ConsensusDocs 500

STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONSTRUCTION MANAGER (Where the CM is At-Risk)

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ARTICLE 1 AGREEMENT

Job Number: OLS-Ewert23-01

This Agreement is made this 29th day of July in the year 2024, by and between the

OWNER, City of Joplin, Missouri

and the

CONSTRUCTION MANAGER, Branco Enterprises, Inc.
12033 E Highway 86
Neosho, MO 64850

for construction and services in connection with the following

PROJECT City of Joplin, MO Ewert Splash park

Design Professional is Olsson Studio
1814 Main Street
Kansas City, MO 64108

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ARTICLE 2 GENERAL PROVISIONS

2.1 PARTIES' RELATIONSHIP Each Party agrees to act on the basis of mutual trust, good faith, and fair dealing, and perform in an economical and timely manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

2.1.1 Construction Manager represents that it is an independent contractor and that it is familiar with the type of Work it is undertaking.

2.1.2 Neither Construction Manager nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in this Agreement unless authorized in writing by Owner's Representative.

2.2 ETHICS Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest, and (b) promptly disclose to the other Party any conflicts that may arise. Each Party warrants that it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers, employees, Subcontractors, Subsubcontractors, Suppliers, or Others to secure preferential treatment.

2.3 DESIGN PROFESSIONAL Owner, through its Design Professional, shall provide all architectural and engineering design services necessary for the completion of the Work excluding, however, (a) design services delegated to Construction Manager in accordance with §3.17, and (b) services within the construction means, methods, techniques, sequences, and procedures employed by Construction Manager, its Subcontractors, and Subsubcontractors in connection with their construction operations.

2.4 Owner shall obtain from Design Professional either a license for Construction Manager and Subcontractors to use the design documents prepared by Design Professional or ownership of the copyrights for such design documents, and shall indemnify and hold harmless Construction Manager against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents for the Project.

2.5 DEFINITIONS

2.5.1 "Agreement" means this ConsensusDocs 500 Standard Agreement and General Conditions Between Owner and Construction Manager, as modified, and exhibits and attachments made part of this agreement upon its execution.

2.5.1.1 The following attached exhibits are a part of this Agreement:

Exhibit A: See Article 15
Exhibit B: NOT USED
Exhibit C: Construction Manager at Risk (CMAR) Service Scope of Work
Exhibit D: Preliminary Design Schedule
Exhibit E: CMAR Proposal Form
Exhibit F: Proposal Matrix
Exhibit G: Branco Insurance Certificate

2.5.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

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2.5.3 A "Change Order" is a written order signed by the Parties after execution of this Agreement, indicating changes in the scope of the Work, the GMP and Date of Substantial Completion or Date of Final Completion, including substitutions proposed by Construction Manager and accepted by Owner.

2.5.4 The "Contract Documents" consist of (a) this Agreement; (b) documents listed in §15.1 as existing contract documents; (c) drawings, specifications, addenda issued and acknowledged before execution of this Agreement; (d) information furnished by Owner pursuant to §3.15.4, and (e) Change Orders, Interim Directives, and amendments issued in accordance with this Agreement.

2.5.5 "Contract Time" is the period between the Date of Commencement and the total time authorized to achieve Final Completion.

2.5.6 "Cost of the Work" means the costs and discounts specified in ARTICLE 8.

2.5.7 The "Construction Manager" is the person or entity identified in ARTICLE 1 and includes Construction Manager's Representative.

2.5.8 "Date of Commencement" is as set forth in §6.1.

2.5.9 "Day" means a calendar day.

2.5.10 "Defective Work" is any portion of the Work that that does not conform with the requirements of the Contract Documents.

2.5.11 "Design Professional" means the licensed architect or engineer, and its consultants, retained by Owner to perform design services for the Project.

2.5.12 "Final Completion" occurs on the date when Construction Manager's obligations under this Agreement are complete and accepted by Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Parties.

2.5.13 "Hazardous Material" is any substance or material identified now or in the future as hazardous under the Law, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or cleanup.

2.5.14 "Interim Directive" is a written order containing change to the Work directed by Owner pursuant to §9.2 and that is signed by Owner after execution of this Agreement and before Substantial Completion.

2.5.15 "Law" means federal, state, or local laws, ordinances, codes, rules, and regulations applicable to the Work with which Construction Manager must comply that are enacted as of the Agreement date.

2.5.16 "Others" means Owner's other: (a) contractors/constructors, (b) suppliers, (c) subcontractors, subsubcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or any by any of them or for whose acts any of them may be liable.

2.5.17 "Overhead" means (a) payroll costs, burden, and other compensation of Construction Manager's employees in Construction Manager's principal and branch offices; (b) general and administrative expenses of Construction Manager's principal and branch offices including charges against Construction Manager for delinquent payments, and costs related to the correction of



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defective work; and (c) Construction Manager's capital expenses, including interest on capital used for the Work.

2.5.18 "Owner" is the person or entity identified in ARTICLE 1.

2.5.19 The "Owner's Program" is an initial description of Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, and any requirements for phased occupancy.

2.5.20 The "Parties" are collectively Owner and Construction Manager.

2.5.21 The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which Construction Manager is to perform Work under this Agreement. It may also include construction by Owner or Others.

2.5.22 The "Schedule of the Work" is the document prepared by Construction Manager that specifies the dates on which Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Owner.

2.5.23 "Subcontractor" is a person or entity retained by Construction Manager as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design Professional or Others.

2.5.24 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that Owner may occupy or utilize the Work, or a designated portion, for the use for which it is intended, without unapproved disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond Construction Manager's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Parties.

2.5.25 A "Subsubcontractor" is a person or entity who has an agreement with a Subcontractor or another subsubcontractor or Supplier to perform a portion of the Subcontractor's Work or supply material or equipment.

2.5.26 A "Supplier" is a person or entity retained by Construction Manager to provide material or equipment for the Work.

