



Sawyer County

Agenda

County Board of Supervisors Meeting
Thursday, July 15, 2021 @ 6:30 PM
Large Courtroom; Sawyer County
Courthouse/Virtual Meeting

Page

1 CALL TO ORDER

- a. To view or participate in the **virtual meeting** from a computer, iPad, or Android device please go to <https://zoom.us/j/95015680309>. You can also use the dial in number for listening only at **1-312-626-6799** with the Webinar ID: 950 1568 0309. If additional assistance is needed please contact the County Clerk's Office at 715-634-4866 prior to the meeting. This meeting will be recorded and will be available on our website at: <https://sawyercountygov.org>. If you are on a computer, click the "Raise Hand" button and wait to be recognized. If you are on a telephone, dial *9 and wait to be recognized.

2 ROLL CALL

3 PLEDGE OF ALLEGIANCE

4 CERTIFICATION OF COMPLIANCE WITH THE OPEN MEETINGS LAW

5 MEETING AGENDA

6 PUBLIC COMMENTS

- a. At this time, members of the public will be given the opportunity to address the Board on items not on the agenda. Please adhere to the following when addressing the Board:
 - Comments will be limited to 3 minutes or less per individual.
 - Comments should be directed to the Board as a whole and not directed to individual Board members.
 - The Board cannot respond to your comments during this time.
 - Please sign in and fill out a public comment sheet if you wish to speak on an item.

7 CONSIDER APPROVAL OF MINUTES FROM PREVIOUS MEETING

- 4 - 6 a. [6.17.21 County Board Minutes DRAFT](#)

8 ZONING COMMITTEE CHAIR REPORT

9 COVID UPDATE

10 PUBLIC SAFETY COMMITTEE CHAIR REPORT

- 7 - 8 a. Link to Sawyer County Hazard Mitigation Plan -
 <https://www.nwrpc.com/989/2019-Regional-Hazard-Mitigation-Plan>
- b. Resolution 2021-80 Adopting the Sawyer County Hazard
 Mitigation Plan 2020 Update
 [2021-07-14 CLEAN Resolution re Hazard Mitigation Plan
Update](#)

11 PUBLIC WORKS COMMITTEE CHAIR REPORT

- 9 - 88 a. Resolution for Miron Construction Contracts (discussion and
 possible action)
 [1\) Resolution Miron Contracts Approval](#)
 [2\) FINAL REDLINE A133](#)
 [3\) FINAL REDLINE A 201](#)
- 89 - 91 b. Couderay River Ordinance (discussion and possible action)
 [1\) 2021-07-14 Resolution Couderay River Ordinance](#)
 [2\) 2021-07-14 Ordinance - Couderay River Closure](#)
- 92 - 100 c. Courthouse Construction Update
 [1\) 21_0615 Kickoff Meeting Minutes](#)
 [2\) 21_0623 Design Meeting Minutes](#)
 [3\) 21_0707 Design Meeting Minutes](#)

**12 LAND, WATER, AND FOREST RESOURCES COMMITTEE CHAIR
REPORT**

13 HEALTH AND HUMAN SERVICES BOARD CHAIR REPORT

**14 ECONOMIC DEVELOPMENT & UW EXTENSION COMMITTEE
CHAIR REPORT**

**15 LETTER OF SUPPORT FOR MOSAIC BROADBAND GRANT
(DISCUSSION AND POSSIBLE ACTION)**

- 101 a. [7.15.21 Mosaic Grant Letter of Support](#)

16 REVIEW OF VIRTUAL MEETINGS POLICY

- 102 - 130
- a. Rule 2.9 and 2.10 Review, page 8 (discussion and possible action)
[Board Policy Amended 6.17.21](#)

17 COUNTY ADMINISTRATOR'S REPORT

- 131 - 132
- a. Administrator's Report
[Administrator's Report 2021-07-14](#)
- 133
- b. Potential Uses of ARPA Funds
[DOR - Non-Exclusive-Eligible Uses List-ARPA-LFRF](#)

18 CORRESPONDENCE, REPORTS FROM CONFERENCES AND MEETINGS, OTHER MATTERS FOR DISCUSSION ONLY

DISCLAIMER:

Copy sent via email to: County Clerk and News Media. Note: Any person wishing to attend whom, because of a disability, requires accommodation should call the Sawyer County Clerk's Office (715.634.4866) at least 24 hours before the scheduled meeting so appropriate arrangements can be made.

Mission Statement: *The Sawyer County Board of Supervisors will strive to provide excellent services and responsible leadership to protect and enhance Sawyer County citizens, businesses, and resources, while preserving our unique heritage.*

**Minutes of the June 17th meeting of the Sawyer County
Board of Supervisors
Large Courtroom; Sawyer County Courthouse/Virtual**



Voting Committee

Members Present (X)	District	Wards
☒ Dale Schleeter	01	T Lenroot W-1, T Hayward W-7, C Hayward W-5 & 6
☒ Jesse Boettcher-Virtual @ 6:37 pm	02	T Lenroot W-2, T Round Lake W-1
☒ Tweed Shuman	03	T Hayward W-1 & 2
☒ Stacey Hessel	04	T Hayward W-1 & 3
☒ James H. Schlender, Jr.	05	T Hayward W-5 & 6
☒ Marc D. Helwig	06	C Hayward W-1 & 2
☒ Thomas W. Duffy	07	C Hayward W-3 & 4
☒ Bruce Paulsen	08	T Bass Lake W-1 & 2
☒ Brian Bisonette-Virtual	09	T Bass Lake W-3 & 4
☒ Chuck Van Etten	10	T Sand Lake, T Edgewater W-1
☒ Dale Olson leaving @ 8:55pm	11	T Edgewater W-2, T Bass Lake W-5, T Hayward W-8, T Meteor, T Couderay, V Couderay
☒ Dawn Petit-Virtual	12	T Spider Lake, T Round Lake, W-2, T Winter W-1
☒ Ron Kinsley	13	T Hunter, T Radisson W-1, T-Ojibwa W-1, V Radisson
☒ Ron Buckholtz	14	T Radisson W-2, T Ojibwa W-2, T Weirgor, V Exeland, T Meadowbrook
☒ Ed Peters - Virtual	15	T Winter W-2, T Draper, V Winter

Call to Order/Pledge of Allegiance— Chair Tweed Shuman called the meeting to order at 6:30 pm. Roll Call taken; quorum met.

Certification of Compliance with the open meeting law was met.

Public Comments – Public members speaking included: Roberto Escamilla II

Minutes – A motion was made by Mr. Duffy to approve the minutes of the May 20, 2021, meeting; second by Mr. Helwig. Motion carried without negative vote.

Appointments – A motion was made by Mr. Olson; second by Mr. Kinsley to re-appoint Dee Dobilas and Steve Kelsey to the positions of Zoning Board of Appeals. Motion carried without negative vote.

Covid-19 Update – Julia Lyons reported good news for the County. Wisconsin state continues to be in the yellow risk level and may get down to green soon. Our County risk level is dropping now, as well; we are in yellow risk level. This week has been very quiet so she expects us to drop down even more. The vaccination rate is at 46.8% range; 65+ is 80%. They are seeing some new first vaccinations yet at the health department on Tuesdays & Fridays. LCO Health Center continues to vaccinate, too. They continue to work with summer camps in providing testing options and vaccinations. She reported that we are not seeing any breakthrough of variants at this time. LCO recently moved to a “highly recommend masking” policy for unvaccinated individuals reported Chair Shuman.

Public Safety Committee Chair Report –

Mr. Schlender reported that there is an uptick in the activity in calls and responses but there have not been as many traffic fatalities as previous year. Our jail is slowly filling back up again. At the CJCC vice chair request, JusticePoint presented an update.

Melissa Fisher, Program Coordinator, reported that they have 110 people on pre-trial, down from 115; they have filed 14 over-capacity memos due to high numbers; 6 people are on electronic monitors and one on alcohol monitor. Nikki Leicht, Program Administrator, advised that the County contracted for two case managers. Due to the high volume, they are looking at a different pre-screening test that does not require an in-person interview as does our current pre-screening process. If this new process takes place, the judge would see a risk assessment tool on every individual because capacity is able to be higher. They are also re-establishing the programming in conjunction with the LCO treatment center that was available pre-covid; this will add additional screening capacity. Staff continue working on TAD grant (Treatment and Diversion) for the August deadline.

Mr. Schlender read a letter of commendation regarding Chief Deputy Joe Sajdera written by Sheriff Mrotek recognizing him for outstanding service. Sheriff Mrotek presented three awards: Lifesaving award to Deputy Ryan Schick; Medal of Valor Award to Sgt. Nick Al-Moghrabi; and Community Service Medal to Chris Headley. Sheriff Mrotek advised that within three weeks of having its first positive covid test case, the jail is now covid-free and precautions remain in place.

Zoning Committee Chair Report – Mr. Buckholtz reported that the zoning department continues to see large amounts of rezone and conditional use permit requests, and it is at a 15-year high in volume.

Mr. Kozlowski presented rezone request #21-005 of Pinewood Properties from RR-1 to RR-2. Public comments were made by Darlene Maske, Lynn Sennett, Douglas Kurtzweil, and Adam Bodenschatz. Options for this action include a motion to deny the rezone request, approve the rezone request or table the request to a date certain. A motion was made by Mr. Buckholtz to deny the rezone request; second by Mr. Paulsen. A roll call vote was taken: “Yes” votes included Schleeter, Paulsen, Bisonette, Buckholtz, and Peters. “No” votes included Boettcher, Shuman, Hessel, Schlender, Helwig, Van Etten, Olson, Petit and Kinsley. The motion to rezone failed 5-10.

Mr. Helwig made a motion to postpone the rezone request #21-005 for two months. A roll call vote was taken. “Yes” votes included Schleeter, Shuman, Helwig, Duffy, Paulsen, Bisonette, Van Etten, Olson, Petit, Kinsley and Peters. “No” votes were Boettcher, Hessel, Schlender and Buckholtz. Motion to postpone carried 11-4.

Mr. Kozlowski presented a summary for section 6.6 of the Sawyer County Zoning Ordinance Sec.6.6-Trailer Camps and Campgrounds. The ordinance would be applicable only for new campgrounds and those wishing to expand. The ordinance would increase the required acreage and density stipulations among other stipulations. A written copy of the changes was provided. Public comment was heard by Don Robinson, Randy Eytcheson and Mark Hazelaker. A motion to approve the changes to the ordinance was made by Mr. Paulsen; second by Mr. Olson. A roll call vote was taken and there was one “No” vote cast by Mr. Van Etten. Motion to approve this ordinance carried 14-1.

Public Works Committee Chair Report – Mr. Kinsley reported that the airport was closed for a short period to repave the runway and the Young Eagles flight event will be held on Saturday, June 19. The County is in the process of renegotiating cell tower leases and there was storm damage in the amount of \$48,000 to three County roads to which we are applying for disaster aid to help pay for.

Mr. Kinsley presented the contract with Venture Architects for approval. A motion was made by Mr. Helwig; second by Mr. Duffy to approve this contract. The motion carried without negative vote. The Miron contract should be presented at the July Board meeting.

Land, Water, and Forest Resources Committee Chair Report – Mr. Paulsen presented 2021-05-26 County Forestry ordinance which prescribes the rules and regulations for the administration of Sawyer County’s powers and duties as provided in Chapters 26, 28 and 59 of the Wisconsin Statutes. A motion was made by Mr. Buckholtz; second by Mr. Duffy to approve this ordinance. Motion carried without negative vote.

Health and Human Services Board Chair Report – Mr. Schleeter advised that members of the Health and Human Services Board is working to determine the future status of the Oasis Group Home.

Finance Committee Chair Report – Mr. Hoff gave a presentation of current ARPA Information which provided links to various guidance reports, key reporting dates, obligation dates, a list of Municipality and County distributions, and allowable uses of funds. Allowable uses include: supporting public health response, replacing public sector revenue loss, water and sewer infrastructure, addressing negative econ impacts, premium pay for essential workers, and broadband infrastructure. Governor Evers' \$100,000,000 broadband grants require a due date of July 27th. Mr. Olson and Ms. Hessel left the meeting briefly between 8:15 and 8:20 pm.

Mr. Olson left the meeting at 8:55 pm. Mr. Paulsen presented two broadband proposals where the County would commit to helping pay for broadband expansions in various projects; written reports are provided. Mr. Helwig left briefly from 9:03-9:06 pm.

Mr. Helwig made a motion to approve a resolution approving a broadband expansion proposal from Norvado Technologies; second by Ms. Petit. A roll call vote was taken: "Yes" votes included: Schleeter, Boettcher, Shuman, Hessel, Schlender, Helwig, Duffy, Paulsen, Bisonette, Petit, Kinsley and Peters. "No" votes were Van Etten and Buckholtz. The motion carried 12-2 with Mr. Olson not being present.

Mr. Helwig made a motion to approve a resolution approving a broadband expansion proposal from Mosaic Technologies; second by Ms. Petit. A roll call vote was taken: "Yes" votes included: Schleeter, Boettcher, Shuman, Hessel, Schlender, Helwig, Duffy, Paulsen, Bisonette, Petit, Kinsley and Peters. "No" votes were Van Etten and Buckholtz. The motion carried 12-2 with Mr. Olson not being present. Ms. Petit thanked Mr. Paulsen for the hard work on these broadband projects.

Economic Development and UW-Extension Committee Chair Report – Mr. Schlender presented the proposed mission statement for the committee designating that reporting relationships for various entities are "for purposes of economic development". Mr. Schlender made a motion to approve this mission statement; second by Ms. Hessel. Motion carried without negative vote.

Mr. Schlender presented a letter of support for LCO Ojibwe Community College economic development. A motion was made by Mr. Schlender to approve this letter; second by Mr. Duffy. Motion carried without negative vote.

County Administrator's Report – Mr. Hoff presented the highlights of his administrator report. A written copy was provided.

Correspondence, Reports from Conferences and Meetings, Other Matters for Discussion --

Meeting Date/Time – The next meeting of the County Board of Supervisors will be Thursday, July 15, at 6:30 pm in the Large Courtroom.

Meeting adjourned at 9:24 pm
Minutes recorded by Lynn Fitch, County Clerk

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WHEREAS, hazard mitigation planning is the process of developing a set of actions designed to reduce or eliminate long-term risk to people, businesses, infrastructure, and property from hazards and their effects;

WHEREAS, the County participated in the planning process through a meeting with community representatives to identify hazard risks, vulnerabilities, and strategies unique to the community, as well as, through the review of draft plan materials;

WHEREAS, adoption of the Plan by the County Board of Supervisors will meet prerequisite requirements which enable County to apply for FEMA grant dollars for hazard mitigation projects.

WHEREAS, as required by Rule 6 of the County Board Policy and Procedure Manual, two (2) County Board Supervisors have sponsored this Resolution and the County Board voted by 2/3 majority to review and render a decision on the Plan and this Resolution; and

NOW, THEREFORE BE IT RESOLVED, the Sawyer County Board of Supervisors hereby adopts the *Sawyer County Hazard Mitigation Plan 2020 Update*, as the official all hazards mitigation plan for Sawyer County with the intent of implementing the plan recommendations as funding and resources allow.

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This Resolution was sponsored by the Sawyer County Board Supervisors set forth below,
as required by Rule 6 of the Sawyer County Board Policy and Procedure Manual.

James Schlender,	
Sawyer County Board Supervisor	Sawyer County Board Supervisor

This Resolution is hereby adopted by the Sawyer County Board of Supervisors on
July 15, 2021.

Tweed Shuman,	Lynn Fitch
Sawyer County Board of Supervisors, Chair	Sawyer County Clerk

**SAWYER COUNTY BOARD OF SUPERVISORS RESOLUTION TO AUTHORIZE
ENTERING INTO CONTRACTS WITH MIRON CONSTRUCTION, CO., INC. FOR THE
COURTHOUSE CONSTRUCTION PROJECT**

WHEREAS, Sawyer County (the “County”) is in the pre-construction process of its courthouse expansion project (the “Courthouse Project”), as previously approved by the County Board of Supervisors (“County Board”);

WHEREAS, the County issued a Request for Proposal (“RFP”) for a Construction Manager at Risk (“CMAR”) to assist with the Courthouse Project, and thereafter reviewed the submitted RFPs for the CMAR;

WHEREAS, the County, through its Courthouse Construction Ad Hoc Committee, interviewed and scored the CMAR candidates and selected Miron Construction Co., Inc. (“Miron”) to recommend as the best candidate to serve as CMAR for the Construction Project;

WHEREAS, to memorialize the duties, obligations, roles and responsibilities of the County and Miron during Miron’s work on the Courthouse Project, the County and Miron discussed and negotiated the terms of an AIA Document A133 – 2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor, a copy of which is attached hereto and incorporated herein as Exhibit A (“CMAR Contract”) and the terms of an AIA Document A201 – 2017 General Conditions of the Contract for Construction, a copy of which is attached hereto and incorporated herein as Exhibit B (“General Contract”);

WHEREAS, on June 29, 2021, the County Courthouse Construction Ad Hoc Committee reviewed and discussed the CMAR Contract and General Contract, and voted to recommend to the County Board that it approve the CMAR Contract and the General Contract;

WHEREAS, on July 7, 2021, the County Public Works Committee reviewed and discussed the CMAR Contract and the General Contract, and voted to recommend to the County Board that it approve the CMAR Contract and the General Contract; and

WHEREAS, the County Board reviewed and discussed the contents of this Resolution, the CMAR Contract and the General Contract at its meeting on July 15, 2021, and determined that it is in the best interest of the County to enter into the CMAR Contract and the General Contract.

