, to assert claims for damages and indemnification directly against any Subcontractor that is or may be responsible for breach of the Contract, defects in the Work, or other damages incurred by the Owner arising out of or related to the Work or the Project. However, nothing in this Section 5.3 or elsewhere in the Contract Documents shall be interpreted, however, to mean that a Subcontractor has any right to bring a claim against Owner under the Contract.

§ 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 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, subject to Section 5.4.2 below.

§ 5.4.2 In the event of an assignment under Section 5.4.1, the Owner shall only be responsible to the Subcontractor for those obligations that accrue during the period commencing upon such assignment and ending upon any further assignment under Section 5.4.3.

§ 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 and, upon such further assignment, shall not remain legally responsible for any of the successor contractor's or other entity's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

§ 6.1.3 The Contractor shall coordinate the activities of its own forces and those of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their Construction Schedules. The Contractor shall make any revisions to its Construction Schedule deemed necessary after a joint review and mutual agreement, including written agreement of Owner. The Construction Schedule shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Intentionally omitted.

§ 6.2 Mutual Responsibility

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

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

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

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

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Engineer 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. In no event shall the Contractor be entitled to additional compensation without the prior written authorization of the Owner.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Engineer. A Construction Change Directive requires agreement by the Owner and Engineer 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 Engineer 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.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Engineer (or such other party as the Owner may direct) and signed by the Owner 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.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, without limitation, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, the Contract Time, and the Construction Schedule, except to the extent stated otherwise in the Change Order itself.

§ 7.2.3 All Change Orders and requests therefor shall be accompanied by a complete itemization of costs, including, without limitation, labor and material costs.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Engineer (or such other party as the Owner may direct) and signed by the Owner, 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 consistent with the Agreement; 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 Engineer (after due consultation and coordination with the Owner) 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 Engineer or Owner may prescribe or require, 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 but only to the extent directly attributable to the change:

- .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 Owner;
- .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 Additional costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change (at rates set forth in the Agreement).

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time or Contract Sum, 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 notify the Engineer and Owner 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 Engineer and approved by the Owner in writing. 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 Engineer and Owner will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Engineer and Owner determine, in the Engineer's and Owner's professional judgment, to be reasonably justified. The Engineer's and Owner's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Engineer 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 Engineer (or such other party as the Owner may direct) will prepare a Change Order pursuant to Section 7.2. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Owner, or Engineer with approval of Owner, 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 Engineer's or Owner'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 promptly notify the Owner and Engineer and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Owner's or Engineer's order for a minor change without prior notice to the Owner and Engineer that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 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 Engineer in accordance with Section 9.8.

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the critical path of the Work (1) by active interference of the Owner or Engineer, of an employee of either, or of a Separate Contractor (but not Owner's proper exercise of its rights under the Contract Documents); (2) by changes ordered in the Work; or (3) by industry wide labor disputes affecting multiple contractors and multiple construction projects, fire, unavoidable casualties, adverse weather conditions that are severe and abnormal documented in accordance with Section 15.1.6.2, or other similar causes beyond the Contractor's control, in each case that could not have been anticipated by it, that could not have been prevented by commercially reasonable precautions, and that could not have been circumvented through the use of alternate sources, workaround plans or other means, then the Contract Time may be extended for a reasonable amount of time; provided, however, no extension of the Contract Time shall be permitted for a delay in the commencement or progress of the Work unless the Contractor (a) provides notice of such delay to the Owner and

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Engineer as required under Section 15.1.6, and (b) demonstrates that such delay impacts the critical path of the Work; and provided, further, that in no event shall the Contract Time be extended beyond the extent that such delay affects the critical path of the Work. No extension of time shall be granted to the Contractor to the extent that, notwithstanding the existence of any circumstance beyond the Contractor's control, delay would have resulted from any event due to a concurrent unexcused delay of the Contractor. Except as set forth in Section 8.3.3, no such Change Order extending the Contract Time shall result in any increased payments to the Contractor.

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

§ 8.3.3 Except to the extent prohibited by law, the Contractor acknowledges and agrees that whether or not any delay shall be the basis for an extension of time, it shall have no Claim against the Owner for any increase in the Contract Sum, nor a Claim against the Owner for payment or allowance of any kind of damage, loss or expense resulting from delays, hindrances, obstructions or interferences with the Work, unless such delay was caused by the active interference of the Owner in the progress of the Work, in which case the Contractor shall be entitled to reasonable additional out-of-pocket costs and expenses actually and directly incurred by the Contractor as a result of active interference of the Owner; provided, however, the Contractor shall not be entitled to any payment of costs and expenses on account thereof unless the Contractor shall provide to the Owner notice of the event causing the delay in accordance with Section 15.1.6 and other relevant provisions of the Contract Document together with an estimate of the probable costs associated with such delay. Except as set forth in this Section 8.3.3, the only remedy available to the Contractor on account of delays will be an extension of time as permitted pursuant to this Article 8.

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, the procedures set forth in Section 6.4 of the Agreement shall apply for purposes of determining any equitable adjustments in unit prices.