2.5.27 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.5.28 "Work" means the construction and administrative and management services necessary or incidental to fulfill Construction Manager's obligations for the Project in accordance with and reasonably inferable from the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

2.5.29 "Worksite" means the area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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3.1 GENERAL RESPONSIBILITIES

3.1.1 Construction Manager shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with the Contract Documents and reasonably inferable from the Contract Documents.

3.1.2 Construction Manager represents that it is an independent contractor and that it is familiar with the type of work required by this Agreement.

3.1.3 Unless the Contract Documents instruct otherwise, Construction Manager shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized. When following construction means, methods, techniques, sequences, or procedures instructed by the Contract Documents, Construction Manager is not liable to Owner for damages resulting from compliance with such instructions, unless (a) Construction Manager recognized and (b) failed to timely report to Owner any error, inconsistency, omission, or unsafe practice that it discovered in such requirements.

3.1.4 Construction Manager shall perform Work only within locations allowed by the Contract Documents, Law, and applicable permits.

3.2 CONSTRUCTION PERSONNEL AND SUPERVISION

3.2.1 Construction Manager shall provide competent supervision for the performance of the Work. Before commencing the Work, Construction Manager shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Owner may review the individual's qualifications. If, for reasonable cause, Owner refuses to approve the individual, or withdraws its approval after once giving it, Construction Manager shall name a different superintendent for Owner's review.

3.2.2 Construction Manager shall be responsible to Owner for acts or omissions of Parties or entities performing portions of the Work for or on behalf of Construction Manager or any of its Subcontractors.

3.2.3 Construction Manager shall permit only fit and skilled persons to perform the Work. Construction Manager shall enforce safety procedures, strict discipline and good order among persons performing the Work. If Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, Construction Manager shall immediately reassign the person on receipt of Owner's written notice to do so.

3.2.4 CONSTRUCTION MANAGER'S REPRESENTATIVE Construction Manager's authorized representative is rob Lichtenberg. Construction Manager's Representative shall possess full authority to receive instructions from Owner and to act on those instructions. If Construction Manager changes its representative or their authority, Construction Manager shall immediately notify Owner in writing.

3.3 PRECONSTRUCTION SERVICES The Preconstruction Services under this section are included in Construction Manager's work.

3.3.1 PRELIMINARY EVALUATION Construction Manager shall provide a preliminary evaluation of Owner's Program and report such findings to Owner and Design Professional.

3.3.2 CONSULTATION Construction Manager shall schedule and attend regular meetings with Owner and Design Professional. Construction Manager shall consult with Owner and Design



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Professional regarding site use and improvements and the selection of materials, building systems, and equipment. Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost, including estimates of alternative designs or materials.

3.3.3 SCHEDULE OF THE WORK When Project requirements have been sufficiently identified, Construction Manager shall prepare a preliminary Schedule of the Work for Design Professional's review and Owner's approval. Construction Manager shall coordinate and integrate the Schedule of the Work with the services and activities of Owner, Construction Manager, Design Professional, and the requirements of governmental entities. As design proceeds, Construction Manager shall update the Schedule of the Work to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. If Schedule of the Work updates indicate that milestone dates contained in prior Schedules of the Work will not be met, Construction Manager shall notify and make recommendations to Owner. If the Project is to be completed in phases, Construction Manager shall make recommendations to Owner and Design Professional regarding the phased issuance of the drawings and specifications.

3.3.4 ESTIMATES

3.3.4.1 When Owner has sufficiently identified Owner's Program and other Project requirements and Design Professional has prepared other basic design criteria, Construction Manager shall prepare, for the review of Design Professional and approval of Owner, an initial estimate for the Project, utilizing area, volume, or similar conceptual estimating techniques.

3.3.4.2 When schematic or preliminary design documents have been completed by Design Professional and approved by Owner, Construction Manager shall prepare for the review of Design Professional and approval of Owner, a more detailed budget with supporting data. During the preparation of the design development documents or documents of comparable detail, Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by The Parties.

3.3.4.3 When design development documents or documents of comparable detail have been completed by Design Professional and approved by Owner, Construction Manager shall prepare a further detailed estimate with supporting data for review by Design Professional and approval by Owner. During the preparation of the drawings and specifications, Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Parties.

3.3.4.4 If any estimate submitted to Owner exceeds previously approved estimates, Construction Manager shall notify and make recommendations to Owner.

3.3.5 CONSTRUCTION DOCUMENT REVIEW Construction Manager shall review the drawings and specifications in an effort to identify potential constructability problems that could impact Construction Manager's ability to perform the Work in an expeditious and economical manner. Construction Manager shall issue a report to Design Professional and Owner for their review and action as appropriate. In addition, Construction Manager shall promptly report to Owner and Design Professional any errors or omissions which it discovers in the drawings and specifications.



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3.3.6 TEMPORARY FACILITIES Construction Manager shall make recommendations regarding temporary construction facilities, equipment, materials, and services for common use by Construction Manager, its Subcontractors, Subsubcontractors, and Suppliers.

3.3.7 LONG-LEAD-TIME ITEMS Construction Manager shall recommend to Owner and Design Professional a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Schedule of the Work. Construction Manager shall help expedite the delivery of long-lead-time items.

3.3.8 SOLICITATION OF SUBCONTRACTORS AND SUPPLIERS Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to Owner and Design Professional a list of possible subcontractors from whom proposals may be requested for each principal portion of the Work. Owner shall promptly reply in writing to Construction Manager if Owner or Design Professional know of any objection to a subcontractor. Owner may designate specific persons or entities from whom Construction Manager shall solicit bids.

3.3.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION Construction Manager shall consult with Owner regarding equal employment opportunity and affirmative action programs.

3.3.10 CONSULTANTS Construction Manager shall assist Owner in selecting, retaining, and coordinating the professional services of a surveyor, testing laboratories, and special consultants as needed.

3.3.11 PERMITS Construction Manager shall assist Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by Construction Manager.