NOW, THEREFORE, BE IT RESOLVED, the County Board determines the following:

1. Recitals. The Recitals set forth above are true and correct, and are hereby incorporated into this Resolution.
2. Approval of CMAR Contract. The County Board hereby approves the CMAR Contract as set forth in Exhibit A.
3. Approval of General Contract. The County Board hereby approves the General Contract as set forth in Exhibit B.

- 47
48 4. Health, Welfare and Safety. The County's approval of this Resolution, the CMAR
49 Contract and the General Contract is beneficial to the health, welfare and safety of the
50 County and the County's residents, taxpayers and visitors.
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53 This Resolution is hereby adopted by the Sawyer County Board of Supervisors this 15th day of July, 2021.
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56 _____
57 Tweed Shuman,
58 Sawyer County Board of Supervisors Chairman
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57 Lynn Fitch,
58 Sawyer County Clerk
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61 The CMAR Contract and the General Contract described above were reviewed and discussed by this
62 Sawyer County Courthouse Construction Ad Hoc Committee at its meeting on June 29, 2021, and the
63 Sawyer County Courthouse Construction Ad Hoc Committee voted to recommend that the Sawyer County
64 Board of Supervisors approve the CMAR Contract and the General Contract at its meeting on July 15,
65 2021.
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69 Ron Kinsley, Chair
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69 Bruce Paulsen, Vice-Chair
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73 Thomas R. Hoff, Member
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73 James Schlender, Member
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77 Tweed Shuman, Member
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79 Lynn Fitch,
80 Sawyer County Clerk
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82 *(Signatures continue on next page)*
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The CMAR Contract and the General Contract described above were reviewed and discussed by this Sawyer County Public Works Committee at its meeting on July 7, 2021, and the Sawyer County Public Works Committee voted to recommend that the Sawyer County Board of Supervisors approve the Contract at its meeting on July 15, 2021.

Ron Kinsley, Chair

Marc Helwig, Vice-Chair

Brian Bisonette, Member

Dale Olson, Member

Ed Peters, Member

Lynn Fitch,
Sawyer County Clerk

Exhibit A – AIA Document A133 – 2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor

Exhibit B - AIA Document A201 – 2017 General Conditions of the Contract for Construction

DRAFT 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 «25th» day of «May» in the year «2021»
(In words, indicate day, month, and year.)

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

«Sawyer County»«»
«10610 Main Street
Hayward, WI 54843»

«»
«»

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

«Miron Construction Co., Inc.»«»
«1471 McMahon Drive
Neenah, WI 54956»
«Telephone Number: (920) 969-7000»
«Fax Number: (920) 969-7399»

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

«Sawyer County
County Courthouse Addition & Remodeling Project, as generally identified in the
Preliminary Design Documents»
«Hayward, WI 54843»
«»

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

«Venture Architects»«»
«212 North 25th Street
Milwaukee, WI 53233»
«»
«»

The Owner and Construction Manager agree as follows.

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

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

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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5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
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8	DISCOUNTS, REBATES, AND REFUNDS
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12	DISPUTE RESOLUTION
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14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

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.)

«Owner's Program to be finalized during the schematic and design development activities.»

§ 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.)

«To be identified during the schematic and design development activities and as initially set forth in the Preliminary Design Documents.»

§ 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.)

«Target cost for the Guaranteed Maximum Price (GMP) is \$6,000,000 and shall be finalized in the GMP Amendment.»

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

.1 Design phase milestone dates, if any:

«Unidentified at this time.»

.2 Construction commencement date:

«To be identified in the GMP Amendment.»

.3 Substantial Completion date or dates:

«To be identified in the GMP Amendment.»

.4 Other milestone dates:

Schematic Design Milestone: July 21, 2021

Design Development Milestone: October 13, 2021

Construction Document Milestone: December 22, 2021

Construction Commencement Date: April, 2022«Not applicable.»

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§ 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.)

«Not applicable.»

§ 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 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

«Not applicable.»

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

«Sawyer Tom Hoff, County Administrator»
«Attention: Thomas R. HoffSawyer County»
«10610 Main Street»
«Hayward, WI 54843»
«»
«»

§ 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:

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(List name, address and other contact information.)

«Venture Architects
Attention: John Cain
«212 North 25th Street
Milwaukee, WI 53233»
Not applicable.»

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

.1 Geotechnical Engineer:

«Jeff Manninen
Intertek/PSI
12839 30th Avenue
Chippewa Falls, WI 54729
Unidentified at this time.»
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.2 Civil Engineer:

o «Brad Seubert
Harwood Engineering Consultants
255 N. 21st Street
Milwaukee, WI 53233
Unidentified at this time.»
«»
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.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

«Unidentified at this time.»

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

«John Cain, Vice President
«Venture Architects»
«212 North 25th Street»
«Milwaukee, WI 53233»
«»
«»

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

«David Keating, Project Executive
«Miron Construction Co., Inc.
3402 Oakwood Mall Drive, Suite 200
Eau Claire, WI 54701»
«Telephone Number: (920) 969-7000»

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«Fax Number: (920) 969-7399»

«»
«»

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

«Not applicable.»

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

«Trade packages to be bid as defined in Article 9.»

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

« »

§ 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 appropriately adjust the ~~Project schedule~~ Project 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, the Preliminary Design Documents, the GMP Amendment (once completed), 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, 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 Architect 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 ~~certain~~ the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

§ 2.2.1 Construction Manager's Acceptance.

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; in performing the Contract, the Construction Manager shall utilize the Construction Manager's Capabilities (as defined below) to: (a) to furnish efficient construction administration, management services, and supervision; (b) to furnish at all times an adequate supply of materials and workers, who shall be ~~and materials~~ qualified, have sufficient experience to carry out their duties and will commit sufficient time to the Project to meet the milestones identified in the Construction Schedule (defined below); and (c) use its best efforts and to perform the Work in an expeditious and economical manner consistent with the Owner's interests and; (d) 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.

§ 2.2.2 Team Approach.

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The Construction Manager shall schedule and conduct bi-weekly meetings with the Architect, Owner, (the "Project Team") to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall designate a person to represent it in the Project Team who shall be knowledgeable about the Project and shall be committed to attending all of the Project Team meetings. That person shall provide recommendations to the Project Team on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. That person shall also advise the Project Team on proposed site use and improvements, selection of materials, and building systems and equipment. The Architect will continually update its design and specifications, which shall be presented to the Project Team at the weekly meetings. The Construction Manager shall continually update and refine the Project budget and present it to the Project Team at each meeting. The Project Team shall use the Project Team approach to deliver the Project efficiently and at the best cost by eliminating the need for Change Orders and Requests for Information during construction and by closely controlling costs on a weekly basis. The Construction Manager shall incorporate BIM into the construction process to the extent it adds value to the Project, for example, clash detection. The Construction Manager shall cooperate with the Architect to coordinate the use and management of BIM into the construction process.

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§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction ("General Conditions"), shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager. The term "Contract Sum" as used in the General Conditions shall mean GMP Amendment, as may be modified as provided herein.

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§ 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. The term "Contract Sum" as used in the General Conditions shall mean GMP Amendment, as may be modified as provided herein.

§ 2.3.3 The administrative and supervisory Work to be performed under this Agreement shall be performed by the Construction Manager's own staff unless otherwise authorized by the Owner. The employment of, contract with, or use of the services of any other person or firm by the Construction Manager as a consultant or otherwise shall be subject to the prior written approval of the Owner. Such approval shall not be construed as constituting an agreement between the Owner and any such person or firm.

§ 2.3.4 The Construction Manager assumes the risks and responsibilities of constructing the Work pursuant to the terms of this Agreement and shall take such steps as may be necessary to achieve satisfactory performance from each Subcontractor as set forth in the Contract Documents.

§ 2.3.5 If inspectors representing local, state or federal agencies having jurisdiction over the Project shall visit the Project site, the Construction Manager, if possible, shall provide Owner reasonable advance notice of the inspection, accompany the inspectors during their tour through the Project site, and record and report to the Owner the results of the inspections in writing.

§ 2.3.6 The Construction Manager shall reasonably secure the Project site in order to protect against potential theft, unauthorized entry and possible injury, vandalism and equipment sabotage. The Construction Manager shall coordinate opening and lockup daily.

§ 2.3.7 The Construction Manager acknowledges the high importance that the Owner places on safety. The Construction Manager shall create a safety program and standards for the Project (the "CM's Safety Program"). At a minimum, the CM's Safety Program shall comply with all OSHA requirements. The safety programs of the Subcontractors shall at minimum comply with the standards of the CM's Safety Program. The Construction Manager shall be responsible to monitor, supervise and enforce the implementation of the CM's Safety Program, shall coordinate, monitor, audit and supervise the implementation of the Subcontractors' safety programs, and shall make best efforts to require all other entities or persons who are on the Project site to abide by the CM's Safety Program. The Construction Manager and its Subcontractors of any tier shall be individually responsible to implement and monitor their respective safety programs in connection with their own employees and their Subcontractors of any tier. All employees, workers, contractors and

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Subcontractors shall be responsible to cooperate with the Construction Manager to timely resolve any unsafe conditions.

§ 2.3.8 The Construction Manager shall not store materials off-site unless the same are fully-insured and the site is secure and bonded. Prior to such storage, the Construction Manager shall provide the location of the storage site and confirm to the Owner that the amount or value of materials stored does not exceed the limitations imposed by the Owner's insurance policies or by its construction lender. Upon delivery of any materials at an off-site storage facility, the Construction Manager shall promptly provide a copy of the storage receipt or similar documents to the Owner.

§ 2.3.9 Use of photographs for purposes other than internal Project administration is not permitted without prior written approval of the Owner. The Construction Manager agrees that under all circumstances the Construction Manager will use photographs in a manner that is consistent with the Owner's standards.

§ 2.3.10 The Construction Manager shall maintain a competent supervision staff at the site where the Work is being performed for the coordination and direction of the Work.

§ 2.3.11 The Construction Manager shall maintain at the Project site a current marked set of working Drawings and Specifications reflecting "AS BUILT" conditions. Upon completion of construction, the Construction Manager shall turn over these record drawings to the Architect for modification of the original Drawings.

§ 2.3.12 The Construction Manager shall submit a written list of all known uncompleted items and items requiring corrective work to the Architect and the Owner as of the date the Construction Manager notifies the Architect that, in the Construction Manager's opinion, a portion of the Work has achieved Substantial Completion (other than receipt of a temporary or permanent occupancy permit for that portion of the Work, the parties acknowledging that a temporary or permanent occupancy permit will be obtained only when the Work has been Substantially Completed for a particular building). The Architect shall then conduct an inspection of that portion of the Work and, based upon its inspection and the list submitted by the Construction Manager, prepare a punch list itemizing each uncompleted item and items requiring corrective work in that portion of the Work and shall distribute such list to the Owner and the Construction Manager. Other than seasonal items, the Construction Manager shall complete all punch list items within thirty (30) days after the date of Substantial Completion of that portion of the Work. All in-season items on the punch list shall be completed within thirty (30) days of the earliest date that such in-season items may be commenced. The Construction Manager shall notify the Owner and the Architect as the items on the punch list are completed. If any punch list items cannot be completed within the thirty (30) day requirement after Substantial Completion, the Construction Manager shall notify the Owner and Architect in writing as to the reason and approximate time for completion. If the timing is unsatisfactory to the Owner, the Owner may, at its option, complete such remaining punch list items and charge the Construction Manager for the cost of the same. After thirty (30), but not more than forty-five (45), days after the date of the punch list, the Architect shall re-inspect that portion of the Work, identifying any remaining uncompleted items and items requiring corrective work, amend the punch list accordingly, and distribute such amended punch list to the Owner and to the Construction Manager.

§ 2.3.13 All warranties shall either be assignable or extendable to the Owner (unless the Owner is notified in advance in writing that certain Work or material warranties are not assignable or extendable and Construction Manager shall not use such Subcontractor or purchase such materials without the prior written approval of the Owner, which approval may be withheld in its sole discretion). The Construction Manager shall take all actions necessary to assign the Subcontractors' warranties to the Owner.

§ 2.3.14 The Construction Manager acknowledges that the Project site is smoke-free. The Construction Manager shall inform its employees and its Subcontractors and vendors of the no-smoking policy and shall enforce the same.

§ 2.3.15 The Construction Manager represents that it will strictly enforce all of the terms of its subcontracts with its Subcontractors and further represents that none of the terms of any subcontracts will be inconsistent with the terms of this Agreement.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager represents that it has the following knowledge, experience and resources to fulfill its obligations under the Contract Documents:

1. Knowledge of all laws, statutes, ordinances, rules, standards, regulations and orders of

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governmental and hospital certification authorities, including permit, building codes and the inspection, approval and issuance process applicable to its performance under the Contract Documents (collectively the "Applicable Law");

2 Experience in supervising and managing projects of a similar size, scope and complexity as the Project; and

3 Available employees who will devote sufficient time to the Project and have sufficient information technology to provide efficient construction and business administration, management, accounting and supervision to timely build the Project pursuant to the Construction Schedule in a good and workmanlike manner.

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The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The Construction Manager's Representative shall have the authority to bind the Construction Manager with regard to all matters involving the Contract Documents and multiple signatures are not required. Construction Manager shall provide at least twenty (20) days written notice to Owner before changing the Construction Manager's Representative. The Construction Manager or Construction Manager's Representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the timely performance of the Owner's responsibilities or in meeting the milestones in the Project Schedule. The term "Construction Manager" in this Agreement means the Construction Manager or the Construction Manager's Representative.

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§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect 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. The Construction Manager is not required to ascertain that the Drawings and Specifications outside of its control are in accordance with Applicable Laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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§ 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. The Owner's budget for the Project (including, but not limited to, the premium for the payment and performance bond, design/engineering fees, and other furniture, fixtures and equipment to be purchased by the Owner (the "Owner's Budget"), together with the construction cost in the Owner's Budget (the "Owner's Construction Budget").

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§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct weekly meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work and as more detailed in Section 2.2.2 above.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; 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 Architect 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 Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion ("Project Schedule"). The updated Project Schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, materials and equipment, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. 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 Architect, the Construction Manager shall prepare, for the Architect'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 Architect 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 Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for 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. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

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

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

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

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 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, which shall be presented to and approved by the Owner.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect'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. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items 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.

The Construction Manager acknowledges and accepts that the Owner is a governmental entity subject to specific provisions of Wisconsin law, including but not limited to Wis. Stat. Ch. 59. The Construction Manager agrees to comply with all provisions of any Law that may apply to the Construction Manager by virtue of the relationship between the Construction Manager and the Owner as a result of the Contract, the Project or the Work.

§ 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.)

« »

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. 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 contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 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.

§ 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 Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications, provided that none

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of the assumptions or the clarifications may contradict the requirements of the Drawings and Specifications;

- 3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's Contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- 4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- 5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use (the "Construction Manager's Contingency") to cover those costs that are included ~~for which a Change Order is not explicitly permitted hereunder, provided however, the Construction Manager's Contingency does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order. The Construction Manager shall provide advance written notice to the Owner of any use of the Construction Manager's Contingency and the reason therefore. The Construction Manager's Contingency shall be for the exclusive use of the Construction Manager for the above purposes but all unused amounts shall be returned to the Owner, in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Construction Manager's Contingency shall initially be an amount agreed to by the Construction Manager and the Owner, but shall not exceed Five Percent (5%) of the Cost of the Work at the time of the establishment of the GMP Amendment.~~

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 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.