§ 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 Owner and the Engineer before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner or the Engineer. The schedule of values shall include each item of Unit Price Work and other items designated by Owner. This schedule, when approved by Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Owner and Engineer and supported by such data to substantiate its accuracy as the Owner or Engineer may require, and when approved by Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

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

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Engineer, 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 set forth in the Contract Documents and otherwise satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest (including, without limitation, compliance with all conditions and requirements of Owner's insurer and other requirements with respect thereto set forth in the Contract Documents), 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, Sub-subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. Additionally, by submitting an Application for Payment, Contractor represents to the Engineer and Owner that the Work has progressed to the point indicated in such Application for Payment and that the quality of the Work is in accordance with the Contract Documents.

§ 9.3.4 As an additional condition to receipt of payment, each Application for Payment shall also be accompanied by duly executed (1) conditional waivers of lien from Contractor and all applicable Subcontractors covering all Work for which payment is being requested in such Application for Payment and (2) unconditional waivers of lien from Contractor and all applicable Subcontractors covering all Work for which payment was requested in the previous Application for Payment (as applicable).

§ 9.4 Certificates for Payment

§ 9.4.1 The Engineer will, within seven days after receipt of the Contractor's properly completed Application for Payment (accompanied by all supporting documentation and information required by or pursuant to the Contract Documents), either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Engineer determines is properly due, and notify the Contractor and Owner of the Engineer's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Engineer's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, based on the Engineer's evaluation of the Work and the data in the Application for Payment, that, to the best of the Engineer's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Engineer. However, the issuance of a Certificate for Payment will not be a representation that the Engineer 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 Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Engineer's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Engineer is unable to certify payment in the amount of the Application, the Engineer will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Engineer cannot agree on a revised amount, the Engineer will promptly issue a Certificate for Payment for the amount for which the Engineer is able to make such representations to the Owner. The Engineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as

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may be necessary in the Engineer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective or incomplete Work not remedied;
- .2 liens or third party claims filed or reasonable evidence indicating probable filing of such claims, unless security or insurance acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 uninsured loss caused by the negligence of the Contractor, a Subcontractor, a Sub-subcontractor, or supplier, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable.

§ 9.5.2 When either party disputes the Engineer'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 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 Engineer and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.5.5 In addition to the Engineer's rights under Section 9.5.1, notwithstanding anything in the Contract Documents to the contrary, the Owner may withhold payment to the Contractor for any of the reasons for which the Engineer may withhold or nullify a Certificate of Payment, including, without limitation, as may be necessary in the Owner's discretion to protect the Owner from loss for which the Contractor is responsible because of any of the circumstances described in Sections 9.5.1.1 through 9.5.1.8. If the Owner withholds payment under this Section 9.5.5, then the Owner shall notify the Contractor and Engineer.

§ 9.6 Progress Payments

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

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

§ 9.6.3 The Engineer 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 Engineer and Owner on account of portions of the Work done by such Subcontractor.

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

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

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

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

§ 9.6.8 Provided that the Owner has paid all undisputed amounts due and payable under the Contract Documents, the Contractor shall not permit any laborer's, materialmen's, mechanic's or other similar liens, claims of liens, stop-notices, or other demand for payment for any labor, services, trust fund contribution, materials, equipment, taxes, or other item furnished for or in connection with the Work or security therefore (including bond claims) to be filed or otherwise imposed on any part of the Work or the property on which the Work is performed. If any such lien, notice, or claim is filed or asserted on the Project by any party working for or under the Contractor, including, without limitation any Subcontractor, Sub-subcontractor, or supplier, and if the Contractor does not undertake to cause any such lien, notice, or claim to be released or discharged (by paying, bonding, or otherwise) within fifteen (15) days of such filing, the Owner shall have the right to pay all sums necessary to obtain such release or discharge and deduct all amounts so paid, including, without limitation, any attorneys' fees and filing costs, from monies due to the Contractor. The Contractor shall defend, indemnify, and hold harmless the Indemnitees from all claims, losses, demands, causes of action or suits of whatever nature arising out of such lien, notice, claim, or other demand or that part of the Work covered thereby. The Contractor shall, upon its receipt of any notice of claim, potential claim of right, or any other document filed in connection with applicable lien laws, promptly provide the Owner with a copy of such notice.

§ 9.7 Failure of Payment

§ 9.7.1 Subject to Section 9.5, if the Engineer does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty (30) days after the date established in the Contract Documents, the amount certified by the Engineer or awarded by binding dispute resolution, then the Contractor may, upon thirty (30) additional days' notice to the Owner and Engineer, 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.