3.3.12 OTHER PRECONSTRUCTION SERVICES Construction Manager shall provide such other preconstruction services as are agreed upon by the Parties and identified in an attached exhibit to this Agreement.

3.4 GUARANTEED MAXIMUM PRICE (GMP)

3.4.1 At such time as the Parties agree the drawings and specifications are sufficiently complete, Construction Manager shall prepare and submit to Owner in writing a GMP. The GMP proposal shall include the sum of the estimated cost of the Work, Construction Manager's Fee, the clarifications and assumptions upon which it is based, allowances, and reasonable contingencies, but shall not include compensation for Preconstruction Services. Construction Manager does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with this Agreement.

3.4.2 BASIS OF GUARANTEED MAXIMUM PRICE Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

3.4.2.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

3.4.2.2 a list of allowances and a statement of their basis;

3.4.2.3 a list of the assumptions and clarifications made by Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

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3.4.2.4 the Date of Substantial Completion or the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion or the Date of Final Completion is based;

3.4.2.5 a schedule of applicable alternate prices;

3.4.2.6 a schedule of applicable unit prices;

3.4.2.7 a statement of any work to be self-performed by Construction Manager.

3.4.3 Construction Manager shall meet with Owner and Design Professional to review the GMP. If Owner or Design Professional discovers any inconsistencies, inaccuracies, or omissions in the information presented, they shall promptly notify Construction Manager, who shall make appropriate adjustments to the GMP. Owner shall then give prompt written approval of the GMP.

3.4.4 Owner shall cause Design Professional to revise the drawings and specifications to the extent necessary to reflect the clarifications, assumptions, and allowances on which the GMP is based. Revised drawings and specifications shall be furnished to Construction Manager in accordance with the current Schedule of the Work, unless otherwise agreed by Owner, Construction Manager, and Design Professional. Construction Manager shall promptly notify Owner and Design Professional if the revised drawings and specifications are inconsistent with the GMP's clarifications, assumptions, and allowances.

3.4.5 If the Contract Documents are not complete at the time the GMP proposal is submitted to Owner, Construction Manager shall provide in the GMP for further development of the Contract Documents. 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 Document.

3.4.6 If this Agreement is executed before establishment of the Guaranteed Maximum Price and its acceptance by Owner, then the GMP and its basis shall be set forth in Amendment 1.

3.4.7 Allowances shall include the costs of materials, supplies, and equipment delivered to the Worksite less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. Construction Manager's overhead and profit for the allowances shall be included in the GMP, but not in the allowances. The GMP shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

3.4.8 FAILURE TO ACCEPT THE GMP PROPOSAL Unless Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies Construction Manager, the GMP Proposal shall not be effective. If Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, Owner shall have the right to:

3.4.8.1 suggest modifications to the GMP Proposal. If such modifications are accepted in writing by Construction Manager, the GMP Proposal shall be deemed accepted in accordance with §3.4.6;

3.4.8.2 direct Construction Manager to proceed on the basis of reimbursement as provided in ARTICLE 7 and ARTICLE 8 without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

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3.4.8.3 terminate the Agreement for convenience in accordance with §12.4. In the absence of a GMP the Parties may establish a Date of Substantial Completion or a Date of Final Completion.

3.4.9 PRE-GMP WORK Before Owner's acceptance of the GMP Proposal, Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as Owner may specifically authorize in writing.

3.5 WORKMANSHIP

3.5.1 The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except as otherwise provided in the Contract Documents.

3.6 COOPERATION WITH WORK OF OWNER AND OTHERS

3.6.1 Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, cleanup, and safety that are substantively the same as the corresponding provisions of this Agreement.

3.6.2 If Owner elects to perform work at the Worksite directly or by Others, the Parties shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. Owner shall require each separate contractor to cooperate with Construction Manager and assist with the coordination of activities and the review of construction schedules and operations. The GMP or the Date of Substantial Completion or the Date of Final Completion may be equitably adjusted in accordance with this Agreement, for changes resulting from the coordination of construction activities, and the Schedule of the Work shall be revised accordingly.

3.6.3 With regard to the work of Owner and Others, Construction Manager shall (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of Owner or Others or cause the work of Owner or Others to become defective; (b) afford Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities; and (c) coordinate Construction Manager's Work with theirs.

3.6.4 Before proceeding with any portion of the Work affected by the construction or operations of Owner or Others, Construction Manager shall give Owner prompt, written notification of any defects Construction Manager discovers in their work which will prevent the proper execution of the Work. Construction Manager's obligations in this subsection do not create a responsibility for the work of Owner or Others, but are for the purpose of facilitating the Work. If Construction Manager does not notify Owner of defects interfering with the performance of the Work, Construction Manager acknowledges that the work of Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from Construction Manager of defects, Owner shall promptly issue an Interim Directive informing Construction Manager what action, if any, Construction Manager shall take with regard to the defects.

3.7 CONTRACT DOCUMENT REVIEW AND ADMINISTRATION



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3.7.1 Before commencing the Work, Construction Manager shall examine and compare the drawings and specifications with information furnished by Owner that are considered Contract Documents, relevant field measurements made by Construction Manager, and any visible conditions at the Worksite affecting the Work.

3.7.2 Should Construction Manager discover any errors, omissions, or inconsistencies in the Contract Documents, Construction Manager shall promptly report them to Owner. It is recognized, however, that Construction Manager is not acting in the capacity of a licensed design professional, and that Construction Manager's examination is to facilitate construction and does not create an affirmative responsibility to detect defects or to ascertain compliance with a Law. Following receipt of written notice from Construction Manager of defects, Owner shall promptly inform Construction Manager what action, if any, Construction Manager shall take with regard to the defect.

3.7.3 Construction Manager shall have no liability for errors, omissions, or inconsistencies discovered under this section, unless Construction Manager knowingly fails to report a recognized problem to Owner.

3.7.4 Construction Manager may be entitled to additional costs or time because of clarifications or instructions growing out of Construction Manager's reports described in this §3.7.