§ 3.2.8 The Owner shall authorize ~~the Architect to provide preparation of~~ revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment, ~~provided however, it is expected that all such assumptions would have been identified previously to the Architect during the Project Team meetings.~~ The Owner and the Architect shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect 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.

~~§ 3.2.10, The Owner is not obligated to accept the Guaranteed Maximum Price Proposal or engage Construction Manager to provide any of the Construction Phase Services.~~

~~§ 3.2.11, The Construction Manager will purchase all materials and equipment that will become a component of the Project on a sales tax-exempt basis as permitted by Wis. Stats. § 77.54(9m) (2019-2020), as the same may be amended or renumbered from time to time ("Tax-Exempt Items"). At its sole option, the Owner may dispute, contest or otherwise~~

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resist an imposition or assessment of any such sales tax at no expense to the Construction Manager. The Construction Manager shall promptly notify the Owner of any actual or threatened imposition or assessment of a sales tax.

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§ 3.2.12 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 7.8.

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§ 3.2.13 The Construction Manager shall schedule and conduct meetings not less than weekly with the Subcontractors, Architect and Owner to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 3.2.14 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section _____ of the General Conditions. The date for Substantial Completion shall not exceed the date on the Guaranteed Maximum Price proposal.

§ 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.

§ 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.

§ 3.3.2 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 Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule (the "Construction Schedule") in accordance with Section 3.10 of A201–2017 and as otherwise required in the Contract Documents. The Construction Schedule shall contain the design and construction milestones. The Construction Schedule shall incorporate all elements required to complete the design and construction by the date of Substantial Completion so that the Owner may occupy and use the Project. The Construction Manager shall incorporate the Construction Schedule into the Project Schedule.

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§ 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 Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect upon request, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 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. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

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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 Prior to the execution of the ~~Guaranteed-Maximum-Price-GMP~~ Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the ~~Guaranteed-Maximum-Price-GMP~~ Amendment, ~~the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. the Construction Manager may request such information as set forth in A201-2017 Section 2.2.~~

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§ 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. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager ~~may shall be entitled to~~ rely on the accuracy of information and services furnished by the Owner ~~in the Construction Manager's reasonable discretion~~, 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, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 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. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, 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 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.~~

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§ 4.1.6 The Owner shall only communicate with Subcontractors through the Construction Manager except as specifically authorized under the Contract Documents.

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§ 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 Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative only to the extent that the Owner's representative is authorized to act on behalf of the Owner pursuant to Wis. Stat. § 59.18 or as permitted by the Owner's Ordinances or policies.

§ 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 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

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, 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.)

«Preconstruction Phase services to be provided and are included in the fee identified in Article 6.1.2. »

§ 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.)

«--»

Individual or Position

Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services 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.

§ 5.1.32 If the Preconstruction Phase services covered by this Agreement have not been completed within «twelve » («12 ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid «twenty » («20 ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. *(Insert rate of monthly or annual interest agreed upon.)*

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«12 » % «per annum »

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 . For the Construction Manager's performance of the Work and as required pursuant to this Agreement, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. ~~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 as set forth. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

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§ 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.)

«Construction Manager's Fee shall be equal to ~~1.95~~% of the Cost of the Work. »

~~The Construction Manager will be compensated for the General Conditions/Staffing items, which include mobilization, project management, project superintendent, vehicles/fuel, office trailers/supplies, telephones, computers/software, and office support activities for a lump sum value of \$23,700 per month.~~

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

« All additive changes to the Project shall be equal to ~~1.95~~% of the ~~adjusted~~ Cost of 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:

« Subcontractor's overhead and profit shall not exceed 15%. »

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

§ 6.1.6 Intentionally Deleted

§ 6.1.7 Intentionally Deleted

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the ~~GMP~~~~Guaranteed Maximum Price~~ Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

All savings from the Guaranteed Maximum Price shall return to 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 Architect 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 ~~GMP~~~~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

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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.

§ 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 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 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. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. All trade contracts will be bid and based on a lump sum value; only allowances, General Conditions/Requirements, or other activities performed on a time and material basis will be tracked on a reimbursable basis.

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§ 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. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

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

§ 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, wages paid for labor involved in expediting material and equipment for the project from the Construction Manager's yard and maintenance facilities. Labor, as identified throughout Article 7.1, will be billed as set forth in the attached Exhibit 1 – Labor Rate Schedule, which in addition to wages paid and attendant burden includes charges for overhead and/or profit in addition to the fee for any work that is not performed on a lump sum basis.

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

§ 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.)

«Senior Project Manager
Project Manager
Project Accountant
Document Controls Administrator »

§ 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,

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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 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

~~Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Payments made or owed pursuant to an invoice included in an application for payment for that cycle by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. The Construction Manager shall not mark up the costs of subcontracts or additive Change Orders from Subcontractors. For portions of Work where the Owner and Construction Manager mutually agree in writing that the basis of payment for such portion of Work is a stipulated sum, such Work shall be billed and paid as if the Work was completed by a Subcontractor pursuant to this Section 7.3. Progress payments for such Work shall be computed by multiplying the percentage of completion of each portion of the Work by the share of the stipulated sum allocated to that portion of the Work in the schedule of values.~~

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§ 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. ~~This Section 7.5.1 does not apply to equipment used by Subcontractors where a lump sum is bid where these costs are included as part of the lump sum bid.~~

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§ 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 approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. Reference Exhibit 2 for equipment rates applicable for any portion of the Work performed on a time and material basis.

§ 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 Project 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 or assessed value indicated in the Cost of the Work Summary for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Insurance will be billed at sixty-five hundredths percent (0.65%) of the Cost of the Work.

§ 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.

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§ 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 or may be 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. The cost of defending suits or claims for infringement of patent rights or other intellectual property rights arising from such requirement 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, and the costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

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§ 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 knew or had reason to know or 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 Architect 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 Project site, with the Owner's prior 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 and, 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 Subject to the Owner's prior written approval, Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

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§ 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.

§ 7.6.12 All other General Conditions/Requirements costs which will be identified upon finalization of the Work and mutually agreed upon with Owner, Architect, and Construction Manager.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 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.

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§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors ~~of any tier, vendors, or suppliers~~, (collectively, the "Responsible Persons"), 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 of its Responsible Persons, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, ~~sureties, or any Responsible Persons sureties, Subcontractors, suppliers, or others~~ after the conclusion of the Construction Manager's good faith and diligent efforts to recover such sums from insurance, sureties, or any Responsible Person to the extent such entities may be liable for such costs.

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§ 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, 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, 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. 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.

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§ 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 temporary office on the Project site-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 of the~~ Construction Manager or by anyone for whom Construction Manager is responsible to fulfill a specific responsibility of the Contract;
- 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; and
- 9 Costs for services incurred during the Preconstruction Phase;
- 10 Sales tax on Tax Exempt Items.

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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

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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.

§ 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 The Construction Manager shall obtain bids to be opened at a designated time and location as identified in the bidding documents from Subcontractors and from suppliers of materials or equipment fabricated to a special design of the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Construction Manager will be allowed to submit bids for portions of the Work that are customarily performed by the Construction Manager's own personnel. In doing so, the Construction Manager shall adhere to all requirements of both bidding and selection and such bids shall be evaluated by Owner on the same basis as those submitted by other potential Subcontractors. The Construction Manager shall obtain no less than two (2) additional bids from potential Subcontractors for work it wishes to self-perform. The Construction Manager shall use reasonable, good faith efforts to obtain bids or competitive proposals from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work. The Construction Manager shall not include or consider any bids from Subcontractors to whom the Owner has a reasonable objection. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids or proposals, subject to those persons or entities accepting subcontract terms acceptable to the Construction Manager. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager or the Owner has reasonable objection. These 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. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, 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 Architect 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 Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, 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.

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§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 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.

§ 2.3.2.17 The Construction Manager shall, in conjunction with the Architect, determine that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents. The Construction Manager shall reject Work that the Construction Manager and Architect determine does not conform to the requirements of the Contract Documents.

§ 2.3.2.18 If a subcontractor requires an interpretation of the meaning and/or intent of the Drawings and Specifications during construction, the Construction Manager shall consult with the Owner and Architect to obtain the interpretation in writing, and transmit the interpretation to the appropriate Subcontractor.

§ 2.3.2.19 The Construction Manager shall receive from the Subcontractors and review all shop drawings, product data,

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samples and other submittals required by the Contract Documents. The Construction Manager shall coordinate them with information contained in related documents and transmit to the Architect those recommended for the Architect's approval. With Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of shop drawings, product data, samples and other submittals.

§ 2.3.2.22 Construction Manager shall obtain from Subcontractors all necessary operating manuals, equipment manuals, maintenance instructions and parts list for equipment procured as required by the Contract Documents. Upon review and approval, Construction Manager shall submit them to the Owner for its records.

§ 2.3.2.23 The Construction Manager shall review and process all applications by the Subcontractors for progress payments and final payments and make recommendations to the Architect for approval of the applications.

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, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by any Applicable Law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents. If required by the Owner, the Construction Manager shall meet with the Owner or Architect prior to submitting an Application for Payment to review the proposed charges.

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

« »

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the «5th» day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the «20th» day of the «same» month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «thirty» («30») days after the Architect receives the Application for Payment.
(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, and any other evidence required by the Owner or Architect 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. The Construction Manager shall provide its own and Subcontractors or vendors unconditional waivers of lien for the payment they received under the previous Application of Payment. If an unconditional waiver of lien is not received by the Application for Payment in the next following month, Owner has the authority to withhold one hundred and fifty percent (150%) of the amount allocated for payment to the Construction Manager or its Subcontractor or vendor under the previous Application for Payment.

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§ 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; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; 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 Architect may require. The 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.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 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 schedule of values; Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as set forth in Section 15.1.4 of the General Requirements set forth in AIA Document A201-2017.
- 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 Architect determines, in the Architect's professional 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.

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§ 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 and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- 3 Any amount for which the 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, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017;
- 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; and
- 6 Retainage withheld pursuant to Section 11.1.8.

§ 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.)

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«Retainage of five percent (5%) will be applicable. »

§ 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.)

« »

§ 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.)

«Upon reaching 50% completion based on the billing of the Cost of the Work, no additional retainage will be held if the Work is satisfactorily on schedule, as determined by the Architect and the Owner. »

§ 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.)

« »

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager or its Subcontractors or vendors, 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. Construction Manager shall not store materials and equipment off-site except with Owner's prior written approval, in a secure location and in no case shall the stored materials and equipment exceed the insurance coverage for such storage. Construction Manager shall notify the Owner of the location of the stored materials and equipment.

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§ 11.1.11 Payments to Subcontractors shall be subject to retainage of 5%. If a Subcontractor has satisfactorily completed all of its Work in the Owner's and Construction Manager's opinions, the Owner will consider releasing the Subcontractor's retainage prior to final payment, subject to any changes. The 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.

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§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect 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 Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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§ 11.1.13 By delivering an Application for Payment, the Construction Manager represents and warrants that title to all equipment and materials will pass to the Owner no later than the time of payment and that the material and equipment are free from all liens, claims, security interests or encumbrances.

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§ 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 a final accounting for the Cost of the Work and a final Application for Payment; and
- 3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.
- 4 a certificate of occupancy has been issued or other determination made by the governmental authorities having jurisdiction of the Project that it may be occupied and used for its intended purpose;
- 5 all operating and maintenance manuals and all warranties have been delivered and assigned, where applicable, to the Owner;
- 6 the "as-built" Drawings have been timely provided to the Architect;
- 7 evidence that the insurance required by the Contract will remain in force after final payment and shall not be cancelled without thirty (30) days prior written notice to the Owner;
- 8 completion of any commissioning, move-in and Project close-out as may be required by this Agreement; and
- 9 consent of the surety, if any.

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With the final Application for Payment, the Construction Manager shall provide its unconditional waiver of lien for the entire Work and the waivers of liens from the Subcontractors and vendors. If any of those waivers are conditioned on payment, the Construction Manager shall deliver the unconditional waivers of lien within fifteen (15) days of payment or shall refund one hundred and fifty percent (150%) of the amount previous paid for the conditional waiver of lien, which shall be held by the Owner until the unconditional waiver of lien is delivered or the lien rights expire.

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§ 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 shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 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, and provided that the other conditions of Section 11.2.1 have been met, the Architect 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 Architect'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 Architect 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, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect'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 Architect'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 Architect's final Certificate for Payment, or as follows:

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§ 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. ~~If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.~~

§ 11.3 Interest

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

«12 » % «per annum »

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 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. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

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« »
« »
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§ 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 (7) 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 (7) days' written notice to the Owner ~~for the reasons set forth in Section 14.1 of A201-2017.~~

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§ 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 (7) 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 (7) 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 Construction Phase services.

§ 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. 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 the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 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 Document A201-2017.

§ 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;

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- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 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. 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.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

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

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§ 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 Unless otherwise defined in this Agreement, the 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. In the event of a conflict of terms, the terms set forth in this Agreement shall control.

§ 14.2 Additional terms

§ 14.2.1 Preliminary Design Documents shall be defined as the Request for Proposal for Construction Management At Risk (the "RFP"), issued by the Owner, and dated April 1, 2021, a copy of which is attached hereto as Exhibit A and the response to RFP submitted to Owner by the Construction Manager, a copy of which is attached hereto as Exhibit B (the "Proposal"), and its terms, to the extent they are supplementary and not contradictory to the terms herein, will be deemed to be part of the terms of this Agreement.

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§ 14.2.2 The Construction Manager shall comply with Applicable Laws, applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents. In addition to any other requirement of law, Construction Manager shall not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap in their performance of this Agreement, including, but not limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeships. Notices shall be posted in conspicuous places available for employees and applicants for employment setting forth the provisions of this nondiscrimination clause.

§ 14.2 Successors and Assigns

§ 14.2.3 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. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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§ 14.2.42 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The 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 Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 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.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than «one million dollars» (\$ «1,000,000») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 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 «five hundred thousand dollars» (\$ «500,000») each accident, «five hundred thousand dollars» (\$ «500,000») each employee, and «five hundred thousand dollars» (\$ «500,000») policy limit.

§ 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 «two million dollars» (\$ «2,000,000») 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
\$5,000,000	Umbrella Policy

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§ 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 as an additional insured 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 Owner's 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 or upon commencement of the Construction Phase, whichever occurs sooner, 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 bonds as set forth in AIA Document A133™-2019 Exhibit B, and elsewhere in the Contract Documents. The bonds will be billed at one percent (1.0%) of the Cost of the Work.

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

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

« »

§ 14.5 Other provisions:

« »

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:

- 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, if executed
- 3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- 4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- 5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

- 6 Other Exhibits:
Exhibit 1 Labor Rate Schedule
Exhibit 2 Equipment Rates

(Check all boxes that apply.)

☐ AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

« »

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

- 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.)

« »

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

OWNER (Signature)
«O»«O»
(Printed name and title)

CONSTRUCTION MANAGER (Signature)
«Tim Kippenhan.»«Vice President»
(Printed name and title)

TELEBARO

DRAFT AIA® Document A201® – 2017

General Conditions of the Contract for Construction

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

«Sawyer County
County Courthouse Addition & Remodeling Project»
«Hayward, WI 54843 »

THE OWNER:
(Name, legal status and address)

«Sawyer County»«»
«10610 Main Street
Hayward, WI 54843»

THE ARCHITECT:
(Name, legal status and address)

«Venture Architects»«»
«212 North 25th Street
Milwaukee, WI 53233»

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

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

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



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.1.9 CONTRACTOR

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

§ 1.1.10 APPLICABLE LAW

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

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§ 1.2 Correlation and Intent of the Contract Documents

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

§ 1.2.1.1 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. In the event of conflicts or discrepancies among the Contract Documents, the terms of the documents shall control in the following order of priority: (1) the Agreement, as changed by a Modification (without the Exhibits, except as stated below); (2) the Exhibits attached to the Agreement other than these General Conditions; (3) addenda, with those of later date having precedence over those of an earlier date; (4) the Supplementary and Special Conditions; (5) General Conditions.

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

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

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

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§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 The Architect, Architect's consultants, the Contractor, Subcontractors of any tier and material or equipment suppliers hereby authorize each other to use and reproduce their respective Instruments of Service solely and exclusively for use in completion of the Project.

§ 1.5.2 In addition to the limited license granted above, the Authors grant a broader irrevocable, perpetual, royalty-free right and license to the Owner, including its contractors, agents, licensees, consultants, architects, partners, governmental entities with jurisdiction over Owner, and tenants, to use, incorporate, copy, reproduce, display, distribute, change, modify, alter or prepare other derivative works under the copyrights, and any common law, statutory and other reserved rights in any proprietary information relating to the subject matter of their Instruments

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of Service in connection with future repairs, maintenance, improvements, alterations, expansions, additions, modifications, or updates to the Project, or reports to governmental or non-governmental authorities with jurisdiction over the Owner and Project.