§ 9.7.2 Owner may offset payments owed to Contractor for this Agreement by any amounts owed to Owner by Contractor under other agreements.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, provided that as a condition precedent to Substantial Completion, the Owner shall have received a final certificate of occupancy (unless issuance of a final certificate of occupancy is delayed for reasons outside of Contractor's control, then grant and issuance of such final certificate of occupancy shall not be a requirement for Substantial Completion of the Work) and all other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project, and the Contractor shall have complied with all other requirements for achieving Substantial Completion set forth in the Contract Documents.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Engineer and the Owner a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list. 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 Contractor's list, the Engineer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Engineer's inspection discloses any item, whether or not

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

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

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

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Engineer and Owner 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 Owner.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer will promptly make such inspection. When the Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Engineer will promptly issue a final Certificate for Payment stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. All warranties, guarantees, and contract closeout documents required pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Engineer as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Engineer until all warranties, guarantees, and contract closeout documents have been received and accepted by the Owner. The Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due (nor shall a final Certificate for Payment be issued by the Engineer) until the Contractor submits to the Engineer (with a copy of same to the Owner) (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, (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, (7) "marked" record as-built digital drawings certified by the Contractor as accurate and complete, (8) three sets of manuals, indexed and bound, containing manufacturer's warranties, instructions for maintenance and operation of each item of equipment and apparatus included in the Work; and (9) contingent on final payment, a final release and waiver of liens from the Contractor and all Subcontractors and suppliers. Unconditional final releases and waivers of liens from the Contractor and all Subcontractors and suppliers shall be delivered to the Owner no later than fifteen (15) days following final payment. If a Subcontractor or supplier 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, but not limited to, 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 Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Engineer, 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 Engineer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4

(Paragraphs deleted)
Intentionally omitted.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

§ 10.2.2 The Contractor shall comply with, and give notices required by Applicable Laws bearing on safety of persons or property or their protection from damage, injury, or loss. The Contractor shall supply, upon request, any written documentation of their company safety policies and programs in support of compliance with aforementioned laws, codes and regulations as necessary.

§ 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

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against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel and shall give the Owner and Engineer reasonable 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 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is caused by the acts or omissions of the Owner or Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall investigate the material or substance reported by the Contractor and, in the event such material or substance is found to be hazardous, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Engineer the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Engineer will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Engineer has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Engineer 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 Intentionally Omitted.

§ 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 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner from and against all damages, costs and expenses the Owner incurs (1) for remediation of hazardous materials or substances the Contractor, Subcontractor or Sub-subcontractor brings to the site when not required by the Contract Documents or brings to the site and negligently handles, or (2) where the Contractor, Subcontractor or Sub-subcontractor 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 fault or 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.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall, and, as applicable, shall cause all Subcontractors and Sub-subcontractors to, purchase and maintain insurance of the types and limits of liability, containing the endorsements, naming Additional Insureds (as defined in **Exhibit B** to the Agreement) and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents (including, without limitation, **Exhibit B** to the Agreement). The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

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

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

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

§ 11.2 Property Insurance

§ 11.2.1 The Contractor shall purchase and maintain builder's risk property insurance in accordance with the requirements, terms, and conditions set forth in **Exhibit B** and elsewhere in the Contract Documents.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Contractor does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Contractor shall so inform the Owner in writing prior to commencement of the Work. If the Contractor fails to purchase or maintain such property insurance, the Owner may then procure such insurance and by appropriate Change Order the cost thereof shall be deducted from the Contract Sum. If the Owner or Owner's landlord is damaged by the failure or neglect of the Contractor to purchase or maintain insurance as described above, then the Contractor shall bear all reasonable costs properly attributable thereto.

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§ 11.2.3 Intentionally omitted.

§ 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 Engineer and Engineer's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Contractor shall require similar written waivers in favor of the individuals and entities identified above from 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 Intentionally omitted.

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

The Owner, at the Owner's option and without limiting any obligations of the Contractor under **Exhibit B**, 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.

§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 (or by the Contractor, upon the written direction by the Owner and with the Owner's written consent as to the terms of any such adjustment) and made payable to the Owner on behalf of the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and, as applicable, of Sections 11.5.2 and 11.5.3. The Owner shall pay the Engineer and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Engineer and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 If the Contractor is directed by the Owner in writing to adjust an insured loss pursuant to Section 11.5.1, then prior to settlement of such loss, the Contractor shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall not settle the loss without the prior written consent of the Owner. The Owner shall not be bound by any settlement and allocation made by the Contractor without such written consent.

§ 11.5.3 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. Any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Engineer or any governmental authority has not specifically requested to examine prior to its being covered, the Engineer 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 and approved by Owner. If such

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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 Engineer or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, Owner's expenses and attorneys' fees, and compensation for the Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to so notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction as set forth in this Section 12.2 by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Engineer, the Owner may correct it in accordance with Section 2.5.

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

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

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Contractor shall not assign the Agreement as provided in Section 14.2.1 of the Agreement.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract as provided in Section 14.2.2 of the Agreement. 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, Engineer, 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. No inspection performed or failed to be performed by the Owner, Engineer or any governmental authority hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

§ 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. 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 Engineer and Owner timely notice of when and where tests and inspections are to be made so that the Engineer and Owner may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly pay for tests, inspections, or approvals where building codes or Applicable Laws or regulations so require.

§ 13.4.2 If the Engineer, 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 Engineer 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 Engineer of when and where tests and inspections are to be made so that the Engineer 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 Engineer'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 Owner and Engineer.