3.7.5 Nothing in §3.7 shall relieve Construction Manager of responsibility for its own errors, inconsistencies, or omissions.

3.7.6 COST REPORTING Construction Manager shall maintain complete, accurate, and current records that comply with generally accepted accounting principles and calculate the proper financial management under this Agreement. Construction Manager shall maintain a complete set of all books and records prepared or used by Construction Manager with respect to the Project. Owner shall be afforded access to all of Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. Construction Manager shall preserve all such records for a period of three years after the final payment or longer where required by Law.

3.7.6.1 Construction Manager agrees to use reasonable skill and judgment in the preparation of cost estimates and Schedule of the Work, but does not warrant or guarantee their accuracy.

3.8 MATERIALS FURNISHED BY OWNER OR OTHERS

3.8.1 If the Work includes installation of materials or equipment furnished by Owner or Others, it shall be the responsibility of Construction Manager to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of Construction Manager shall be the responsibility of Construction Manager and may be deducted from any amounts due or to become due Construction Manager. Any defects discovered in such materials or equipment shall be reported at once to Owner. Following receipt of written notice from Construction Manager of defects, Owner shall promptly inform Construction Manager what action, if any, Construction Manager shall take with regard to the defects.

3.9 TESTS AND INSPECTIONS

3.9.1 Construction Manager shall schedule all required tests, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. Construction Manager shall give proper notice to all required Parties of such

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tests, approvals, and inspections. If feasible, Owner and Others may timely observe the tests at the normal place of testing. Except as provided in §3.9.3, Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by Construction Manager and promptly delivered to Owner.

3.9.2 If Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, Construction Manager shall arrange for the procedures and give timely notice to Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at Owner's expense except as provided in the subsection below.

3.9.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of Construction Manager, Construction Manager shall be responsible for costs of correction and retesting.

3.10 WARRANTY

3.10.1 Construction Manager warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At Owner's request, Construction Manager shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Construction Manager further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. Construction Manager's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or others, or abuse. Construction Manager's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion.

3.10.2 With respect to any portion of Work first performed after Substantial Completion, Construction Manager's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

3.10.3 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. For such incorporated items, ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED

3.10.4 Construction Manager shall obtain from its Subcontractors and Suppliers any special or extended warranties required by the Contract Documents. Construction Manager's liability for such warranties shall be limited to the one-year correction period referred to in the section immediately below. After that period Construction Manager shall provide reasonable assistance to Owner in enforcing the obligations of Subcontractors or Suppliers for such extended warranties.

3.11 CORRECTION OF WORK WITHIN ONE YEAR

3.11.1 If before Substantial Completion or within one year after the date of Substantial Completion of the Work any Defective Work is found, Owner shall promptly notify Construction Manager in writing.



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Unless Owner provides written acceptance of the condition, Construction Manager shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Owner discovers and does not promptly notify Construction Manager or give Construction Manager an opportunity to test or correct Defective Work as reasonably requested by Construction Manager, Owner waives Construction Manager's obligation to correct that Defective Work as well as Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.11.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall commence when that portion of the Work is substantially complete. Correction periods shall not be extended by corrective work performed by Construction Manager.

3.11.3 If Construction Manager fails to correct Defective Work within a reasonable time after receipt of written notice from Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due Construction Manager. If payments then or thereafter due Construction Manager are not sufficient to cover such amounts, Construction Manager shall pay the difference to Owner.

3.11.4 Construction Manager's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Work which Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Construction Manager and allow Construction Manager an opportunity to correct the Work if Construction Manager elects to do so. If Construction Manager elects to correct the Work it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Construction Manager does not elect to correct the Work, Owner may have the Work corrected by itself or Others, and, if Owner intends to seek recovery of those costs from Construction Manager, Owner shall promptly provide Construction Manager with an accounting of the actual correction costs.

3.11.5 If Construction Manager's correction or removal of Defective Work causes damage to or destroys other completed or partially completed work or existing building, Construction Manager shall be responsible for the cost of correcting the destroyed or damaged property.

3.11.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Construction Manager's other obligations under the Contract Documents.

3.11.7 Before final payment, at Owner's option and with Construction Manager's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such cases the GMP shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.12 CORRECTION OF COVERED WORK

3.12.1 Upon issuance of an Interim Directive, Work that has been covered without a requirement that it be inspected before being covered may be uncovered for Owner's inspection. Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by Owner or Others. If the uncovered Work proves to be defective, Construction Manager shall pay the costs of uncovering and replacement.



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3.12.2 If any Work is covered contrary to requirements in the Contract Documents, Owner may issue an Interim Directive to uncover the Work for Owner's observation and recover the Work all at Construction Manager's expense. In this circumstance the Work shall be replaced at Construction Manager's expense and with no adjustment to the Dates of Substantial or Final Completion.

3.13 SAFETY OF PERSONS AND PROPERTY

3.13.1 SAFETY PROGRAMS Construction Manager holds overall responsibility for safety programs. However, such obligation does not relieve Subcontractors of their safety responsibilities and to comply with the Law. Construction Manager shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the Worksite; (b) materials and equipment stored at onsite or offsite locations for use in performing the Work; and (c) property located at the Worksite and adjacent to work areas, whether or not the property is part of the Worksite.

3.13.2 CONSTRUCTION MANAGER'S SAFETY REPRESENTATIVE Construction Manager shall designate an individual at the Worksite in its employ as its safety representative. Unless otherwise identified by Construction Manager in writing to Owner, Construction Manager's project superintendent shall serve as its safety representative. Construction Manager shall report promptly in writing all recordable accidents and injuries occurring at the Worksite. When Construction Manager is required to file an accident report with a public authority, Construction Manager shall furnish a copy of the report to Owner.

3.13.3 Construction Manager shall provide Owner with copies of all notices required of Construction Manager by the Law. Construction Manager's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

Damage or loss not insured under property insurance that may arise from the Work, to the extent caused by negligent or intentionally wrongful acts or omissions of Construction Manager, or anyone for whose acts Construction Manager may be liable, shall be promptly remedied by Construction Manager.