§ 1.5.3 Each Author shall obtain licenses from its consultants, Contractor, Subcontractors, sub-subcontractors, or Contractor, Subcontractors any tier and material or equipment suppliers sufficient to grant the licenses set forth above in this Section 1.5.

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§ 1.5.4 Notwithstanding the provisions of § 1.5.2 above, (The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. None of the Authors may use the Instruments of Service for any other project without the specific written consent of the Owner and the Author of the specific Instruments of Service

§ 1.5.5 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants. Contractor, Subcontractors, Sub-subcontractors, and suppliers are prohibited from using, reproducing, sharing or forwarding any Instruments of Service if such actions would create a threat to public safety, health or welfare, which shall be determined in the Owner's reasonable discretion.

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§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

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

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately. Prior to the execution of the GMP Amendment, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the GMP Amendment, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change.

§ 2.2.2 Following commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After commencement of the Work, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change, and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen (14) days of the Contractor's request, the Contractor may immediately stop the Work upon fourteen (14) days' notice and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

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

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

§ 2.3 Information and Services Required of the Owner

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

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

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of 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.

§ 2.4 Owner's Right to Stop the Work

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

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

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§ 2.5 Owner's Right to Carry Out the Work

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the

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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 in accordance with Applicable Law.

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

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

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

§ 3.3 Supervision and Construction Procedures

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

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

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

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§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

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

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

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

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

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. All communications (a) affecting the Contract Sum, Contract Time, Contractor's Contingency, Construction Schedule (or milestones therein) or a material term of the Contract or (b) involving a substitution of materials or equipment, shall be in writing. Other communications shall be confirmed in writing by the Contractor.

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

superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3. The Contractor shall employ a superintendent, or an assistant to the superintendent, who is knowledgeable in mechanical and electrical systems and can read and interpret the Drawings, Specifications and Shop Drawings pertaining to such systems. That person shall (i) coordinate the Work required by such documents, including, but not limited to, assisting Subcontractors in arranging space conditions so as to eliminate interference between mechanical and electrical systems and other Work, (ii) supervise the installation of the systems in restricted spaces and (iii) assist in planning and expediting the proper sequence of the delivery of the mechanical and electrical equipment to the site.

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

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall ~~prepare and~~ submit for the Owner's and Architect's information a Contractor's ~~construction schedule~~ Construction Schedule for the Work ("Construction 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 and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

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

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

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

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§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The

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

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

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof. Owner shall be charged to, entitled to reimbursement from the Contractor by deductive Change Order. Unless covered by builder's risk insurance or unless attributable to separate contractors not under contract to the Contractor or its Subcontractors, the Contractor shall be responsible for broken glass and, at the completion of the Work, shall replace such damaged or broken glass. After broken glass has been replaced, the Contractor shall remove all labels, wash and polish interior sides of all glass surfaces. In addition to general broom cleaning, the Contractor shall perform the following final cleaning for all trades at the completion of the Work, including, but not limited to: (a) remove temporary structures; (b) remove spots, mortar, plaster, soil and paint from finished materials and wash or wipe clean; (c) clean fixtures, cabinetwork and equipment, removing stains, paint, dirt and dust and leave in undamaged, new condition; (d) clean aluminum in accordance with the recommendations of the manufacturer; and (e) clean resilient floors thoroughly with a well-rinsed mop containing only enough moisture to clean off surface dirt or dust and buff-dry by machine to bring surfaces to sheen.

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§ 3.16 Access to Work

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

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§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

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

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

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§ 3.18.4 The Owner shall not be responsible for any civil penalties which may be assessed for violations of the requirements of the Occupational Safety and Health Act of 1970, as amended ("OSHA"), or any standards, rules or orders promulgated or regulations prescribed pursuant thereto (including rules of the Wisconsin Department of Industry, Labor and Human Relations), and Contractor shall indemnify and hold harmless the Indemnified Parties from and against any such claims, penalties or other damages promulgated under OSHA.

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ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed,

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

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

§ 4.2.4 Communications

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

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

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

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

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§ 5.3 Subcontractual Relations

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

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§ 5.3.2 In addition to the foregoing, each such subcontract agreement shall, in any event: (a) require that such Work be performed in accordance with requirements of the Contract Documents; (b) waive all rights that the contracting parties may have had against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils covered by the property insurance described in the Contract Documents; (c) require a Subcontractor to carry and maintain liability insurance; (d) require a Subcontractor to furnish such insurance certificates and policies as Owner may reasonably request; (e) require a Subcontractor to comply with any safety plan required by Contractor; and (f) require a Subcontractor to comply with the Owner's policies and procedures.

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§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the ~~subcontract~~ subcontract but shall not be liable for any breach of the subcontract prior to the effective date of the assignment.

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the

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

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§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

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

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

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods if Contractor provides evidence to the reasonable satisfaction of the Owner that such additional costs are actually and directly incurred because of the Construction Change Directive:

- .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 and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner, the applicable unit prices shall be equitably adjusted;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond in writing within seven (7) days after receipt of the Construction Change Directive promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. If the Owner disagrees in writing with the Architect's determination, the matter shall be submitted as a Claim under the dispute resolution provisions of the Contract. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

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- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change except for sales tax on Tax-Exempt Items; and
- .5 Costs of supervision and field office personnel directly attributable to the change and actually incurred by the Contractor.

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

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

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not ~~knowingly, except by agreement or instruction of the Owner in writing,~~ commence the Work prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner.

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation ~~and binding dispute resolution~~; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner and Architect may determine.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

§ 9.3.1 ~~Pursuant to the requirements of the Agreement, At least ten days before the date established for each progress payment,~~ the Contractor shall submit to the Architect 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 Any Cost of the Work not submitted within ninety (90) days of being incurred shall be deemed waived.~~ The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment ~~as that~~ the Owner or Architect may require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage ~~if provided for in the Contract Documents~~.

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

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

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

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

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;

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- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 ~~repeated failure to carry out the Work in accordance with the Contract Documents after a written warning and failure to cure within ten (10) days, or such longer reasonable time if the cure cannot be accomplished in ten (10) days, as long as the action to cure is made continuously and diligently, repeated failure to carry out the Work in accordance with the Contract Documents.~~

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

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

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

§ 9.6 Progress Payments

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

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

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and ~~equipment and material~~ suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law. ~~If the Contractor has been paid for the Work of a Subcontractor but has not paid that Subcontractor by the time of the next Application for Payment in the following month, such money shall be re-credited to the Owner in such subsequent Application for Payment. In the absence of a bona fide good faith dispute with the Subcontractor, the Owner reserves the right, but not the obligation, to pay that Subcontractor directly on behalf of the Contractor. In the event any action is commenced against the Owner by the Subcontractor, or if the Subcontractor files a lien against the Project site, the Owner shall tender the defense of such action or lien to the Contractor, who shall timely accept such defense in writing and who shall hold the Owner harmless therefrom. The Contractor shall immediately take such action as may be required by Wis. Stat. Ch. 779 currently in effect, as the same may be amended or renumbered from time to time, to remove any lien.~~

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§ 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.

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~~§ 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. ~~Other than as required by Applicable Law, n~~ Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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

§ 9.7 Failure of Payment

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

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

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

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

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if

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

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§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached through the claims process in Article 15, by decision of the Architect.

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

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

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) 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, (6) delivery of the as-built Drawings to the Architect, showing all construction modifications to them, (7) the warranties, instructions and maintenance manuals required to be furnished under the Contract and (8) a final statement of the Cost of the Work with a breakdown according to the construction budget and in a form approved by the Owner, documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the

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Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible for all reasonable measures necessary to protect any property improvements adjacent to the Project. Any damage to such property improvement that is caused by the Contractor shall be promptly repaired by the Contractor.

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed

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by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition. All equipment used on the Project shall be handled and operated in conformance with OSHA safety requirements.

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

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§ 10.2.9 Injury or Damage to Person or Property

When required by Applicable Law, the Contractor shall shore up, brace, underpin and protect the foundations and other portions of the existing structures which are in any way affected by the Work. The Contractor, before commencement of any part of the Work, shall give any notice required to be given under Applicable Law to adjoining landowners or other parties. If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of 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.

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

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

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

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

§ 10.46 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 purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. Such insurance as will protect the Contractor and Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

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- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including explosion, collapse, underground hazards and damage to underground utilities and loss of use resulting therefrom.

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- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations set forth herein.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by Applicable Law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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

§ 11.1.34 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.

§ 11.1.54 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.

§ 11.1.6 Certificates of insurance and policies acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness with reasonable promptness.

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§ 11.2 Owner's Insurance

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

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the

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Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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

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

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§ 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; and (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) ~~even though that person or entity did not pay the insurance premium directly or indirectly,~~ or (23) whether or not the person or entity had an insurable interest in the damaged property.

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

§ 11.3.3 The Owner shall have power to adjust and settle a loss with its insurers unless another party in interest shall object in writing within five days after the Owner's notice of intent to exercise this power. If such objection is made, the dispute shall be resolved, as provided in Article 15. The Owner shall, in the case of litigation or arbitration, make settlement with insurers in accordance with the directions of the arbitrators.

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

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Group, the Owner, Owner's consultant and Architect are not responsible for loss or damage to the Contractor Group's tools or equipment.

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the Owner's property insurance required by the Agreement shall be adjusted by the Owner ~~as fiduciary~~ and made payable to the Owner ~~and any other s-fiduciary for the~~ insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner. The Contractor and Architect shall pay Subcontractors their just shares of insurance proceeds received by the Contractor or Architect, and by appropriate agreements shall require Subcontractors to make payments to ~~the Architect and Contractor shall~~ make payments to their consultants and ~~Sub~~Subcontractors in similar manner.

~~§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~

§ 11.5.2 The Owner shall have power to adjust and settle a loss with its insurers unless another party in interest shall object in writing within fourteen (14) days after the Owner's notice of intent to exercise this power. If such objection is made, the dispute shall be resolved, as provided in Article 15. The Owner shall, in the case of litigation or arbitration, make settlement with insurers in accordance with the directions of the arbitrators.

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect, after prior written approval of the Owner, may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's ~~the Contractor shall be entitled~~

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~~to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If expense.~~ If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year 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 ~~written~~ notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

§ 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

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

~~§ 12.3.2 No course of conduct or dealings between the parties, no express or implied acceptance of alterations or additions to the Work (except a fully-executed Change Order), and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work (whether or not there is in fact any such unjust enrichment) shall be the basis for any claim for an increase in the Contract Sum or extension of the Contract Time.~~

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ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by ~~Applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities.~~ Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect ~~and Owner.~~

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

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§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not timely issued a Certificate for Payment and Owner has not advanced the requested funds pending issuance of a Certificate of Payment notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's written request, reasonable evidence as required by Section 2.2.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and reasonable overhead and costs to the date of termination, as well as plus the Construction Manager's Fee thereon ~~reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~

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§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and

- 3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

1 Upon receipt of any such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the Work on the date and to the extent specified in the notice; place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary to complete such portion of the Work as is not discontinued; promptly make every reasonable effort to procure cancellation upon terms satisfactory to Owner of all orders and subcontracts to the extent they relate to the performance of the discontinued portion of the Work and, therefore, to the extent such cancellation was achieved, shall only do such Work, as may be necessary to preserve and protect Work already in progress, to protect materials, plant and equipment on the Project site or in transit thereto and to complete such Work related to subcontracts that cannot be cancelled.

2 Upon such termination, the obligation of the Contractor shall continue as to portions of the Work already performed and as to bona fide obligations assumed by Contractor prior to the date of termination.

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

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

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed and reasonable; costs incurred by reason of the termination, ~~including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of contract terms, 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. Claims must be initiated by written notice. 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, whether in contract, tort, breach of warranty or otherwise, against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. ~~The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~

§ 15.1.3 Notice of Claims

~~§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~

Claims by Owner must be initiated by written notice to the Contractor and may be made at any time prior to the expiration of the applicable statute of limitations for such Claim. Claims by the Contractor must be initiated by written notice within 21 days after the occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes, or should have recognized, the condition giving rise to the Claim, whichever is later. Notwithstanding the foregoing, the parties may agree in writing to extend the time of noticing a Claim. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 15.1.3.2 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 written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided ~~in Section 15.1.3 herein~~ 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.

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§ 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, written notice as provided in Section 15.1.3 herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If ~~A~~ adverse weather conditions shall not be a ~~are the compensable~~ basis for a Claim for additional time, unless such weather condition may be construed as an unexpected act of God or other force majeure, and in such case, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor Contractor and Owner waive Claims against each other for hereby waives consequential damages against the Owner arising out of or relating to their Contract. The Owner hereby waives consequential damages against the Contractor that exceed the minimum amounts of general liability and umbrella insurance required to be carried by the Contractor under the ~~C~~Contract.

This mutual waiver includes

1. ~~damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
2. ~~damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.~~

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.8 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

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

§ 15.1.9 ALTERATION OR ADDITION TO WORK

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

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker,

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unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

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

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7 herein, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

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The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

~~§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~

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

~~§ 15.3.5 Controversy and Claim Subject to Litigation. If the parties do not resolve a Claim through mediation pursuant to Section 15.3, the parties shall resort to litigation in the Circuit Court for Sawyer County, Wisconsin or a federal court of competent jurisdiction.~~

§ 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.

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§ 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.

TELARDO

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1
2
3 **SAWYER COUNTY BOARD OF SUPERVISORS –**
4 **ADOPTION OF ORDINANCE RELATING TO REGULATION OF BOATING AND**
5 **OTHER USE OF THE COUDERAY RIVER**
6 **RESOLUTION NO. _____**
7

8 **WHEREAS**, Wis. Stat. § 30.77(b) authorizes Sawyer County (the “County”) to adopt
9 ordinances relating to use of riverways in the County’s jurisdiction and if such ordinance is not
10 contrary to state law;
11

12 **WHEREAS**, the County will be completing bridge repairs to the bridge expanding over
13 the Couderay River on CTH B (the “Construction Project”), as set forth in the proposed Regulation
14 of Boating and Other Use Upon Couderay River Ordinance, which is attached hereto and
15 incorporated as Exhibit A (the “Ordinance”);
16

17 **WHEREAS**, the Wisconsin Department of Natural Resources (“WisDNR”) informed the
18 County Highway Commissioner on July 12, 2021 of the need for the Ordinance in order to regulate
19 a portion of the Couderay River under the CTH B bridge during the Construction Project so as to
20 ensure the public health, welfare and safety during the Construction Project;
21

22 **WHEREAS**, the Ordinance was not reviewed by the Public Works Committee at its
23 meeting on July 7, 2021 due to the County not being ordered to adopt the Ordinance by WisDNR
24 until July 12, 2021;
25

26 **WHEREAS**, in order to ensure compliance with the Construction Project schedule, this
27 Ordinance must be reviewed by the County Board of Supervisors (“County Board”) in the month
28 of July 2021;
29

30 **WHEREAS**, as required by Rule 6 of the County Board Policy and Procedure Manual,
31 two (2) County Board Supervisors have sponsored this Resolution and the County Board voted by
32 2/3 majority to review and render a decision on the Ordinance and this Resolution;
33

34 **WHEREAS**, the County Board thereafter reviewed and discussed the Ordinance at its
35 meeting on July 15, 2021.
36

37 **NOW, THEREFORE, BE IT RESOLVED**, the Sawyer County Board of Supervisors
38 determines, adopts and directs the following:
39

- 40 1. Recitals. The Recitals set forth above are true and accurate, and are therefore
41 incorporated into the Resolution and shall be used not just for reference.
42
43 2. Adoption of Ordinance. The proposed Regulation of Boating and Other Use Upon
44 Couderay River Ordinance, a copy of which is attached hereto as Exhibit A, is hereby
45 approved and adopted.
46

47 3. Ordinance is in the Best Interest of Sawyer County. The adoption of the Regulation of
48 Boating and Other Use Upon Couderay River Ordinance is in the best interest of the
49 health, welfare and safety of Sawyer County and its citizens, property owners and
50 visitors.
51

52
53 This Resolution was sponsored by the Sawyer County Board Supervisors set forth below, as
54 required by Rule 6 of the Sawyer County Board Policy and Procedure Manual.
55
56

57
58 _____
59 Ron Kinsley,
60 County Board Supervisor
61

57
58 _____
59 Marc Helwig,
60 County Board Supervisor
61

62
63 This Resolution is hereby adopted by the Sawyer County Board of Supervisors this 15th day of
64 July, 2021.
65