§ 13.4.5 If the Engineer is to observe tests, inspections, or approvals required by the Contract Documents, the Engineer 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 of ten percent (10%) per annum.

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 90 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 Engineer has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents, except to the extent permitted under Section 9.5 or where payment has been withheld as the result of a reasonable dispute as to the justification for, or the amount of, the payment; or
- .4 Intentionally omitted.

§ 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.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Engineer, terminate the Contract and recover from the Owner payment for Work properly executed prior to such termination, and actual, demonstrable, reasonable, out-of-pocket costs incurred by reason of such termination, but not lost profit or overhead or profit on unperformed Work.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon thirty (30) additional days' notice to the Owner and the Engineer, 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 fails to supply enough properly skilled workers or proper materials;
- .2 fails to timely and properly make payment to Subcontractors or suppliers in accordance with the Contract Documents and the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards Applicable Laws;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or
- .5 fails to prosecute the Work in accordance with the Contract Documents, including, without limitation, any work reflected in a Change Order or Construction Change Directive.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs to the Owner of finishing the Work, including compensation for the Engineer's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, then the Contractor shall be paid for Work properly completed prior to such termination, but only to the extent of such excess. In no event shall the Contractor be entitled to profits, fees or costs on unperformed Work. If such costs and damages exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner immediately upon demand by the Owner. The cost to the Owner of finishing the Work shall include, but not be limited to, the cost of any additional engineering and other design professional, accounting, managerial and administrative services required to facilitate completion, any costs incurred in retaining another contractor or other subcontractors, any additional interest or fees which the Owner must pay by reason of a delay in completion of the Work, and any other damages, costs, expenses, and attorneys' fees that the Owner incurs by reason of completing the Work or any delay in the Work.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1 (if any). Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent that the suspension was a result of factors or events caused by Contractor or within Contractor's control or for which Contractor is responsible, or:

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract (including, without limitation, pursuant to Section 14.3.3 below).

§ 14.3.3 If the Contractor believes that a suspension may adversely affect the Work or impact the Contract Sum or Contract Time, then the Contractor shall immediately notify the Owner of such belief and describe in detail the particular reasons therefor. Any failure of the Contractor to timely notify the Owner as required in the foregoing sentence shall preclude adjustment of the Contract Sum or Contract Time to the extent that delays or costs could have been avoided as a result of the Contractor having properly given timely notice as required.

§ 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 or assign, in accordance with Section 14.5, all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders except as may be necessary for completion of such portion of the Work as is not discontinued.

§ 14.4.3 Subject to Section 13.1 of the Agreement, in case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; and actual, demonstrable, reasonable, out-of-pocket costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; but not lost profit or overhead or profit on unperformed Work.

§ 14.4.4 Termination for cause, if wrongfully made by the Owner, shall be treated as a termination for convenience under this Section 14.4.

§ 14.5 In the event that the Contract is terminated by the Owner pursuant to this Article 14, the Contractor agrees to assign to Owner or, if not assignable by Contractor, to use commercially reasonable efforts to cause to be assigned to the Owner, to the extent directed by the Owner, all of the Contractor's right, title and interest in any Subcontracts and purchase orders placed with respect to the Project.

§ 14.6 The provisions of the Contract, which by their nature survive final acceptance of the Work, including, without

limitation, all provisions relating to indemnity, warranty, insurance, intellectual property, confidentiality or dispute resolution, shall remain in full force and effect after termination pursuant to this Article 14 and final payment. For avoidance of doubt, upon such termination, the obligations of the Contractor shall continue as to portions of the Work already completed and as to bona fide obligations assumed by the Contractor prior to the date of termination.

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. As between the Owner and Contractor, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events as provided by Applicable Law.

§ 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. Claims by either party under this Section 15.1.3.1 shall be initiated within the specific time constraints set forth in the Contract Documents, if any. If no time constraints are provided in the Contract Documents with respect to a specific type of Claim, then a claimant shall use commercially reasonable efforts to furnish the other party, as expeditiously as reasonably necessary, with notice of any Claim once such Claim is recognized. A claimant shall cooperate with the party against whom the Claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of the Claim.

§ 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.

§ 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 Intentionally omitted.

§ 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 (and subject to Section 8.3, as applicable) 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 and Section 8.3 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. Should the Contractor contend that it is entitled to an extension of time for completion of any portion or portions of the Work, it shall, within seven (7) days of the occurrence of the cause of the delay, notify the Owner in writing of the existence of the delay, setting forth (a) the cause for the delay, (b) a description of the portion or portions of Work affected thereby, (c) specific identification of all critical path activities that may be impacted by the delay, and (d) all details pertinent thereto. If it is impracticable to specify the length of such delay at the time the notice referred to in the preceding

sentence is delivered, then the Contractor shall provide the Owner with periodic (not less than weekly) supplemental notices during the period over which the event continues. Such supplemental notices shall keep the Owner informed of any change, development, progress or other relevant information concerning the event of which the Contractor is aware. It is a condition precedent to the consideration or prosecution of any claim for extension of time that the foregoing procedures be strictly adhered to in such instance. Within seven (7) days after the expiration of any such delay, the Contractor shall deliver to the Owner a subsequent written application for the specific number of days of extension of time requested together with all necessary documentation to demonstrate the extent to which the delay impacted the critical path of the Work. If such subsequent application from the Contractor is accepted by the Owner, then the agreed upon extension of the Contract Time shall be memorialized in a Change Order.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, in addition to the requirements set forth in Section 15.1.6.1, such Claim shall be documented by data substantiating that weather conditions were severe and abnormal for the period of time (and not otherwise contemplated by the Contract Documents), 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 lost income, profit, financing, business and reputation; 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 income or profit.