3.13.4 If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Construction Manager's safety program, may require by Interim Directive Construction Manager to stop performance of the Work, take corrective measures satisfactory to Owner, or both. If Construction Manager does not adopt corrective measures, Owner may perform them and deduct their cost from the GMP. Construction Manager agrees to make no claim for damages, or an increase in the GMP, or for a change in the Dates of Substantial or Final Completion based on Construction Manager's compliance with Owner's reasonable request.

3.14 EMERGENCIES In an emergency affecting the safety of persons or property, Construction Manager shall act in a reasonable manner to prevent threatened damage, injury, or loss. If appropriate, an equitable adjustment in GMP or Date of Substantial Completion or Date of Final Completion shall be determined as provided for in ARTICLE 9.

3.15 HAZARDOUS MATERIALS

3.15.1 Construction Manager shall not be obligated to commence or continue Work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by Owner as certified by an independent testing laboratory, and approved by the appropriate governmental agency.



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3.15.2 If after commencing the Work, Hazardous Material is discovered at the Worksite, Construction Manager shall be entitled to immediately stop Work in the affected area. Construction Manager shall promptly report the condition to Owner, Design Professional, and, if required, the governmental agency with jurisdiction.

3.15.3 Construction Manager shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.15.4 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of Owner, and shall be performed in a manner minimizing any adverse effect upon the Work.

3.15.5 If Construction Manager incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Construction Manager may be entitled to an equitable adjustment in the GMP or the Dates of Substantial or Final Completion in accordance with this Agreement.

3.15.6 To the extent permitted by §6.7 and to the extent not caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, Owner shall defend, indemnify, and hold harmless Construction Manager, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.15.7 MATERIALS BROUGHT TO THE WORKSITE

3.15.7.1 Safety Data Sheets (SDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Construction Manager, Subcontractors, Owner or Others, shall be maintained at the Worksite by Construction Manager and made available to Owner, Subcontractors, and Others.

3.15.7.2 Construction Manager shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Construction Manager in accordance with the Contract Documents and used or consumed in the performance of the Work. Upon the issuance of the Certificate of Substantial Completion, Owner shall be responsible for materials and substances brought to the Worksite by Construction Manager if such materials or substances are required by the Contract Documents.

3.15.7.3 To the extent permitted under §6.7 and to the extent caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, its agents, officers, directors, and employees, Construction Manager shall defend, indemnify, and hold harmless Owner, its agents, officers, directors, and employees, from and against claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Construction Manager

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3.15.7.4 §3.15 shall survive the completion of the Work or Agreement termination.

3.16 SUBMITTALS

3.16.1 Construction Manager shall submit to Owner and Design Professional all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in electronic form if required in accordance with §4.6.1. Construction Manager shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, Construction Manager shall prepare and deliver its submittals in such time and sequence so as not to delay the performance of the Work or the work of Owner and Others. Construction Manager's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any Construction Manager submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless a Change Order or Interim Directive specifically authorizes such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval by Owner. Neither Design Professional nor Owner shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to Construction Manager. If the Contract Documents do not contain submittal requirements pertaining to the Work, Construction Manager agrees upon request to submit in a timely fashion to Design Professional and Owner for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by Owner.

3.16.2 Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

3.16.3 Construction Manager shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not an authorization to perform changed work, unless the procedures of ARTICLE 9 are followed. Approval does not relieve Construction Manager from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.

3.16.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to Owner upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples, and shop drawings.

3.16.5 Construction Manager shall prepare and submit to Owner

X Final marked-up as-built drawings;
[_____] Updated electronic data, in accordance with §4.6.1;
[_____] Other documentation required by the Contract Documents that specifies how various elements of the Work were actually constructed or installed.

3.17 DESIGN DELEGATION If the Contract Documents require Construction Manager to specify that Construction Manager is responsible for the design of a particular system or component to be incorporated into the Project, then Owner shall specify all required performance and design criteria. Construction Manager shall not be responsible for the adequacy of such performance and design criteria. As required by the Law, Construction Manager shall procure design services and certifications necessary to satisfactorily complete the Work from a licensed design professional. The signature and seal of Construction Manager's design professional shall appear on all drawings, calculations, specifications,

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certifications, shop drawings, and other submittals related to the Work designed or certified by Construction Manager's design professional.

3.18 WORKSITE CONDITIONS

3.18.1 WORKSITE VISIT Construction Manager acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.18.2 CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite is (a) a subsurface or other physical condition materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Construction Manager shall stop affected Work after the condition is first observed and give prompt written notice of the condition to Owner and Design Professional. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Construction Manager is to proceed. Construction Manager shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties. Any change in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services as a result of the condition, including any dispute about its existence or nature shall be determined as provided in ARTICLE 9.

3.19 PERMITS AND TAXES

3.19.1 Construction Manager shall give public authorities all notices required by law and, except for permits and fees that are the responsibility of Owner pursuant to §4.4, shall obtain and pay for all necessary building permits, utility fees, licenses, and renewals pertaining to the Work. Construction Manager shall provide to Owner copies of all notices, permits, licenses, and renewals required under this Agreement.

3.19.2 Construction Manager shall pay applicable taxes for the Work provided by Construction Manager.

3.19.3 If, in accordance with Owner's direction, Construction Manager claims an exemption for taxes, Owner shall indemnify and hold Construction Manager harmless from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by Construction Manager as a result of any such claim.

3.20 CUTTING, FITTING, AND PATCHING

3.20.1 Construction Manager shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or Others.

3.20.2 Cutting, patching, or altering the work of Owner or Others shall be done with the prior written approval of Owner. Such approval shall not be unreasonably withheld.

3.21 CLEAN UP

3.21.1 Construction Manager shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Construction Manager shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus

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materials. Construction Manager shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Construction Manager shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.21.2 If Construction Manager fails to commence compliance with cleanup duties within two (2) Business Days after written notification from Owner of non-compliance, Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due to Construction Manager in the next payment period.