66
67 _____
68 Tweed Shuman,
69 Sawyer County Board of Supervisors Chairman

66
67 _____
68 Lynn Fitch,
69 Sawyer County Clerk

Ordinance

Regulation of Boating and Other Use Upon Couderay River

- 1. Applicability and Enforcement:** The provisions of this Ordinance shall apply to the waters of Couderay River as detailed below. This Ordinance shall be enforced by the officers of Sawyer County or as otherwise permitted under Wisconsin law.
- 2. Intent and Authority:** The intent of this Ordinance is to provide safe and healthful conditions for the enjoyment of aquatic recreation consistent with public rights and interest and the capability of the water resources. Sawyer County's authority to adopt this Ordinance is set forth in Wis. Stat. § 30.77(2)(b).
- 3. State Boating and Safety Laws Adopted:** State boating laws as found in Wis. Stat. Ch. 30 or as otherwise referenced in Wisconsin law are adopted by reference.
- 4. Penalties:** Wisconsin state boating penalties as found in Wis. Stat. § 30.80 and deposits established in the Uniform Deposit and Bail Schedule established by the Wisconsin Judicial Conferences, are hereby adopted by reference and all references to fines amended to forfeitures and all references to imprisonment deleted.
- 5. Severability:** The provisions of this Ordinance shall be deemed severable and it is expressly declared that Sawyer County would have passed the other provisions of this Ordinance irrespective of whether one of more provisions may be declared invalid. If any provision of this Ordinance or the application to any person or circumstances is held invalid, the remainder of the Ordinance and the application of such provisions to other persons or circumstances shall not be affected.
- 6. Restriction Area:** No person shall operate a boat, as defined in Wis. Stat. § 30.50(6), non-motorized boat, vessel, or engage in any other activity on the waters of Couderay River within the right-of-way at the crossing of County Highway E during the bridge construction project, as noted in the attached map. The restriction set forth in this Ordinance shall be in place from August 16, 2021 to October 1, 2021 unless otherwise modified by the Sawyer County Board of Supervisors.
- 7. Posting Requirements:** Sawyer County shall place and maintain a synopsis of this Ordinance at all public access points within the jurisdiction of the Sawyer County pursuant to the requirements of Wis. Admin. Code Ch. NR 5.15.
- 8. Effective Date:** This Ordinance shall take effect on August 16, 2021.
- 9. Sunset Date:** This Ordinance will therefore sunset at midnight on October 1, 2021 unless otherwise amended, rescinded, or extended by future action by the Sawyer County Board of Supervisors.

Meeting Minutes



Sawyer County
Courthouse Expansion
Venture Project # 200032.00
Kick Off Meeting

When
June 15, 2021 at 9:00 AM
Where:
Virtual

Participants / Distribution

PRESENT		CC
SAWYER COUNTY Ron Kinsley Tom Hoff Rebecca Roeker (Von Briesen) MIRON CONSTRUCTION Andrew Daniels Dave Keating Nick Sanderfoot	VENTURE ARCHITECTS John Cain Jack Blume John Sucharski Sam Guadagnino Matthew Sowinski	

Introductions/Meetings

- 1) Each of the groups introduced their teams.
 - a) Tom will be the main decisionmaker from Sawyer County. The County will determine the frequency of ad hoc committee representation at design meetings. Tim Hagberg will attend most early meetings.
 - b) Miron will attend in person during design when necessary; otherwise virtual.
 - c) Venture will attend most design meetings in person; especially early in the process.
 - i) Judge Yackel and Chris Channing will be invited when appropriate.
- 2) Meetings will be conducted roughly every other Wednesday at 9:00AM.

Contracts

- 3) The Venture contract was submitted for review by the County Board at this Thursday's meeting.
- 4) The Miron contract will be submitted in July for approval. Andrew said that, in good faith, they would continue to work on the project before the contract is approved.
- 5) A few Miron contract items were discussed.
 - a) 3.2.4 Contingency. There was discussion about the proposed 5% contingency amount vs. higher contingencies during design. Andrew will add clarification to the contract.
 - b) 7.6 Miscellaneous Costs. The Venture contract includes reimbursable costs, so Jack suggested the group review similar Miron costs and determine if they should be considered the same. Andrew and Dave clarified these costs would be identified in the GMP, therefore would be known and included to be paid in pay applications. No revisions will be made to the contract.

Meeting Minutes



**Sawyer County
Courthouse Expansion
Venture Project # 200032.00**

When
June 15, 2021 at 9:00 AM

Where:
Virtual

Kick Off Meeting

- c) 11.1 Billing Process. The dates identified in the contract were discussed and clarified and no revisions will be made. There will not be up front payment requirements of the County.
- 6) Miron and Venture will put together a billing schedule so the County can plan for payments.

Schedule

- 7) The schedule for the project is as follows:
 - a) Schematic Design – now through 7/21/21
 - i) Followed by Cost Estimating (Miron)
 - b) Design Development – 7/22/21 – 10/13/21
 - i) Followed by Cost Estimating (Miron)
 - c) Construction Documents – 10/14/21 – 12/22/21
 - i) Final Cost Estimate Due 12/22/21
 - d) Bidding – 1/5/22 - ???
 - e) Construction – April, 2022 - ???
- 8) There is some desire to bid the project in December, as it is traditionally more competitive before the New Year. The team will attempt to shorten the schedule, but cannot guarantee.

Design Options

- 9) Sam presented four potential exterior treatment options. The floor plan is the same for all options, and is similar to that at the completed study. Each option shows different roof treatments and some show alternate wall materials.
 - a) Ron mentioned not liking flat roofs fundamentally.
 - b) The group noted that Option A might have ice dam issues at the hipped roof areas.
 - c) Potential fire wall areas were discussed, and will be clarified at the next meeting.
 - d) A few options suggest removing the roof that covered the clerestory windows in the courtroom. Tom mentioned the windows were covered because of excessive glare in the courtrooms.
 - e) Tom asked the group to explore using solar energy on the building.

Next Meeting

- 10) The next meeting will be **Wednesday, Junw 23rd at 9PM at the Sawyer County Courthouse, Room TBD**. Topics to be discussed will be updated floor plans and design options.

END OF MEETING MINUTES

Meeting Minutes



**Sawyer County
Courthouse Expansion
Venture Project # 200032.00**
Design Meeting

When
June 23, 2021 at 9:00 AM
Where:
Sawyer County Courthouse Assembly Room

Participants / Distribution

PRESENT		CC
SAWYER COUNTY Ron Kinsley Tom Hoff Marge Kelsey Tim Hagberg Sheriff Doug Mrotek (SCSO) Jeff Johnson (SCSO) Joe Sajdera (SCSO)	MIRON CONSTRUCTION Andrew Daniels Dave Keating VENTURE ARCHITECTS John Cain Jack Blume Sam Guadagnino WI DEPT OF CORRECTIONS Jodi Hollister WI CIRCUIT COURTS Judge John Yackel Chris Channing Anna Amparo	

Introductions/Meetings

- 1) Each attendee introduced themselves.
- 2) Jack will include the Team Directory with these meeting minutes.

Floor Plan Review

- 3) Sam explained the current floor plan and oriented the group accordingly.
- 4) Jack explained potential code ramifications with the current floor plan.
 - a) Fire walls are unavoidable, no matter how the addition is configured.
 - b) Holding areas are required to be sprinklered; needs to be addressed as a variance if proceeding without fire protection.
 - c) With rated partitions and walls, doors will need to be on closers.
- 5) John went through the previous program for verification.
 - a) Proposed courtroom size, which does not meet SCR 350, will be acceptable.
 - b) Holding areas: need to be 50sf for 1 occupant, 10sf additional for each additional occupant.

Meeting Minutes



**Sawyer County
Courthouse Expansion
Venture Project # 200032.00**

When
June 23, 2021 at 9:00 AM
Where:
Sawyer County Courthouse Assembly Room

Design Meeting

- c) Sheriff asked there is space in the secure area for three deputies that will escort inmates. Need to add this to the plan.
- d) The holding rooms in the jail side should have access from the back of the room as well as the front.
- e) The IT room in the current building should be relocated where it can be accessed from the conference room.
- f) Need to show access from Captain corridor to east side of jail.
- g) Holding room access will be by key and remotely.
- h) The separation between the existing building and addition needs to have doors, which will allow for separation of the spaces, which helps prevent people from the south from entering the court area without going through security.
 - i) Issue- there is a snow drift area outside the existing doors, which Tim is concerned about. Can the fire wall line move south to remediate?
- i) Soundproofing needs to be provided along the south wall of the jury deliberation/corridor area.
- 6) John expressed the desire for conceptual floor plan approval. Tom said that the approval would need to come from the ad hoc committee.

Courtroom Configuration

- 7) Sam explained the various layouts.
- 8) Like the hidden space behind corner wall for storage.
- 9) Clerk does not need a ledge for passing through papers.
- 10) The group would like flexibility for 4 tables if possible.
- 11) County has a Court Security Officer, not a bailiff. This person is responsible for all security in space, so they need to be able to react to any issue or concern. They will have at least a monitor at their stand up desk.
- 12) The group toured the existing courtroom to describe their preferences.
 - a) Judge Yackel mentioned that sightlines are important and sometimes an issue in the current courtroom.
 - b) The Court Reporter joined the group and expressed her preference to sit between the Judge and Witness.
 - i) She prefers the witness to be on the same side of the room as the jury-not across the room.
 - c) The heights of the spaces in the well should be derived from the Barron County Courtroom; that is believed to be:
 - i) Jury front row and Witness on floor.

Meeting Minutes

**Sawyer County
Courthouse Expansion
Venture Project # 200032.00**

When
June 23, 2021 at 9:00 AM
Where:
Sawyer County Courthouse Assembly Room

Design Meeting

- ii) Court Reporter, Jury second row and Clerk to be one riser higher than floor.
- iii) Judge to be three risers higher than the floor.
- d) There is a desire for a flip down bench in the front wall of the Jury bench, to allow for more seating during jury selection.
- e) The A/V system in the room was designed by SKC. It is unclear whether there is still an ongoing contract with them.
- f) Video proceedings are an option in various areas in the building, and this needs to be discussed further.
- g) John noted the new configuration of the courtroom in the existing space will have a higher ceiling in the well area than the gallery area.
- h) The Guardian Ad Litem needs a space that isn't in the gallery, and that has a microphone.
- i) There was mentioned a desire to have an attorney/client conference room close to the secure courtroom entrance. This would allow for a space to hold an unruly client, as well as have a conference.
- j) The Court Security Officer is different than a bailiff, in that they are responsible for all persons in the courtroom, not just the client. Discussions need to evolve on their desire to have easy access to the court rifle.
- k) There needs to be an exterior door at the Secure Corridor, for access by Sheriff and juvenile defenders. This cannot be an exit door.
- l) 14 jury chairs are desired.
- m) 2 attorney tables are expected, but power and data should be provided for 4 tables.
- n) The balance of the well and gallery: the group determined that gallery seating could be reduced to make the spaces work in the well. However, there is a desire to have 60 persons occupy the space during jury selection.
- o) Judge Yackel asked for daylight to be incorporated into the courtroom design.

Board Room Configuration

- 13) Sam explained the proposed layout.
 - 14) The group suggested the room be larger.
 - 15) The board area should have fixed seating (for 15+). John suggested adding a partition to split the room into 2.
 - 16) There needs to be consideration of zoning off the board room and toilet rooms from the courtroom area for night meetings.
 - 17) VA will provide various layout options at the next meeting.
-

Meeting Minutes



**Sawyer County
Courthouse Expansion
Venture Project # 200032.00**

Design Meeting

When
June 23, 2021 at 9:00 AM

Where:
Sawyer County Courthouse Assembly Room

Exterior Expressions

- 18) Sam presented the four exterior options.
 - a) Option D (the hybrid) is the favorite. Option C, (the flat roof option) was a close second, but they liked the ceremonial entrance to Option D the best.
 - b) Location and size of windows is largely still undecided.

Clerk of Court & Court Commissioner Options

- 19) Clerk would like to have one of the six workstations replace the private meeting room, but still include a counter.
- 20) Court Commissioner should not exit into the departments, but there should be a door anyway for extreme emergencies.
- 21) Marge would like a window from her office looking into the department and an exterior window for emergency exit.
- 22) Court Commissioner space should be a corner desk, perhaps near the exterior wall, including a private corridor with or without ramps.
- 23) Attorneys' tables should have their backs to the wall, flipped 180 degrees from where they are right now.
- 24) Still need to confirm exact chair and desk locations of all court members.

Additional Spaces

- 25) Comments were made about including more changes to more departments in the Clerk of Court and Court Commissioner building wing. (We have graphics of some of these potential options in the earlier studies from 2019).

Next Meeting

- 26) The next meeting will be Wednesday, June 23rd at 10PM at the Sawyer County Courthouse, Assembly Room. Topics to be discussed will be updated floor plans and design options.

END OF MEETING MINUTES

Meeting Minutes



**Sawyer County
Courthouse Expansion
Venture Project # 200032.00**
Design Meeting

When
July 7, 2021 at 10:00 AM
Where:
Sawyer County Courthouse Assembly Room

Participants / Distribution

PRESENT		CC
SAWYER COUNTY Tom Hoff Marge Kelsey Tim Hagberg Sandy Snider Okamoto Sheriff Doug Mrotek (SCSO) Jeff Johnson (SCSO) Joe Sajdera (SCSO)	MIRON CONSTRUCTION Andrew Daniels VENTURE ARCHITECTS John Cain Jack Blume Sam Guadagnino Matthew Sowinski WI CIRCUIT COURTS Judge John Yackel Chris Channing Anna Amparo	Ron Kinsley Dave Keating

Courtroom Discussion

- 1) North Courtroom
 - a) Confirmed the Judge's Bench should be 18 inches above the floor. The Clerk and Court Reporter heights can be 6 inches or 12 inches, and that needs to be worked on. This would apply for both courtrooms.
 - b) Need to find location for an attorney/client conference room. Will likely be outside north courtroom.
 - c) Office windows should be high enough to protect the user, but also allow for them to see outside when standing. The glass should have a bullet-resistant film. Alternatively, windows with direct sitting views are an option, as long as they have proper security measures.
 - d) Staff Area
 - i) Judge to access corridor directly from Chambers, through 'closet' space.
 - ii) Funnel visitors to the court suite administration office, yet retain the exterior wall office window for staff.
 - iii) Relocated Storage and Restroom above Court Suite's interior, entry corridor.
 - e) Guardian Ad Litem

Meeting Minutes



**Sawyer County
Courthouse Expansion
Venture Project # 200032.00**

Design Meeting

When
July 7, 2021 at 10:00 AM

Where:
Sawyer County Courthouse Assembly Room

- i) Needs to be moveable furniture (both courtrooms).
 - ii) Location should be behind attorney tables, in void behind jury.
 - iii) Area where currently shown should be a built-in standing desk for Court Security Officer, with safe against the wall or under counter space for the Courtroom Rifle.
- 2) South Courtroom
 - a) VA will work on an option which ramps inside the courtroom.
 - b) Discussed a non-accessible option. VA will lay out an option with stepped access and no lift or ramp, to see if it resolves all other issues.
 - c) Explore more options with different ramp and door configurations.
 - d) A toilet room needs to be added for staff, to match the north courtroom area.
 - (1) The kitchenette could be sacrificed, since they can use the jury room kitchenette.

Jail Area Discussion

- 3) Need to add office area for Shared Services (3 workstations). Location would be in unused space at north end of the addition or in existing building space.

Veterans

- 4) There was discussion about relocating Veterans Services to the Courthouse.
 - a) The existing Assembly room could be altered for the two Veterans Services offices. Those offices would include room for a 4-person table. Any groups larger than 4 persons would require use of a conference room.
 - b) A conference room would be added to the scope in the addition. It could be on either side of the main entrance; the security level would be a factor. VA will provide options of either a larger, divisible Board Room or a nonsecure conference room south of the new entrance.
 - c) Miron will price the cost to demolish the existing Veterans building, as well as the cost to alter the Clerk space and the new Veterans space. Those costs would be alternates, but would be designed by VA.

Additional Spaces

- 5) Entrance
 - a) Need to show a bypass door with card reader, for employees to badge in to avoid screening.
 - 6) County Board built-in seating will need to be U-shape/open for access.
-

Meeting Minutes



**Sawyer County
Courthouse Expansion
Venture Project # 200032.00**

Design Meeting

When
July 7, 2021 at 10:00 AM

Where:
Sawyer County Courthouse Assembly Room

Next Meeting

- 7) The next meeting will be Wednesday, July 21st at 9AM at the Sawyer County Courthouse, Assembly Room. Topics to be discussed will be Schematic Design delivery, as well as a concept site plan.