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 or recovery of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, nor shall it be deemed to preclude any recovery of the following: (1) third party claims and other damages, claims, costs or expenses arising under, or covered by, Section 3.18 or any other indemnity obligation of Contractor under the Contract Documents; (2) Claims, damages, costs or expenses relating to violations of Applicable Law, statute, ordinance, code, rule or regulation, or lawful order of a public authority; (3) Claims, damages, costs or expenses relating to fraud, gross negligence, willful misconduct; (4) Claims, damages, costs or expenses relating to intellectual property infringement, misuse of intellectual property or violation of any non-disclosure or information technology security obligation; and (5) Claims, damages, costs or expenses covered by any insurance policy required by the terms of the Contract Documents; or (6) Claims, damages, costs or expenses caused by Contractor's refusal to perform under the Contract Documents, including, Contractor's refusal to perform any express warranty under the Contract Documents or any obligation arising upon a termination for breach of contract under the Contract Documents.

§ 15.2 Provisions Related to Claims

§ 15.2.1 Direct Discussions and Negotiations

With respect to any Claim, prompt notice thereof shall be given in accordance with Section 15.1 (as to claims by Contractor) and within thirty (30) days of the event giving rise to the Claim as to Claims by Owner, and a record thereof shall be made in the monthly progress report. At the next Project meeting following delivery of the notice of the Claim, Contractor and Owner shall reserve time at the end of such Project meeting to attempt to resolve such Claim at the field level through discussions between a member of Contractor's on-site project management team and Owner's representative. If a Claim cannot be resolved through Contractor's project manager and Owner's representative within thirty (30) days after the initial attempt, then the parties shall attempt in good faith to resolve the Claim promptly by directly negotiating between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of the Agreement. The executives shall meet as soon as conveniently possible, but in no case later than twenty-one (21) days after such a request is made, to attempt to resolve such Claim. Prior to any meetings between the Parties, the Parties shall exchange relevant information that will assist the Parties in resolving their Claim. All reasonable requests for information made by one party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as a compromise and settlement negotiation for purposes of the applicable rules of evidence. This Section 15.2.1 is not intended to waive any rights of either party under this contract or otherwise at law or equity.

§ 15.2.2 Intentionally omitted.

§ 15.2.3 Intentionally omitted.

§ 15.2.4 Intentionally omitted.

§ 15.2.5 Intentionally omitted.

§ 15.2.6 Intentionally omitted.

§ 15.2.6.1 Intentionally omitted.

§ 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 and not resolved by direct discussions and negotiation, 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 direct discussions and negotiation and then, if unsuccessful, 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. For the avoidance of doubt, the requirement for the parties to endeavor to resolve a Claim by mediation pursuant to this Section 15.3.2 shall in no event prohibit the institution of legal or equitable proceedings at such time that would cause any Claim to be barred by the applicable statute of limitations.

§ 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.

§ 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 PREVAILING WAGE REQUIREMENTS

§ 16.1 Unless exempt therefrom via application of O.R.C. 4115.04(B)(1) as a result of any Grant Agreement requiring compliance with the Davis-Bacon Act, in which case Contractor shall comply with all applicable Davis-Bacon Act requirements (including, without limitation, payment of prevailing wage and fringe benefits and compliance with all required reporting), the following prevailing wage requirements apply:

§ 16.1.1 The prevailing wage shall be paid to laborers and mechanics as required in Ohio Revised Code Chapter 4115 et seq. in accordance with the most current schedule published by the State of Ohio, Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau. Every Subcontractor, as soon as Work begins under its Subcontract, shall furnish to the Project's prevailing wage coordinator a schedule of dates during the life of the contract on which wages will be paid to employees performing Work. The Contractor shall also deliver to the Project's prevailing wage coordinator one (1) certified copy of the payroll of the Project within two (2) weeks after the initial pay date. Supplemental reports shall be made monthly thereafter and shall be attached to each monthly Application for Payment.

§ 16.1.2 Each monthly report shall state the period covered and exhibit for each employee paid on the Project, his/her name, current address, Social Security number, number of hours worked each day on the Project during the reporting period, the total hours worked each week on the Project, as well as the total work on other projects, the hourly rate of pay, the job classification, fringe payments, all deductions from wages and net pay. Each report shall also have a certification executed by the Contractor, Subcontractor or duly appointed agent thereof. It shall recite that the payroll is correct and complete and that the wage rates shown are not less than those required by Ohio Revised Code Chapter 4115 et seq. It shall also state the name of the union or plan to which the withheld or unpaid fringes are to be paid. The first report shall also list each fringe and state if it is paid as cash to the employee or to a named plan. The Contractor shall be responsible, as part of each Application for Payment, for the submission of copies of payrolls of all Subcontractors.