3.22 ACCESS TO WORK Construction Manager shall facilitate the access of Owner, its Design Professional, and Others to Work in progress.

3.23 COMPLIANCE WITH LAWS Construction Manager shall comply with all the Law at its own cost. Construction Manager shall be liable to Owner for all loss, cost, or expense attributable to any acts or omissions by Construction Manager, its employees, subcontractors, suppliers, and agents for failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if prior approval by appropriate authorities and Owner is received.

3.23.1 CHANGES IN THE LAW The GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services shall be equitably adjusted in accordance with ARTICLE 9 for additional costs or time needed resulting from Laws enacted after the date of this Agreement, including taxes.

3.24 CONFIDENTIALITY Construction Manager shall treat as confidential and not disclose to third persons, nor use for its own benefit ("Treat as Confidential"), any of Owner's confidential information, know-how, discoveries, production methods, and the like disclosed to Construction Manager or which Construction Manager may acquire in performing the Work. To the extent necessary to perform the Work, Construction Manager's confidentiality obligations do not apply to disclosures to Subcontractors, Subsubcontractors, and Suppliers. Owner shall Treat as Confidential information all of Construction Manager's estimating systems and historical and parameter cost data disclosed to Owner in performing the Work. Each Party shall specify and mark confidential items as "Confidential." Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party's legal objection.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Owner's responsibilities under this Article shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION Before commencement of the Work and thereafter at the written request of Construction Manager, Owner shall provide Construction Manager with evidence of Project financing. Evidence of such financing shall be a condition precedent to Construction Manager's commencing or continuing the Work. Construction Manager shall be notified before any material change in Project financing.

4.3 WORKSITE INFORMATION To the extent Owner has obtained, or is required to obtain the following Worksite information, then Owner shall provide Construction Manager the following:

4.3.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations;



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4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or Law;

4.3.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and

4.3.4 any other information or services requested in writing by Construction Manager which are required for Construction Manager's performance of the Work and under Owner's control.

4.4 BUILDING PERMIT, FEES, AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of Construction Manager pursuant to §3.19.1, Owner shall secure and pay for all other approvals, easements, assessments, and fees required for the development.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving Construction Manager's written request, Owner shall provide Construction Manager with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner's real property interests in the Worksite and the record legal title.

4.6 CONTRACT DOCUMENTS Unless otherwise specified, Owner shall provide a reasonable number of hard copies of the Contract Documents to Construction Manager without cost.

4.6.1 ELECTRONIC DOCUMENTS If Owner requires that Owner, Design Professional, and Construction Manager exchange documents and data in electronic or digital form, before any such exchange, Owner, Design Professional, and Construction Manager shall agree on and follow a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate addendum, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed upon by the Parties in writing, each Party shall each bear its own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.7 OWNER'S REPRESENTATIVE Owner's Representative is Paul Bloomberg. Owner's Representative shall be fully acquainted with the Project, and shall have authority to bind Owner in all matters requiring Owner's approval, authorization, or written notice. If Owner changes its Representative or the Representative's authority, Owner shall immediately notify Construction Manager in writing.

4.8 OWNER'S CUTTING AND PATCHING Cutting, patching, or altering the Work by Owner or Others shall be done with the prior written approval of Construction Manager, which approval shall not be unreasonably withheld.

4.9 OWNER'S RIGHT TO CLEAN UP In case of a dispute between Construction Manager and Others with regard to respective responsibilities for cleanup at the Worksite, Owner may implement appropriate cleanup measures after two (2) Business Days' notice and allocate the cost among those responsible during the following pay period.

4.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of Owner or Others and not to Construction Manager, Owner may either (a) promptly remedy the damage or loss and assume affected warranty responsibilities, (b) accept

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the damage or loss, or (c) issue an Interim Directive or Change Order to remedy the damage or loss. If Construction Manager incurs costs or is delayed due to such loss or damage, Construction Manager may seek an equitable adjustment in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services under this Agreement.

ARTICLE 5 SUBCONTRACTS

5.1 SUBCONTRACTORS Subcontracts shall be issued on a lump sum basis unless Owner has given prior written approval of a different method of payment to the Subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Promptly after the execution of this Agreement, Construction Manager shall provide Owner, and, if directed, Design Professional with a written list of the proposed subcontractors and significant Suppliers. If Owner has a reasonable objection to any proposed subcontractor or material supplier, Owner shall notify Construction Manager in writing. Failure to promptly object shall constitute acceptance.

5.2.2 If Owner has reasonably and promptly objected, Construction Manager shall not contract with the proposed Subcontractor or Supplier, and Construction Manager shall propose another acceptable Subcontractor or Supplier to Owner. An appropriate Change Order shall reflect any increase or decrease in the GMP or Dates of Substantial or Final Completion because of the substitution.

5.3 BINDING OF SUBCONTRACTORS AND SUPPLIERS Construction Manager agrees to bind every Subcontractor and Supplier (and require every Subcontractor to so bind its subcontractors and significant suppliers) to the Contract Documents as they apply to the Subcontractor's or Supplier's applicable provisions to that portion of the Work.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 If this Agreement is terminated, each subcontract and supply agreement shall be assigned by Construction Manager to Owner, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by Owner pursuant to §12.4 or §12.5; (b) Owner accepts such assignment after termination by notifying the Construction Manager and Subcontractor or Construction Manager and Supplier in writing; and (c) Owner assumes all rights and obligations of Construction Manager pursuant to each subcontract or supply agreement.

5.4.2 If Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, the Subcontractor's or Supplier's compensation shall be equitably adjusted as a result of the suspension.

ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in ARTICLE 1 unless otherwise set forth below: N/A.

6.1.1 SUBSTANTIAL/FINAL COMPLETION Unless the Parties agree otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established in Amendment 1 to this Agreement subject to adjustments as provided for in the Contract Documents. Owner and Construction Manager may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this

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Agreement, at such time as GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in Amendment 1. If a GMP is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in Amendment 1. The dates for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.1.2 Time is of the essence with regard to the obligations of the Contract Documents.