END OF MEETING MINUTES

Thomas R. Hoff, Sawyer County Administrator
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Phone: 715 638-3245
tom.hoff@sawyercountygov.org



July 15, 2021

Chairperson Rebecca Valcq
Public Service Commission of Wisconsin
4822 Madison Yards Way
Madison, WI 53705

Regarding the Stone Lake/Sand Lake grant application

Dear Chairperson Valcq,

This letter is to acknowledge Sawyer County's support of the Mosaic grant application, as set forth in this letter, which was reviewed and approved by the Sawyer County Board of Supervisors at its meeting on July 15, 2021. We are pleased to support Mosaic Technologies' broadband expansion grant application to provide broadband service to unserved areas in Sawyer County.

The Sawyer County Board of Supervisors appreciates Mosaic's commitment to expand its fiber network to several underserved areas in Sawyer County. Broadband is important for both residents and businesses, and Mosaic's planned expansions provide opportunities to these groups. From a residential perspective, fiber broadband provides access to all forms of virtual education, telecommuting, and online healthcare applications and telehealth. As seen this past year, opportunities like these are crucial, especially in rural areas where traditional opportunities already require significant travel. Improving broadband also gives our businesses the ability to take advantage of emerging technologies to increase productivity and expand their markets to a global scale. Enhanced broadband will bring the assets of Sawyer County to the world and open up possibilities in an economically challenged area.

Once barriers to broadband expansion are removed, Sawyer County will position itself as a destination for startups, expanding and relocating businesses, and telecommuters and working families relocating here. The close proximity to Duluth, Minneapolis-St. Paul, and Eau Claire provide huge potential markets. New business begets skilled workers, increased home values, and increased tax base; new families expand and revitalize our workforce. The investment by Mosaic Technologies and the State of Wisconsin through awarding broadband grants is of significant economic benefit to the residents and businesses of Sawyer County.

Please feel free to contact me with any questions.

Thank you for your consideration.

Sincerely,

Tom Hoff
County Administrator

Sawyer County Board of Supervisors
Policy and Procedure Manual



Adopted June 16, 2016

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Amendment/Addition Log:

- Adopted June 16, 2016
- Approved April 2018
- Approved May 2018
- Approved July 2018
- March 21, 2019
 - Added Part I Section C. 3.
- Approved April 21, 2020
- Amended February 18, 2021
 - Added Mission Statement
 - Amend Rule 1(3)
 - Amend Rule 2(9) and 2(10)
 - Added Part I, No.'s 21-22
- Amended March 16, 2021
 - Added Appendix A and identified Appendix B
- Amended April 22, 2021
 - Added Part I Section C.2. Public Safety/Court Systems (approved at 4/20/21 Board meeting)
 - Expanded Table of Contents
 - Added an Amendment/Addition Log
 - Added PACE Commission to list on Page 19
- Amended June 17, 2021
 - Added Part I Section D. Economic Development and UW Extension and Agriculture Committee (approved at 6/17/21 Board meeting)
 - Expanded Table of Contents

Mission Statement: The Sawyer County Board of Supervisors will strive to provide excellent services and responsible leadership to protect and enhance Sawyer County citizens, businesses, and resources, while preserving our unique heritage.

Sawyer County, Wisconsin Self-Organized County

Section A: Authority.

This ordinance is adopted under authority granted by Section 59.10, Wisconsin State Statutes. To give Sawyer County the largest measure of self-government under that Statute, the contents of the Sawyer County Board of Supervisors Policy and Procedure Manual shall be liberally construed in favor of the rights, powers, and privileges of the County to exercise any organizational or administrative power not contrary to the State of Wisconsin Constitution or to any enactment of the State Legislature that is of statewide concern and which uniformly affects every County.

Section B: Title.

This ordinance shall be known as the Sawyer County Self-Organized County Ordinance.

Section C: General Provisions.

1. For the purpose of improving the ability of the county government to organize its administrative structure, Sawyer County elects to become a self-organized county and to act under the provisions of Section 59.10 (1), Wisconsin State Statutes.
 - a) Terms of office for election of County Board of Supervisors. Supervisors are county officers and shall be elected for two-year terms in the election to be held on the first Tuesday in April in even numbered years and shall take office the third Tuesday in April of that year.
 - b) Methods for filling vacancies on the County Board. Vacancies shall be filled by procedures determined by the County Board and defined in the Sawyer County Board of Supervisors Policy and Procedure Manual.
 - c) Compensation of County Board Members. The method of compensation for County Board Supervisors shall be determined by the County Board. The County Board shall at or before its annual meeting in odd numbered years by a two-thirds vote of members entitled to a seat, fix the compensation of the board members to be next elected. The Board may also at or before its annual meeting in odd numbered years by a two-thirds vote of members entitled to a seat, provide additional compensation for the County Board Chairperson. In addition to the per diem, the County Board Supervisors shall receive mileage for attending Board meetings and other official meetings in accordance with the Sawyer County Board of Supervisors Policy and Procedure Manual.
2. The County Clerk shall file a certified copy of the Self- Organized County ordinance with the Wisconsin Secretary of State upon passage by the Sawyer County Board.

Section D: Conflicting Ordinances.

Any prior Sawyer County ordinances or parts thereof in conflict with the provision of this ordinance insofar as they regulate the establishment of Sawyer County as a self-organizing county are hereby repealed and rescinded effective the effective date of this ordinance.

Section E: Severability.

The provisions of this ordinance shall be deemed severable and it is expressly declared that the Sawyer County Board of Supervisors would have passed the other provision of this ordinance irrespective of whether one or more provisions may be declared invalid and if any provisions of this ordinance, the application thereof to any person or circumstances is held invalid the remainder of the ordinance and the application of such provision to other persons or circumstance shall not be affected thereby.

Section F: Effective Date

This ordinance shall take effect upon passage and publication as provided by law.

Sawyer County Board of Supervisors Governing Rules of the County Board

Role of a County Board Member

Service as a Board Member is an honor and a trust requiring the holder to serve the public through use of judgement for the benefit of the public. A Board Member is sworn to uphold the Constitution of the United States of America and the State of Wisconsin. A Board Member is responsible to impartially carryout the laws of our nation, our state, and the county.

County Board Members come from society at large. It is probable that Board Members will hold different views, have different perspectives and see things differently. However, it is not these individual traits that must prevail. It is the collective action of the Board that must prevail. Board Members are required to courteously work together for the public good of the whole county.

Board Members are expected to individually contribute to a collaborative effort to set the county's mission and advance the county's priorities. Examples of such activity include:

1. Participating in the process of debate and voting on proposed ordinances, resolutions and motions at the county board and committee meetings.
2. Serving on one or more standing committee(s) or other committee(s), boards and commissions
3. Spending the time needed to understand the issues that come before the board and their committees by preparing for such discussion in advance of the meetings.
4. Setting policy for the county, accepting that the County Administrator and county employees are responsible to carry out the policy. As such, a board member should not interfere with the County Administrator's duties to oversee the daily operations of the county.
5. Being responsive to the issues raised by their constituents.
6. Conducting themselves so that all aspects of their public life reflect positively on the board and its members.
7. Avoiding the appearance of a conflict of interest, bring to the Ethics Board attention any potential conflict.

Rule 1: Board Members

1. The County Board shall consist of fifteen (15) board districts.
2. Board Members shall serve a two-year term beginning and expiring at the convening of the organizational meeting on the third Tuesday in April in the even numbered years.
3. If a vacancy occurs on the Board, the Chair shall, within 30 days of the vacancy, appoint a person who is a qualified elector and resident of the Board district to fill the vacancy subject to confirmation by majority vote of those Board members voting. The appointed person shall serve for the unexpired portion of the term to which the person is appointed. In the event a successor is appointed prior to April 1st of the year preceding the next scheduled County Board Supervisor election, the Board shall order a special election to fill the vacancy, and the person appointed shall serve until their successor is elected and qualified. A person so elected shall serve for the remainder of the unexpired term. Vacancy occurs upon the death of an incumbent, written resignation, removal or ceasing to be a resident of the district or for any other reason set forth in state statute.
4. No county officer or employee is eligible to hold the office of County Board Supervisor, but a

- Supervisor may be a member of a town board, city council or village board of trustees.
5. The Chair and Vice Chair may be removed by a majority vote of those members voting.

Rule 2: Meetings and Quorum

1. The Annual Meeting of the County Board will be on the Tuesday after the second Monday in November, unless that date falls on November 11 in which case the meeting will be held the following day.
2. The Organizational Meeting of the County Board will be on the third Tuesday in April and the November meeting will be on the first Tuesday after the second Monday. Other regular meetings of the County Board shall be on the third Thursday of each month starting at 6:30 pm. Such meeting dates and times may be changed by a majority vote of the county board.
3. A special meeting, which is not an emergency meeting, may be called by a written request of a majority of board members by delivering such request to the County Clerk. The special meeting will be held within seven calendar days from the delivery of the request.
4. A special meeting may be called in the event of an emergency. Upon determining that an emergency exists, the Chair may call an emergency meeting in any manner reasonably designed to give notice to supervisors and the public including by electronic means. Notice must precede meeting time by at least two hours. An emergency is defined as a situation which requires immediate Board action without which the county government or its citizens will suffer risk of physical, financial, or other harm.
5. In the event of inclement weather, the Chair may cancel a meeting at least three hours before the meeting. Any meeting so cancelled shall be held within the next succeeding week.
6. Board members not able to attend a Board Meeting shall contact the Chair, County Administrator or County Clerk before the meeting giving an explanation for the anticipated absence. The Board Member will be entered in the Board minutes as excused.
7. A majority of Board Members who are entitled to a seat shall constitute a quorum.
8. The County Board Chair may authorize a meeting to be held virtually if deemed necessary. Said meeting would be subject to Wisconsin Open meeting law.
9. If a quorum of the Board is physically or virtually present at the meeting, a majority of the Board may allow a Board member to attend a meeting through a virtual meeting platform, telephone conference call, or other electronic means that is deemed acceptable.
10. Board members cannot attend more than three County Board meetings per year by virtual means. Note: This Rule 2(10) shall be suspended until July 1, 2021.

Rule 3: Organizational Meeting

1. At its Organizational Meeting, the Board shall elect a Chair and Vice Chair.
2. Following nominations (including self-nominations), which need not be seconded, each nominee may address the board for three minutes.
3. Secret ballots will be used to elect the Chair and Vice Chair by separate votes for each. Only persons nominated may be voted for.
4. A person receiving a majority vote of Members entitled to a seat shall be declared elected. If no majority is reached, balloting shall continue, including all nominees, until a majority is reached.

Rule 4: Chairperson Powers and Duties

1. The Chair, or in their absence, the Vice Chair shall call the meeting to order and preside over the meeting.
2. In the absence of the Chair and Vice Chair, the County Clerk will preside until the Board elects a Chair Pro-Tem.
3. If the office of the Chair is vacated, new elections for Chair and Vice Chair will be held. Following nominations, which need not be seconded, each nominee may address the Board for three minutes. Secret ballot will be used to elect the Chair and Vice Chair by separate votes for each. Only persons nominated shall be voted for. A person receiving a majority of votes cast on the primary ballot shall be declared elected. If no majority is reached, balloting shall continue, including all nominees, until a majority is reached.
4. The Chair shall preserve the order of the Board and decide the questions of order and procedure subject to an appeal to the Board. The Chair will ensure the Board and individual Board Members act consistent with the rules of order. The Chair shall preside at Board Meetings in an efficient and effective manner and shall set the general tone for each meeting through positive leadership. Board deliberations will be fair, open and thorough, with all Members wishing to speak given a chance to do so.
5. The Chair, working with the County Administrator, will be responsible for the preparation of the written agenda. The Board agenda, related resolutions, ordinances and other attachments and minutes from the preceding meeting will be distributed to the board members at least five calendar days before the scheduled board meeting.
6. The Chair can be a member of standing committees and will be an ex officio member of all other committees of the County Board.
7. The Chair shall have the power to vote at committee meetings when requested by that committee chair to fill a position caused by the absence of a Member of that committee.
8. The Chair shall appoint all Members of the standing committees of the Board with approval by the majority of the Board so voting, with the exception of elected committees. The full Board shall elect by a majority of those voting, members of the elected committees.
9. The Chair shall remove appointed committee members with approval by majority of those Board Members voting. The full Board can replace a member of elected committees by a majority of those Board Members voting. The Chair shall be entitled to vote on all questions coming before the Board. The Chair shall sign all ordinances and resolutions approved by the County Board and where required to do so by Board action counter sign orders, contracts, and the like. The Chair shall transact all necessary County Board business with others and represent Sawyer County at legislative hearings, conventions or other matters pertaining to the county. The Chair may delegate to department heads, County Administrator, other elected and appointed officers and other Board Members such roles and responsibilities.

Rule 5: Order of Business

1. Organizational Meeting
 - Call to order
 - Administration of oath of office
 - Roll call by the County Clerk
 - Pledge of allegiance
 - Certification of compliance with the open meeting law
 - Approval of agenda

- Approval of minutes of last meeting
 - Election of Chairperson and Vice Chairperson
 - Adoption of Rules of Order
 - Election of members of the committee which has jurisdiction over the Highway Department
 - Follow order of business as established for other meetings
2. Other meetings
- Call to order
 - Roll call by County Clerk
 - Pledge of allegiance
 - Certification of compliance with the open meetings law
 - Approval of agenda
 - Public comment See Rule 8
 - Approval of minutes of last meeting
 - Presentations when appropriate
 - Public hearing when needed
 - Committee reports, resolutions and ordinances
 - Election and appointments as needed
 - Correspondence, reports from conferences and meetings, other matters for discussion
 - Adjourn

Rule 6: Resolutions and Ordinances

1. All resolutions or ordinances must be in writing.
2. Resolutions or ordinances sponsored by committees, or by at least two Board Members, shall be delivered to the County Administrator 6 calendar days before the Board meeting.
3. Resolutions or ordinances sponsored by at least two Board Members and not previously considered by a committee of the Board shall, without motion to adopt or discussion, be referred by the Chair to the appropriate committee. This rule may be waived by a two-third vote of those members voting.
4. Any resolution or ordinance presented for consideration must bear the signature of the Members offering the resolution or ordinance, or if being presented by a committee, the signatures of those committee members approving the resolution or ordinance.

Rule 7: Voting and Procedure

1. Unless provided for elsewhere, Robert's Rules of Order shall govern the procedures of the Board.
2. When a Board Member wishes to speak, they will activate the red light on their speaker, wait to be recognized by the chair, and address the chair. When two or more Members activate the red light at the same time, the Chair shall designate the Member who is to speak first. In all cases, a Member who activates the red light first shall speak first after being recognized by the Chair. Members speaking to the Board shall confine their remarks to the subject at hand and shall not deal in personalities. When called to order, the Member speaking will not proceed further without express permission of the Chair.
3. Any unanimous vote shall be considered and recorded as an affirmative unanimous roll call vote when so directed by the Chair.

4. Any Board Member can request a roll call vote. Whenever there is a roll call vote, the County Clerk shall call the roll by name. The County Clerk shall take roll call votes in rotating fashion.
5. No vote shall be taken on any orally presented motion or amendment to a resolution or ordinance until the County Clerk has written it out in full and read it back to the Board.
6. When a motion is made and seconded, it shall be stated by the Chair or designee prior to debate (except for motions to adjourn, postpone, table or commit). Thereafter, it is in the possession of the Board for debate. If agreed to by all the sponsors, the motion may be withdrawn at any time before amendment or decision. If withdrawn, it shall not be entered into the minutes.
7. Each Board Member will be allotted two opportunities to speak on an action being discussed by the Board.
8. If a motion before the Board contains several points, any Member may have it divided so that each point may be voted upon separately.
9. Any Member wanting to terminate the debate may call for the previous question ("call the question"). The Chair will ask if there is an objection to closing debate. If a Member objects to calling the question, the Chair may call for a motion to end debate. If the motion is made and seconded, the Chair should immediately call for a vote on the motion to close debate. Such a motion requires a two-thirds vote of Members attending to pass.
10. Once debate on a motion has begun, no other motions are permitted except the following, all of which need a second:

	<u>Debatable</u>	Votes to <u>Pass</u>
To adjourn	No	Majority
To table	No	Majority
Call the question	No	2/3rds
Postpone to certain day	Yes	Majority
To refer to a committee	Yes	Majority
To amend	Yes	Majority
To postpone indefinitely	Yes	Majority
To consider	Yes	Majority
Majority shall mean the majority of those voting.		
Two-thirds shall mean two-thirds of members voting.		