Exhibit D

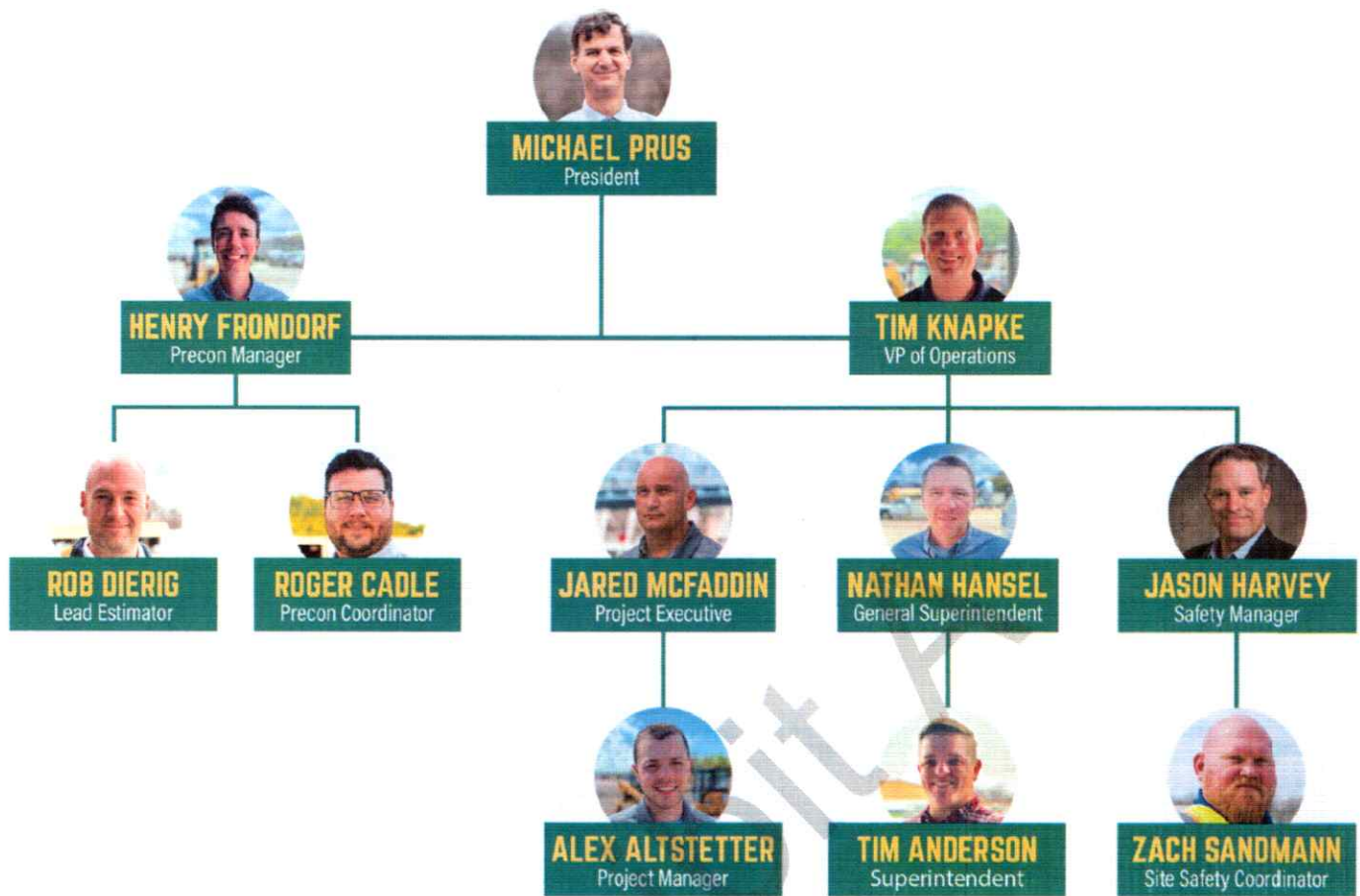
Project Milestone Schedule

Activity	Commencement Date	Substantial Completion Date
Construction Manager Evaluation and Selection	October 1, 2025	February 10, 2026
Construction Manager Contract Award	February 10, 2026	February 20, 2026
Value Engineering	February 20, 2026	October 1, 2026
Finalize Construction GMP Amendment	October 1, 2026	October 31, 2026
Phase 1 Dam Hazard Mitigation Design	May 1, 2026	April 30, 2027
Phase 1 Dam Hazard Mitigation Construction	May 1, 2027	December 31, 2027
Phase 2a Whitewater Course and Phase 2b Upland Park Improvements Design	July 5, 2026	December 31, 2027
Phase 2a Whitewater Course and Phase 2b Upland Park Improvements Construction	January 1, 2028	December 31, 2028
Guaranteed SC Date (Phase 1, Phase 2A, Phase 2B Substantial Completion and Revegetation)	Not Applicable	May 31, 2029 ("Guaranteed SC Date")
Final Completion of the Project (Punchlist Item Completion and Project Closeout)	May 31, 2029	June 30, 2029