6.1.3 Unless instructed by Owner in writing, Construction Manager shall not knowingly commence the Work before the effective date of Construction Manager's required insurance.

6.2 SCHEDULE OF THE WORK

6.2.1 Before submitting its first application for payment, Construction Manager shall submit to Owner and, if directed, Design Professional a Schedule of the Work showing the dates on which Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Owner. Except as otherwise directed by Owner, Construction Manager shall comply with the approved Schedule of the Work. Unless otherwise agreed, the Schedule of the Work shall be formatted in a detailed precedence-style critical path method that (a) provides a graphic representation of all activities and events, including float values that will affect the critical path of the Work, and (b) identifies dates that are critical to ensure timely and orderly completion of the Work. Construction Manager shall update the Schedule of the Work on a monthly basis or as mutually agreed by the Parties.

6.2.2 Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved project schedule. Owner may require Construction Manager to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Owner or Others. If Construction Manager consequently incurs costs or is delayed, the GMP or the Dates of Substantial or Final Completion, or both, Construction Manager may seek equitable adjustment under ARTICLE 9.

6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If Construction Manager is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Construction Manager, Construction Manager shall be entitled to an equitable extension of the Date of Substantial Completion or Date of Final Completion. Examples of causes beyond the control of Construction Manager include, but are not limited to, the following: (a) acts or omissions of Owner, Design Professional, or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under §12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Construction Manager; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Construction Manager shall submit any requests for equitable extensions of Contract Time in accordance with the provisions of ARTICLE 9.

6.3.2 In addition, if Construction Manager incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, Construction Manager shall be entitled to an equitable adjustment in the GMP subject to §6.7.



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6.3.3 NOTICE OF DELAYS If delays to the Work are encountered for any reason, Construction Manager shall provide prompt written notice to Owner of the cause of such delays after Construction Manager first recognizes the delay. The Parties each agree to take reasonable steps to mitigate the effect of such delays.

6.4 NOTICE OF DELAY CLAIMS If Construction Manager requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in §6.3, Construction Manager shall give Owner written notice of the claim in accordance with §9.4. If Construction Manager causes delay in the completion of the Work, Owner shall be entitled to recover its additional costs subject to §6.7. Owner shall process any such claim against Construction Manager in accordance with ARTICLE 9.

6.5 MONITORING PROGRESS AND COSTS Following acceptance by Owner of the GMP, Construction Manager shall establish a process for monitoring actual costs against the GMP and actual progress against the Schedule of Work. Construction Manager will provide written reports to Owner at intervals as agreed to by the Parties on the status of the Work, showing variances between actual costs and the GMP and actual progress as compared to the Schedule of Work, including estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met.

6.6 LIQUIDATED DAMAGES

6.6.1 SUBSTANTIAL COMPLETION Liquidated damages based on the Substantial Completion date of November 14, 2025 shall apply.

6.6.1.1 Owner will suffer damages which are difficult to determine and accurately specify if the Substantial Completion date, which may be amended by Change Order, is not attained. Construction Manager shall pay Owner Three Thousand dollars ($3,000.00) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Substantial Completion date. These liquidated damages are in lieu of all liability for all extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining the Substantial Completion date.

6.6.2 FINAL COMPLETION Liquidated damages based on the Final Completion date December 1, 2025 shall apply.

6.6.2.1 Owner will suffer damages which are difficult to determine and accurately specify if the Final Completion date, as may be amended by subsequent Change Order, is not attained. Construction Manager shall pay Owner Three Thousand dollars dollars ($3,000.00) as liquidated damages and not as a penalty for each Day that Final Completion extends beyond the Final Completion date. These liquidated damages are in lieu of all liability for any extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining Final Completion date.

6.6.3 Other applicable liquidated damages shall be included as Agreement exhibit.

6.7 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in §6.6 and excluding losses covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below.



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Owner agrees to waive damages including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. Construction Manager agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The following are excluded from this mutual waiver: N/A.

6.7.1 The Parties shall each require similar waivers in contracts with Subcontractors and Others retained for the Project.

ARTICLE 7 COMPENSATION AND GUARANTEED MAXIMUM PRICE

7.1 Owner shall compensate Construction Manager for Work performed on the following basis:

7.1.1 the Cost of the Work as allowed in ARTICLE 8; and

7.1.2 Construction Manager's Fee paid in proportion to the Work performed subject to adjustment as provided in §7.4.

7.2 The compensation to be paid shall be limited to the GMP established in Amendment 1, as the GMP may be adjusted under ARTICLE 9.

7.2.1 Payment for Work performed shall be as set forth in ARTICLE 10.

7.3 CONSTRUCTION MANAGER'S FEE Construction Manager's Fee shall be as follows, subject to adjustment as provided in §7.4: 2.5% of the total construction cost.

7.4 FEE ADJUSTMENTS:

7.4.1 Changes in the Work as provided in ARTICLE 9, shall adjust Construction Manager's Fee as follows: fee shall remain at 2.5% of the total construction cost.

7.4.2 except as provided for in §6.3, delays in the Work not caused by Construction Manager shall adjust Construction Manager's Fee to compensate for increased expenses as provided for in ARTICLE 9; and

7.4.3 managing the replacement of an insured or uninsured loss shall increase Construction Manager's fee in the same proportion that Construction Manager's Fee bears to the estimated Cost of the Work for the replacement.

7.5 PRECONSTRUCTION SERVICES COMPENSATION Construction Manager shall be compensated for Preconstruction Services as follows: Five Thousand Dollars ($5,000.00).

ARTICLE 8 COST OF THE WORK

8.1 Owner agrees to pay Construction Manager for the Cost of the Work as defined in this article. This payment shall be in addition to Construction Manager's Fee stipulated in §7.3.