See appendix A for a more complete list of resolutions requiring a supermajority vote of the Board.

11. A motion to adjourn or to table does not authorize a Member to move for adjournment or to table when another Member has the floor or when the Board is voting.
12. All motions amending or changing the current year budget as approved by the Board shall clearly state the reason for the amendment or change, the dollar amounts involved and the source of funding. Such motions require a two-thirds vote of the board membership to pass (10). Voting shall be by roll call.
13. It is in order for a Member who voted on the prevailing side, or a member excused from the previous board meeting, to move for reconsideration of the vote on any question in the same or next regular meeting of the Board.
14. If the Chair is participating in debate, the Chair shall upon the request of any Member, relinquish the gavel to the Vice Chair who shall not participate in the debate.
15. Other than election of Board officers, all votes will be public by voice (ayes and nays), show of hands, paper if the Board Members name is on the ballot, or by electronic voting if

implemented.

16. All Members are required to vote unless there is a conflict or excused by the Chair.

17. A Member with a conflict of interest shall not vote, and prior to the matter being debated, seek authority from the Chair to abstain.

Rule 8: Public Participation in Board Meetings

The public is encouraged to attend Board meetings and participate in its proceedings. Such participation must be balanced with the orderly and efficient proceeding to the Board meetings. Members of the public will be given the opportunity to address the Board during public comment for items not on the agenda or at the time of consideration for items on the agenda.

Those wishing to speak will sign up before the Board meeting indicating their name and topic they wish to address. They will be recognized by the Chair at the appropriate time. Once recognized, the person wishing to speak will approach the podium and state their name and subject upon which they will speak. The time allocated to any person addressing the board will be 3 minutes or less at the discretion of the Chair, with all public comment limited to a maximum of 30 minutes.

Rule 10: Suspension of the Rules

These rules may be amended by resolution at any regular session of the Board by a two-thirds vote of those Members voting.

Sawyer County Board of Supervisors Board Compensation

Section A: Per Diem

1. Compensation of County Board Members shall be determined by the County Board at or before its annual meeting in odd numbered years by a two-thirds vote of members entitled to a seat, fix the compensation of the board members to be next elected. Compensation will be paid to committee members, a substitute for an absent committee member, or if requested to attend the committee meeting by the committee chair or Board Chair.
 - a. All Board and County Board committee meetings.
 - b. Meetings of other entities or committees to which the board member has been appointed.
 - c. Formally schedule meetings such as the interviewing candidates to fill an open position or to provide guidance.
2. Travel time is not counted as meeting time except to attend the Wisconsin Counties Convention, other conventions and training sessions that involves a significant commute. Per diem / compensation will be calculated as in Section A 1. Above.

Section B: Mileage and Other Travel Expenses

A Board Member may charge mileage for travel to drive from their homes to any meeting, convention or training session for which they are eligible to receive a per diem. The mileage rate will be the same as that paid to county employees who drive their own car when no county car is available. When traveling to events involving a significant commute, board members are encouraged to car pool.

All other travel related expenses will be reimbursed according to what is set forth in the Personnel – Administrative Manual.

Section C: Board Chairperson Compensation

Board at or before its annual meeting in odd numbered years by a two-thirds vote of members entitled to a seat, fix the compensation of the County Board Chairperson.

Section D: Change in Board Compensation

Wisconsin State Statutes Section 59.10 (3)(f) provides that the County Board at its Annual Meeting may, with a two-thirds vote of all members, fix the per diem of the Board Members to be next elected.

Sawyer County Board of Supervisors Committees, Boards and Commissions

Part I Standing and Ad hoc Committees of the Board

Section A: General Rules for All Committees

1. At its first meeting, a committee shall elect a chair and a vice chair. Following nominations, which need not be seconded each nominee may address the committee for three minutes. Secret ballots will be used to elect the committee chair and vice chair by separate votes on each. Only persons nominated may be voted for. A person receiving a majority vote of Members entitled to a seat shall be declared elected. If no majority is reached, balloting shall continue, including all nominees, until a majority is reached.
2. When approved by the County Clerk, the committee may appoint a recording secretary. The recording secretary shall submit all agendas, minutes, and other records of all committee meetings to the County Clerk.
3. The committee chair, or in their absence, the vice chair shall call the meeting to order and preside over the meeting following the order of business as prescribed in Board Rule 5.
4. If the office of committee chair is vacated a new committee chair and vice chair will be elected as in item 1 above.
5. If the committee does not have a quorum, the meeting can take place for discussion only or the chair of the committee can reschedule the meeting. If a makeup meeting is to be scheduled, the time required to properly notice the meeting should be considered when setting the new meeting date.
6. Board Rule 7 shall apply to committee meetings.
7. No board member may serve on more than three standing committees nor less than two standing committees unless the board member requests to be on fewer than two.
8. Ex officio members are excluded from the quorum count, unless a quorum would not otherwise be present, in which case ex officio members or other County Board Members shall be deemed regular members.
9. Each committee shall approve goals and objectives for all programs and activities of the departments the committee oversees.
10. After approval by the Board as to purpose and members, each committee may create ad hoc subcommittees.
11. The committee chair working with the County Administrator will be responsible for the preparation of the written agenda. The agenda, related resolutions, ordinances and other attachments and minutes from the preceding meeting will be distributed to the committee members at least five calendar days before the scheduled meeting. In rare instances it may be necessary to add items to the committee agenda subsequent to the agenda being distributed. In such case, the documentation concerning that agenda item will be distributed to committee members as soon as possible.
12. The County Clerk is responsible for publishing committee agendas and proceedings in compliance with the open meeting policy.
13. Board Members not on the committee will be considered as part of the public and have the right to speak when called on by the committee chair. If the Board Member is attending at the

invitation of the committee chair, they may participate in the discussion on the relative agenda item.

14. Each committee shall act on all resolutions and ordinances which come before it that affect any department or agency that reports to it.
15. Resolution and ordinances presented for consideration at any meeting must be in writing. If approved by the committee, to be forwarded to the County Board they should bear the signatures of committee members voting for the resolution or ordinance.
16. Approved resolutions and ordinances must be forwarded to the County Administrator within two days of the committee meeting.
17. The chair of each committee shall present that committee's resolutions and ordinances to the Board.
18. Members of the public will be given the opportunity to address the Board during public comment for items not on the agenda, or at the time of consideration for items on the agenda. The committee chair will call on the member of the public at the appropriate time. The committee chair has the discretion to limit the amount of time each person may speak and the total amount of time devoted to public comment.
19. A member with a conflict shall not vote and prior to the matter being debated, seek authority from the chair (vice chair in the case of the committee chair) to abstain. It is the State Attorney General's opinion that such member shall leave the meeting room during debate and voting.
20. A committee chair may authorize a meeting to be held through a virtual meeting platform, telephone conference call, or other electronic means if deemed necessary in the chair's discretion.
21. If a quorum of a committee is physically or virtually present at the meeting, the committee chair may allow a committee member to attend a meeting through a virtual meeting platform, telephone conference call, or other electronic means that is deemed acceptable in the committee chair's discretion.
22. Committee members cannot attend more than three committee meetings per year by this means. Note: This Part I, Section A No. 22 shall be suspended until July 1, 2021.

Section B: Standing Committees

1. Except for the Health and Human Services committee, Members shall be appointed for two-year terms by the Chair after spring election, and prior to the May meeting. The Chair's appointment shall be confirmed by a majority of the Board voting. The standing committees are:
 - a. Administration consisting of the County Board Chair and Vice Chair sitting as Chair and Vice Chair of the committee plus three appointed members.
 - b. Public Safety/Court System consisting of five appointed members.
 - c. Zoning, Forestry, Land Records, Survey and Register of Deeds consisting of six members five of which will be members of the Sawyer County Board and one representative of the Sawyer County farm service agency (Wisconsin statute s. 59.56 (3) (b).).
 - d. Health and Human Services Board consisting of nine members, five of which will be County Board Members, shall be appointed by the County Administrator with confirmation by the majority of the Board voting. See the Health and Human Services Board section for more details about board selection and board terms.
 - e. Public Works consisting of five appointed members.
 - f. Economic Development/UW-Extension Committee consisting of five appointed members.

- g. Zoning Committee consisting of five appointed members.
- h. Finance Committee consisting of five appointed members.

Roles and responsibilities of the standing committees are as follows:

This section will be drafted by the standing committees and approved by the majority of board members voting.

- **Part I Section C. 2. Public Safety/Court Systems**
- **Part I Section C. 3. Land, Water, Forestry, Surveyor, Land Records and Register of Deeds**

Part I Section C. 2. Public Safety/Court Systems

Mission / Purpose: Provide leadership for Sawyer County by coordinating with the Public Safety and Justice Departments for the County, which provide for the safety of the citizens and guests of Sawyer County; monitoring outcomes, reviewing, and recommending to the County Board policies related to the public safety initiatives of the County.

Membership: The Public Safety Committee shall be comprised of five (5) County Board Supervisors appointed by the Chair of the Sawyer County Board of Supervisors at the April meeting of the full county board in even numbered years.

Term: Members shall serve for a two-year term concurrent with their terms of office as County Board Supervisors.

Officers: The committee will elect amongst itself a chair to conduct meetings consistent with published agendas and a vice-chair to assist in the absence of a chair.

Reporting Relationship: The Public Safety Committee shall be accountable to the County Board.

Committees of Jurisdiction: The Public Safety Committee shall serve as the County liaison and have the primary responsibility of conferring with and providing guidance, including review of policies and developing budgets, to the following County departments:

- Sheriff
- Ambulance
- Coroner
- Emergency Services
- Clerk of Courts
- District Attorney
- Circuit Court
- Child Support

The duties and responsibilities of the Public Safety Committee include but are not limited to:

1. Identify the need for and recommend to the County Board policies related to the public safety of the County.
2. Review programs and associated budget requirements prior to their being considered for inclusion in the County budget.
3. Facilitate broad based discussion of issues and policies encouraging public involvement and communications with the public.
4. Serve as the initial contact point for individuals and/or organizations who wish to introduce or review County Board policy regarding County public safety.
5. Initiate a study to determine future criminal justice issues.
6. Fulfill all statutory requirements assigned by the County Board.

Part I Section C. 3. Land, Water, Forestry, Surveyor, Land Records and Register of Deeds

Mission: Develop, guide and implement policies that protect and ensure the sustainability of our bio-diverse community.

Composition: Six members appointed by the Chair with approval of the board.

Five members will be members of the Sawyer County Board. Two of which are to be members of the Committee of jurisdiction for agriculture and extension education (Sawyer County Economic Development Committee) and a representative of the Sawyer County farm service agency (Wisconsin statute s. 92.06 (1)(b) 1. & 2)

Committee of Jurisdiction for: Land, Water, Forestry, Land Records, Land Information, Surveyor and Register of Deeds

Primary Responsibilities:

- Approve the sale of property acquired by tax foreclosure.
- Approve semiannual forestry stumpage bids.
- Approve bids for trail work on trails overseen by the Forestry Department.
- Approve events to be held on County forest land
- Approve Forestry, Land and Water Conservation and Land Information plans that are required by governmental bodies.
- Hear reports from Sawyer County Trails Alliance, LCO Conservation, Wisconsin DNR Forestry and National Resources Conservation Services.
- Receive monthly reports from departments subject to the committee's jurisdiction.
- Approve annual goals and objectives and long-range plans for departments subject to the committee's jurisdiction.
- Approve grant requests for departments subject to the committee's jurisdiction where such approval is required by the grantor. Such approvals are forwarded to the County Board for approval
- Approve contracts and agreements, and where the counter party requires board approval, forward to the County Board for approval.
- Review budgets for the departments subject to the committee's jurisdiction. Provide recommendations to the County Administrator about his/her proposed changes to the budgets submitted by the departments
- Approve changes or amendments to the previously adopted annual budget (excluding line item transfers) for departments subject to the committee's jurisdiction. This action will be passed on to the Finance Committee and then the County Board.
- Deal with all other issues of policy raised by the departments subject to the committee's jurisdiction while avoiding interfering the day to operations of county government.

Part I Section D: Economic Development and UW Extension and Agriculture Committee

The following provisions shall apply to the Sawyer County Board of Supervisor's ("County Board") standing committee entitled the Economic Development and UW Extension and Agriculture Committee (the "Committee"):

Mission/Purpose: Provide the leadership for implementation of the Education and Economic Development for Sawyer County. To provide leadership in monitoring outcomes, reviewing, and recommending to the County Board all policies related to educational and economic development initiatives of Sawyer County.

Statutory Authority and Responsibilities: Wis. Stat. § 59.56(3).; Wis. Stat. § 92.06(1)(b)1.

Membership: Shall be comprised of five (5) elected County Board Supervisors appointed by the Chair of the County Board at the April meeting of the County Board in even numbered years and approved as required by the County Board Policy and Procedure Manual (as may be amended). Pursuant to Wis. Stat. § 92.06(1)(b)1, at least two (2) members of the Committee shall also be members of the County Land, Water & Forest Resources Committee.

Term: Committee members shall serve for a two (2) year term concurrent with their terms of office as County Board Supervisors.

Reporting Relationship: The Committee shall have responsibility for outcome, monitoring and oversight of the performance of economic development initiatives supported by Sawyer County. The Committee shall have the primary responsibility of conferring with and acting as liaison for the following organizations for purposes of economic development:

- Northwest Regional Planning Commission
- Hayward Lakes Visitor and Convention Bureau
- Sawyer County Snowmobile/ATV Alliance
- Silent Sports
- American Birkebeiner
- UW Extension
- Sawyer County Fair Association
- SC/LCO Economic Development Corporation

Duties and Responsibilities of the Committee include but are not limited to:

1. Foster the implementation of Sawyer County's initiatives related to economic development.
2. Identify the need for, and recommend to the County Board, policies related to education and economic development initiatives appropriately supported by Sawyer County.
3. Review new programs and associated budget requirements prior to their being considered for inclusion in Sawyer County's annual budget.
4. Facilitate broad-based discussion of issues and policies relating to education and economic development by encouraging public involvement.
5. Serve as the initial contact point for individuals and/or organizations who wish to influence County Board policy regarding Sawyer County's economic development.

6. Review and recommend operational procedures and practices to appropriate administrative committee(s) and department(s) of the County.
7. Review and recommend to the County Board programmatic and facility plans consistent with the community's expectations for the University of Wisconsin-Extension.
8. Serve as Sawyer County's Extension and Education Committee, as defined in Wis. Stat. § 59.56(3)(b) by performing the following responsibilities:
 - Establish UW/ Sawyer County based extension policy; and
 - Provide budget oversight of UW/Sawyer County based extension department; and
 - Provide input and monitor the performance of the UW Extension programming; and
 - Create policies and strategies that accomplish educational needs in an efficient and cost-effective manner; and
 - Provide a leadership role with the County Board and other community partners to preserve and enhance access to the resources of the public university; and
 - Assess future community educational needs; and
 - Facilitate a partnership between Sawyer County and the University of Wisconsin.
9. Additional duties as assigned by the County Board.

Section C Ad Hoc Committees

The Chair will recommend creation of an ad hoc committee and shall appoint members of that committee with the approval of the majority of those board members voting. Prior to voting, the purpose of the ad hoc committee will be clearly stated. Once that purpose has been accomplished, the committee will automatically disband.