Exhibit E

Key Personnel and Staffing Plan

Exhibit A



STAFF RESPONSIBILITY

Role	Name	Responsibility
President	Mike Prus	Ensures quality, safety, and client satisfaction oversight.
VP Operations	Tim Knapke	Manages project schedule, resources, and execution phases.
Preconstruction Manager	Henry Frondorf	Leads estimating and preconstruction for budget alignment.
Project Executive	Jared McFaddin	Provides strategic oversight, leads owner communication, and ensures contract performance
Lead Estimator	Rob Dierig	Lead estimating and cost reconciliation to support GMP development and budget
Project Management Lead	Alex Altstetter	Oversees day-to-day construction activities and manages subcontractors, schedule, and cost
Safety Manager	Jason Harvey	Develops and enforces project-specific safety programs, conducts training and audits
Site Safety Coordinator	Zach Sandmann	Maintains jobsite safety compliance, performs daily inspections, and supports site crews
General Superintendent	Nathan Hansel	Overall field leadership across project phases ensuring safety, quality, and schedule alignment
Superintendent	Tim Anderson	Manage daily on-site activities, directing crews and subcontractors
Preconstruction Coordinator	Roger Cadle	Assists with procurement, bid packaging, and subcontractor coordination during preconstruction

Preconstruction Scope of Work- Staff Hour Breakdown per Task

4- Project Management, Coordination, and Meetings	Total Hours	President	VP-Operations	Project Exec	Precon Manager	Lead Estimator	Precon Coordinator	Project Manager	General Super
4.1 Project Management and Administration	68	4	4	12	16	8	8	8	8
4.2 General Coordination	90	0	0	0	30	10	30	10	10
4.3 Meetings with Engineer and Owner	148	12	12	16	24	24	12	24	24
4.4 Meetings with Engineer and Other Stakeholders	132	8	8	8	24	24	12	24	24
4.5 In-Person Design Charette Meetings	90	12	12	12	12	12	6	12	12
5- Initial Detailed Reviews & Add'l Tasks (ALL PHASES)	Total Hours	President	VP-Operations	Project Exec	Precon Manager	Lead Estimator	Precon Coordinator	Project Manager	General Super
5.1.1 Phase 1 Detailed Review (incl. detailed cost estimate and technical memo)	124	4	4	8	24	24	12	24	24
5.1.2 Phase 2a Detailed Review (incl. detailed cost estimate and technical memo)	124	4	4	8	24	24	12	24	24
5.1.3 Phase 2b Detailed Review (incl. detailed cost estimate and technical memo)	124	4	4	8	24	24	12	24	24
5.2 Materials Investigation	58	0	0	4	12	12	6	12	12
5.3 Dam Hazard Mitigation Design Alternatives	124	4	4	8	24	24	12	24	24
5.4 Entrance Gate Alternatives	80	2	2	4	16	16	8	16	16
5.5 Sanitary Sewer Layout	37	0	0	1	8	8	4	8	8
5.6 Potable Waterline Layout	37	0	0	1	8	8	4	8	8
5.7 Electrical and Controls Systems Layout	37	0	0	1	8	8	4	8	8
5.8 Site Lighting and Cameras Layout	55	0	0	1	12	12	6	12	12
5.9 Design/Build Facilities	55	0	0	1	12	12	6	12	12
6- Initial Value Engineering Reviews (ALL PHASES)	Total Hours	President	VP-Operations	Project Exec	Precon Manager	Lead Estimator	Precon Coordinator	Project Manager	General Super
6.1 Phase 1 Value Engineering Review (incl. approx. cost estimate and memo)	84	4	4	8	16	16	4	16	16
6.2 Phase 2a Value Engineering Review (incl. approx. cost estimate and memo)	84	4	4	8	16	16	4	16	16
6.3 Phase 2b Value Engineering Review (incl. approx. cost estimate and memo)	84	4	4	8	16	16	4	16	16
7- Second Detailed Reviews & Add'l Tasks (ALL PHASES)	Total Hours	President	VP-Operations	Project Exec	Precon Manager	Lead Estimator	Precon Coordinator	Project Manager	General Super
7.0.1 Phase 1 Detailed Review (incl. detailed cost estimate and technical memo)	40	2	2	2	8	8	2	8	8
7.0.2 Phase 2a Detailed Review (incl. detailed cost estimate and technical memo)	40	2	2	2	8	8	2	8	8
7.0.3 Phase 2b Detailed Review (incl. detailed cost estimate and technical memo)	40	2	2	2	8	8	2	8	8
7.1 Dam Hazard Mitigation Design Alternatives	57	2	2	4	12	12	1	12	12
7.2 Entrance Gate Alternatives	55	1	1	4	12	12	1	12	12
7.3 Design/Build Facilities	55	1	1	4	12	12	1	12	12
8- Second Value Engineering Reviews (ALL PHASES)	Total Hours	President	VP-Operations	Project Exec	Precon Manager	Lead Estimator	Precon Coordinator	Project Manager	General Super
8.1 Phase 1 Value Engineering Review (incl. approx. cost estimate and memo)	53	1	1	1	12	12	2	12	12
8.2 Phase 2a Value Engineering Review (incl. approx. cost estimate and memo)	53	1	1	1	12	12	2	12	12
8.3 Phase 2b Value Engineering Review (incl. approx. cost estimate and memo)	53	1	1	1	12	12	2	12	12
9- Detailed Review of Phase 1 Dam Hazard Mitigation	Total Hours	President	VP-Operations	Project Exec	Precon Manager	Lead Estimator	Precon Coordinator	Project Manager	General Super
9 Phase 1 Detailed Review (incl. detailed cost estimate and technical memo)	53	1	1	1	12	12	2	12	12
10- Value Engineering Review of Phase 2a Whitewater C	Total Hours	President	VP-Operations	Project Exec	Precon Manager	Lead Estimator	Precon Coordinator	Project Manager	General Super
10 Phase 2a Value Engineering Review (incl. approx. cost estimate and memo)	20	1	1	1	4	4	1	4	4
11- Value Engineering Review of Phase 2b Upland Site I	Total Hours	President	VP-Operations	Project Exec	Precon Manager	Lead Estimator	Precon Coordinator	Project Manager	General Super
11 Phase 2b Value Engineering Review (incl. approx. cost estimate and memo)	20	1	1	1	4	4	1	4	4
12- Detailed Reviews of Phase 2a and Phase 2b	Total Hours	President	VP-Operations	Project Exec	Precon Manager	Lead Estimator	Precon Coordinator	Project Manager	General Super
12.1 Phase 2a Detailed Review (incl. detailed cost estimate and technical memo)	20	1	1	1	4	4	1	4	4
12.2 Phase 2b Detailed Review (incl. detailed cost estimate and technical memo)	20	1	1	1	4	4	1	4	4
TOTAL HOURS	2214	84	84	143	450	422	187	422	422

Construction Stage Personnel

Construction Stage Personnel Rates

Staff

Michael Prus
Tim Knapke
Jared McFaddin
Alex Altstaetter
Nathan Hansel
Tim Anderson
Zach Sandmann

Role

President/CEO
VP-Operations
Project Executive
Project Manager
General Superintendent
Site Superintendent
Safety Manager

Hours

120.0
240.0
1000.0
3000.0
1000.0
3000.0
300.0

Exhibit A

Exhibit F

Hourly Billing Rates Schedule

Exhibit A

Appendix A: Pricing Proposal Form >>>

Proposal Form (CM at Risk Contract)

Project Name: **West Carrollton Whitewater River Park**
CM Proposer: **Prus Construction**

Estimated Cost of Work: \$19,900,000.00
Submission Date: 12/19/2025

Preconstruction Stage Compensation

1	Preconstruction Fee (Lump Sum)	
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Including all Home Office Overhead and Profit

\$25,000.00

Breakdown Staff and Hours into Tasks as required in Attachment 2b - Preconstruction Scope of Work

a. **Preconstruction Stage Personnel Costs Included in Preconstruction Fee**

[illegible]

b. Preconstruction Stage Reimbursable Expenses Cap Included in Preconstruction Fee

Description	Quantity	x	Unit Price	=	Subtotal
Reproduction, printing, and copying of deliverables (monthly)	6.0		\$ 200.00		\$ 1,200.00
Project specific office supplies (monthly)	6.0		\$ 100.00		\$ 600.00
Administrative support costs directly attributable to Project preconstruction (monthly)	6.0		\$ 500.00		\$ 3,000.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
			Subtotal (1c)	=	\$4,800.00

2. Construction Stage Compensation

a. **Construction Stage Personnel Rates**

Staff	Role	Hours	x	Rate (\$)	=	Subtotal
Michael Prus	President/CEO	120.0		\$ 175.00		\$ 21,000.00
Tim Knapke	VP-Operations	240.0		\$ 150.00		\$ 36,000.00
Jared McFaddin	Project Executive	1000.0		\$ 125.00		\$ 125,000.00
Alex Altstaetter	Project Manager	3000.0		\$ 100.00		\$ 300,000.00
Nathan Hansel	General Superintendent	1000.0		\$ 100.00		\$ 100,000.00
Tim Anderson	Site Superintendent	3000.0		\$ 75.00		\$ 225,000.00
Zach Sandmann	Safety Manager	300.0		\$ 75.00		\$ 22,500.00
						\$ -
				Subtotal	=	\$829,500.00

b. General Conditions Costs Cap (Not-to-Exceed Amount)

[illegible]

c. **CM's Contingency** (% of the Cost of Work)

CM's proposed percentage to cover its risk of Unexpected Events

Contingency %

3.00%

d. **CM's Fee (% of the Cost of Work)**

Including all Home Office Overhead and Profit

CM Fee %

4.25%