Part II Boards, Commission and other Committees

Section A: Other Boards and Commissions

County board members and/or other members where indicated will be appointed by the County Administrator, confirmed by a majority of the board members voting to the following committees and boards:

- Aging and Disability Resource Center of the North - one appointed board member
- American Birkebeiner Foundation - one appointed board member
- Criminal Justice Coordinating Committee – two appointed board members
- Ethics Board – three appointed board members and two Sawyer County citizens
- Hayward Lakes Visitor/Convention Bureau - two appointed members of which one must be a board member
- Indianhead Community Action Program - one appointed board member
- Labor Negotiations – two appointed board members
- Land Information Council – one appointed board member
- LCO Library - one appointed board member
- Local Emergency Planning Committee - one appointed board member
- Northern Regional Trail Advisory Committee-NoRTAC – one appointed board member
- Northern Waters Library Service - one appointed board member
- Northwest Regional Community Development Block Grant Housing Program – one appointed board member
- Northwest Regional Planning Commission two appointed board members of which second member is an alternate.
- NW Wisconsin CEP - one appointed board member
- PACE Commission – one appointed board member
- Sawyer County Fair - one appointed board member
- Sawyer County Housing Authority Commission - two board members. By State Statute all members appointed to the commission must be approved by the County Board
- Sawyer County/LCO Economic Development Corporation – two appointed board members
- Sawyer County/LCO Joint Committee – two appointed board members
- Sawyer County /LCO Transit - three appointed members
- Senior Resource Center (Aging unit) – two appointed board members
- Traffic Safety Committee – one appointed board member
- Visions Northwest – one appointed member
- Weiss Community Library Board - one appointed board member
- Winter Library Board - one appointed board member
- Zoning Board of Appeals - no board members

Sawyer County Board Open/Closed Meetings

Section A: Policy

It is the policy of the Sawyer County that the public is entitled to the fullest and most complete information regarding the affairs of county government as is compatible with conduct of county affairs and the transaction of county business. All meetings of the Board, committees, boards and commissions shall be held in public buildings or any place accessible to members of the public and shall be "open sessions" as provided by s. 19.83, Wis. Stats. To that end:

1. The Board of Supervisors, committees, boards and commissions shall comply with the Open Meeting Law. Every meeting shall be preceded by a public notice. Discussion shall be held and action shall be initiated, deliberated upon and acted upon only in open session.
2. Every public notice of a meeting of board meeting, standing or ad hoc committees shall set forth the time, date, place and subject matter of the meeting, including the intended consideration at any contemplated closed session. The notice must be in enough detail so that it is reasonably clear to members of the public and the news media the business to be transacted. Public notice of every meeting shall be given at least 24 hours prior to commencement of such meeting, unless for good cause such notice is impossible or impractical, in which case shorted notice can be given, but no less than 2 hours prior to the meeting. The "good cause" provision should be used sparingly and only when truly necessary.

Section B: Closed Session

The County Board or any committees, upon motion duly made and carried by roll call vote may convene in closed session. This motion may not be adopted unless the Chair announces to those present at the meeting the nature of the business to be considered in closed session and the specific statutory exemption by which such closed session is claimed. Such announcement will be recorded in the minutes. No business may be taken up at any closed session except that which relates to matters germane to the closed session. If the agenda does not give notice of a closed session a member who believes that the agenda item under discussion in an open session should be discussed in closed session may make a motion to convene in closed session. In such case, the closed session will be placed at the end of the agenda. This provision should be used sparingly.

The Chair will state which, if any, non-board members may attend a closed session.

A closed session may be held for any of the following purposes:

1. Deliberating after any judicial or quasi-judicial trial or hearing.
2. Considering dismissal, demotion, licensing, or discipline of any county employee, unless an open session is requested by the person charged or otherwise under discussion.
3. Considering employment, promotion, and compensation or performance evaluation of any county employee.
4. Considering strategy for crime detection or prevention.

5. Deliberating or negotiating the purchase of public properties, the investing of public funds, or conducting other specific public business, whenever competitive or bargaining reasons require a closed session.
6. Considering financial, medical, social or personal histories or disciplinary action of specific persons, which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of such person.
7. Conferring with county legal counsel who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation.
8. Consideration of requests for confidential written advice from the government accountability board or from any county or municipal ethics board.

If the Board or committee intends to meet in open session after a closed session, the public notice must indicate this intent. If not, the Board or committee cannot convene within 12 hours of recess of the closed session.

No member of the county board shall be excluded from any closed session of the County Board or any standing committee of the Board. No person attending a closed session shall divulge any information pertaining to such closed session without specific authorization to do so. Penalties for violation of the secrecy of a legal closed session include censure and payment of damages the Board suffers by reason of the unlawful breach of secrecy.

The minutes, records, proceedings and papers of a closed session shall be privileged and shall not be made available to the public unless authorized by the County Board, committee, board, or commission involved until such time as the purpose necessitating such closed session no longer exists.

APPENDIX A

Supermajority Votes of the County Board

Copied on 3/16/21 from: <https://localgovernment.extension.wisc.edu/counties-in-wisconsin/>

In most cases, adoption of a motion on the floor of the county board requires a simple majority vote, i.e. more than half. From time to time, though, state statutes and parliamentary authorities subject the county board to a higher threshold. Rather than a simple majority, these motions require at least a two-thirds (2/3) vote or even a three-fourths (3/4) vote for approval.

The following tables list the actions requiring a supermajority vote. There is no attempt to describe any procedures that need to be followed prior to these actions being taken. It often takes more than simply adopting a motion at a county board meeting for board action to be legal. For example, while it is true that the vote requirement for removing certain county officers is two-thirds, the board would first need to comply with section 17.16 of the Wisconsin statutes which contains the procedures that must be followed.

Motion before the County Board	Statute	Vote Required
Removal from office of the county clerk, county treasurer, county surveyor, or county board supervisor	17.09(1)	Not less than 2/3 of all supervisors entitled to a seat on the county board.
Removal from office of county officers appointed by the county board.	17.10(2)	Not less than 2/3 of the supervisors entitled to seats on the county board.
Make application to withdraw land from county forest program Also, if application is denied county board may appeal to a review committee. And, if application is approved, county board must approve resolution to withdraw the land.	28.11(11)(a)1 28.11(11)(a)4 28.11(11)(a)6	Not less than 2/3 of county board membership. Not less than 2/3 of county board membership. Not less than 2/3 of county board membership.
Financing harbor improvements..... assume the obligation of paying the principal and interest of such evidences of indebtedness as are then outstanding.	30.34(3)(b)	Not less than 2/3 of county board membership.
Withdrawal from a public library system.	43.18(1)(am)	Not less than 2/3 of county board membership.
Removal for misconduct or neglect of a trustee of a county institution.	46.18(3)	Not less than 2/3 of county board membership.
Removal of a county social services board member appointed by the county board.	46.22(1m)(c)2	Not less than 2/3 of county board membership.
Removal of a member of a county human services board.	46.23(4)(c)1	Not less than 2/3 of county board membership.

Motion before the County Board	Statute	Vote Required
Removal of a member of a county community programs board.	51.42(4)(a)1.a	Not less than 2/3 of county board membership.
Removal of a member of a county developmental disabilities services board.	51.437(7)(a)1	Not less than 2/3 of appointing authority.
Fix the compensation of the board members to be next elected.	59.10(3)(f)	Not less than 2/3 of county board membership.
Override a veto of the county executive.	59.17(6)	Not less than 2/3 of the members-elect of the board.
Discontinue furnishing abstracts.	59.44(5)	Not less than 2/3 of county board membership.
Purchase membership in an association of county boards.	59.52(22)	Not less than 2/3 vote.
Authorization to take certain actions related to public transit in counties.	59.58(3)(i)	Not less than 2/3 vote of county board membership
Amending a zoning ordinance in an airport affected area.	59.69(5)(e)5m	Not less than 2/3 of the members of the board present and voting.
Removal of a member of a solid waste management board.	59.70(2)	Not less than 2/3 vote of the appointing authority.
Changes or amendments to a previously adopted budget.	65.90(5)(a)	Not less than 2/3 of county board membership.
Withdrawal from a regional planning commission.	66.0309(16)	Not less than 2/3 vote of the members elect.
Authorization to expend in excess of funds available or appropriated.	66.0607(7)	Not less than 2/3 of county board membership.
Relief from conditions of gifts and dedications.	66.1025(1)	Not less than 2/3 vote of the members elect.
Declaration as premier resort area.	66.1113(2)(a)	Not less than 2/3 of the members of the county board who are present when the vote is taken.
Motions requiring a 3/4s vote		
Change in restricted use of land.	27.065(15)	Not less than 3/4 of the county board.
Financing harbor improvements through bonds or notes.	30.35(1)	Not less than 3/4 of the county board.
Amendment or repeal of previously adopted ordinance related to fixing the number of deputy sheriffs and their salaries	59.26(8)(d)	Not less than 3/4 of the members elect.
Bypassing bidding requirements for certain public works projects done directly by the county.	59.52(29)(a)	Not less than 3/4 of the county board.
When protest filed against a proposed zoning ordinance amendment.	59.69(5)(e)5g	Not less than 3/4 of the members present and voting.
One of the ways that a county can meet the conditions to issue debt	67.045(1)(f)	Not less than 3/4 of the members elect

This table includes some of the common motions under Robert's Rules of order, Newly Revised that require more than a majority for approval.

Motion before the County Board	Robert's Rules of Order	Vote Required
Limit or extend the limits of debate on a pending question	Chapter 15	2/3 of members voting
Limit or extend the limits of debate for the duration of the meeting.	Chapter 15	2/3 of members voting
Objection to consideration of a question	Chapter 26	2/3 of members voting
Previous question (end debate and vote on the pending question)	Chapter 16	2/3 of members voting
Suspend the rules	Chapter 25	2/3 of members voting

Compiled by Dan Hill, Local Government Specialist.
Reviewed by Philip Freeburg, Local Government Law Educator.

Appendix B

Sawyer County Board of Supervisors

Code of Ethics

It is in the best interests of the members of the Sawyer County Board of Supervisors to be aware of and properly disclose all conflicts of interests and appearance of conflict of interests. Such action will improve the standards of public service. Such action will straighten the faith and confidence of the citizens of Sawyer County in their county board members.

Wisconsin State Statute Section 946.13 sets forth conduct which is deemed unlawful. This code is not a criminal code. This code covers acts which may not be illegal but which might cast doubt on the integrity of the Board and on County Board Members.

Generally, a conflict of interest may occur if:

1. The Board Member or any member of their family may receive a financial or other significant benefit as a result of their position on the county board. Significant benefit is anything of value that could reasonably be expected to influence a board members official action or judgement, or could reasonably be considered as a reward for any official action or inaction.
2. The Board Member has the ability to influence a decision for personal gain or advantage.
3. The Board Member has a financial or other significant interest, which impairs or might appear to impair the individual's independence in the discharge of their responsibilities as a Board Member.

Although each circumstance will be different, some examples of conflict of interests include:

1. Self-benefit. Using your position or relationship as a board member to promote your own interests or those of your family.
2. Influence peddling. Soliciting or receiving benefits for yourself or your family from outside entities in exchange for using your influence to advance the interests of that entity within the County operations.
3. Other business relationships and dealings. Voting for purchases or contracts with entities in which you or your family have a significant financial or other interest or relationship.
4. Outside commitments. Participating in social or political activities is not restricted as long as you participate as an individual or as requested by the Chair or board.
5. Use of Sawyer County property for personal advantage. Using or taking Sawyer County resources, including facilities, equipment, personnel and supplies for private use or other unauthorized use
6. Recording or reporting false information. Misrepresenting, withholding or falsifying relevant information required to be reported to external parties or used internally for decision-making purposes in order to derive personal benefit
7. Using inside information. Using information obtained as a board member to promote your own interests or those of your family
8. Closed session proceedings. Disclosing information discussed in closed sessions to others not part of the closed session.

Real or potential conflicts of interest should be disclosed to the Ethics Board. When deciding what kind of relationships should be disclosed consider the situation from the perspective of an outsider and

whether the relationship is of such a nature that it could raise an allegation of an apparent or actual conflict of interest. When making the decision about disclosure, err on the side of transparency. This will alleviate or avoid future misunderstandings.

Any county board member having a conflict of interest in any matter before the board should disclose that conflict and refrain from voting. Any Board Member who has reason to believe that the vote of another Board Member would be a conflict of interest shall request that board member to abstain from voting.

The recourse of the Board Member requested to abstain from voting is to request a ruling from the Chair. Any Board Member dissatisfied with the Chair's decision has the right to apply for a hearing before the Ethics Board.

Each Board Member will be required to annually sign a Conflict of Interest Statement. Each Board Member is required to disclose to the Ethics Board real or perceived conflicts that arise after the Conflict of Interest Statement is submitted.

The Ethics Board will be appointed by the County Administrator with confirmation by a majority of Board Members voting.

Since the Ethics Board deliberations deal with personnel matters, the Ethic Committee shall deliberate in closed session. All deliberations of the Ethics Board will be documented. This documentation and the Conflict of Interest Statements are open for inspection by any Board Member on the condition items contained therein will not be disclosed to any person not on the Board.

Each year, all Board Members will be required to sign a Conflict of Interest Statement similar to Appendix B.

Appendix B (continued)

**Sawyer County
Board of Supervisors Conflict of Interest Statement**

I have read the Code of Ethics in the Sawyer County Board of Supervisors Policy and Procedure Manual and make the following statement:

☐ I do not have any actual or what may be perceived as conflicts of interest.

OR

☐ I have the following potential, actual or perceived, conflict(s) of interests where there is the potential for items coming before the Board for a vote.

Name (Please Print) _____

Signature _____ Date _____

County Administrator's Work Report

July 14, 2021



State News

AB 369 Redistricting Bill is Vetoed by Governor

The Governor vetoed the bill that would have allowed local governments to deal with the challenges created by not receiving data timely from the Census Bureau. Census data was delayed due to the pandemic and has not been received to date. This means that counties are noncompliant with state law as of July 1, 2021 since they were not able to adopt a tentative county supervisory plan by that date.

AB 374 – Opioid Settlement bill signed into law

The bill provided the foundation for Wisconsin to receive settlement funds from the opioid defendants according to the following framework:

1. All settlement funds are split 70% to litigating local governments (71 counties and a handful of municipalities) and 30% to the state;
2. The state's settlement funds are appropriated to DHS;
3. All funds, state and local, must be spent on the opioid abatement effort;
4. A local government is barred from suing the opioid defendants unless the claim was filed before June 1, 2021; and
5. Various other matters providing for administration of the settlement and settlement funds

AB 68 – 2021-2023 State Budget signed by Gov

Increase in Acreage Payments to Towns – The acreage payments to towns is increased from \$0.30 to \$0.63. The acreage payment increase doesn't affect the County directly. Townships that contain county forest lands receive two sources of revenue from the county. One is the town timber sale revenue which the county pays 10% of timber sale revenue based on acreage of county forest lands. The second one is this acreage payment. This section of the statute requires the DNR to make the payment directly to the towns for county forest acreage. It's a positive move that takes a little pressure off of the county with some townships that have large acreages of county forest which is all tax exempt.

The acreage payment would increase to the townships in Sawyer County by about \$40,000 broken down by township as follows:

- Couderay increase of \$1,508
- Draper increase of \$2,160
- Edgewater increase of \$3,020
- Hayward increase of \$736
- Lenroot increase of \$7,801
- Meadowbrook increase of \$2,810
- Meteor increase of \$727
- Radisson increase of \$501
- Round Lake increase of \$915
- Sand Lake increase of \$757
- Spider Lake increase of \$2,598
- Winter increase of \$14,478

ARPA

- Additional US Treasury Guidance Review
- First tranche of funds received 5/19/21
- Lost revenue analysis
- Qualified expenditure analysis
- Discussions at Committee level

Court Renovation

- Utilities
- Solar
- California Avenue Extension
- Contract Completed for Architect & Construction Manager
- Bi-weekly meetings scheduled

Airport

- Terminal Remodeling underway
- Runway Paving Budgeting
- Recent Incident

TimeClockPlus

- Departments continue to go Live

Budget

- 2022 Budget meetings with Depts
- Coordinate with ARPA/TAD/Opioid/Infrastructure Funding

Other Items

- Oasis discussions
- Carbon Credits
- JusticePoint caseload



Non-Exclusive List of Eligible Uses

ARPA – Local Fiscal Recovery Funds

Responding to the Public Health Emergency	Addressing Negative Economic Impacts	Serving the Hardest Hit	Improving Access to Infrastructure
COVID-19 mitigation • Vaccinations • Personal protective equipment (PPE) • Testing • Alternative care facilities	Workers and families • Unemployment and training • Food, housing, financial security assistance • Survivor’s benefit	Health disparities • Community health works • Public benefits navigators • Community violence intervention	Water and sewer • Drinking/wastewater infrastructure • Cybersecurity • Remediation of lead pipes • Stormwater/green Infrastructure
Behavioral health care • Mental health treatment • Substance abuse treatment • Crisis intervention	Small businesses • Loans • Grants • Counseling programs	Housing and neighborhoods • Homelessness • Affordable housing • Housing vouchers • Residential counseling	Broadband • Currently unserved or underserved • Modern technologies
Public health resources • Payroll for public health and similar employees	Impacted industries • Tourism • Travel • Hospitality • Non-profits	Educational disparities • Early learning services • School district resources • Educational services	Note: These are examples pending final guidance from the U.S. Dept of Treasury (Treasury). Review Treasury documents for details: • FAQs • Interim final rule
Essential workers • Premium pay • Retroactive premium pay	Public sector • Rehire public sector employees to pre-pandemic levels • Replace lost revenue	Healthy environments • Childcare • Enhanced child welfare services	