8.2 COST ITEMS

8.2.1 Labor wages directly employed by Construction Manager in performing of the Work.



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8.2.2 Salaries of Construction Manager's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office as mutually agreed by the Parties in writing.

8.2.3 Cost of all employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Construction Manager's standard personnel policy, insofar as such costs are paid to employees of Construction Manager who are included in the Cost of the Work pursuant to §8.2.1 and §8.2.2.

8.2.4 Reasonable transportation, travel, hotel, and moving expenses of Construction Manager's personnel incurred in connection with the Work.

8.2.4.1 General Conditions outlined by the attached matrix (Exhibit F) are established at Nineteen Thousand Five Hundred Dollars ($19,500.00) per month.

8.2.5 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, transportation, storage, and handling.

8.2.6 Payments made by Construction Manager to Subcontractors for work performed under this Agreement.

8.2.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed that remain the property of Construction Manager.

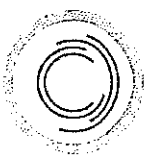
8.2.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Construction Manager or others, including installation, repair, and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from Construction Manager or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.

8.2.9 Cost of the premiums for all insurance and surety bonds which Construction Manager is required to procure or deems necessary, and approved by Owner including any additional premium incurred as a result of any increase in the GMP.

8.2.10 Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Construction Manager is liable.

8.2.11 Permits, fees, licenses, tests, royalties.

8.2.12 Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the Construction Phase and for a one-year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from Construction Manager's negligence.



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8.2.13 Costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office.

8.2.14 Water, power, and fuel costs necessary for the Work.

8.2.15 Cost of removal of all nonhazardous substances, debris, and waste materials.

8.2.16 Costs incurred due to an emergency affecting the safety of persons or property.

8.2.17 Legal, mediation, and arbitration fees and costs, other than those arising from disputes between Owner and Construction Manager, reasonably and properly resulting from Construction Manager's performance of the Work.

8.2.18 Costs directly incurred in the performance of the Work or in connection with the Project, and not included in Construction Manager's Fee as set forth in ARTICLE 7, which are reasonably inferable from the Contract Documents.

8.3 DISCOUNTS All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner. To the extent payments are made with funds of Construction Manager, all cash discounts shall accrue to Construction Manager. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

ARTICLE 9 CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Interim Directive.

9.1 CHANGE ORDER

9.1.1 Construction Manager may request or Owner may order changes in the Work or the timing or sequencing of the Work that impacts the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services. All such changes in the Work shall be formalized in a Change Order. Any such requests for changes in the Work shall be processed in accordance with this article.

9.1.2 For changes in the Work, the Parties shall negotiate an equitable adjustment to the GMP or the Date of Substantial Completion or Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any equitable adjustment in the GMP or Date of Substantial Completion or Date of Final Completion shall not be unreasonably withheld.

9.1.3 NO OBLIGATION TO PERFORM Construction Manager shall not be obligated to perform changes in the Work that impact the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion without a Change Order or Interim Directive.

9.2 INTERIM DIRECTIVES

9.2.1 Owner may issue an Interim Directive directing a change in the Work before reaching agreement with Construction Manager on the adjustment, if any, in the GMP, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, or directing Construction Manager



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to perform Work that Owner believes is not a change. If the Parties disagree that the Interim Directed work is within the scope of the Work, Construction Manager shall perform the disputed Work and furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

9.2.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP or the Date of Substantial Completion or Date of Final Completion arising out of an Interim Directive. As the directed Work is performed, Construction Manager shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directive. If there is a dispute as to the cost to Owner, Owner shall pay Construction Manager fifty percent (50%) of its actual (incurred or committed) cost to perform the Work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of ARTICLE 13. Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work. Construction Manager's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work. Undisputed amounts may be included in applications for payment and shall be paid by Owner in accordance with this Agreement.

9.2.3 When the Parties agree upon the adjustments in the GMP or the Date of Substantial Completion or Date of Final Completion, for a change in the Work directed by an Interim Directive, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directives on which the Parties have reached agreement on GMP or the Date of Substantial Completion or Date of Final Completion issued since the last Change Order.

9.3 DETERMINATION OF COST

9.3.1 An increase or decrease in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from a change in the Work shall be determined by one or more of the following methods:

9.3.1.1 unit prices set forth in this Agreement or as subsequently agreed;

9.3.1.2 a mutually accepted, itemized lump sum;

9.3.1.3 Cost of the Work as defined by ARTICLE 8 and determined as a net savings from the change in the work; plus 2.5% for fee. Construction Manager's fee shall be added to any net increase in GMP. No Overhead and profit shall be applied to any net decrease in the GMP that is less than ten percent (10%). Overhead and profit shall be applied to any net decrease of the GMP that is ten percent (10%) or more.

9.3.1.4 If there is a net increase in the GMP, Construction Manager's Fee shall be adjusted accordingly. In case of a net decrease in the GMP, Construction Manager's Fee shall not be adjusted unless ten percent (10%) or more of the Project is deleted. Construction Manager shall maintain a documented, itemized accounting evidencing the expenses and savings.

9.3.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to either Party, such unit prices shall be equitably adjusted.



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9.3.3 If the Parties disagree as to whether work required by Owner is within the scope of the Work, Construction Manager shall furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

9.4 CHANGES NOTICE Except as provided in §6.3.2 and §6.4 for any claim for an increase in the GMP or the Date of Substantial Completion or Date of Final Completion, Construction Manager shall give Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after Construction Manager first recognizes the condition giving rise to the claim, whichever is later. Owner's failure to so respond shall be deemed a denial of Construction Manager's claim. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, Construction Manager shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. No later than fourteen (14) Days after receipt, Owner shall respond in writing denying or approving the claim. Owner's failure to so respond shall be deemed a denial of the claim. Any change in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from such claim shall be authorized by Change Order.

9.5 INCIDENTAL CHANGES Owner may direct Construction Manager to perform incidental changes in the Work, upon concurrence with Construction Manager that such changes do not involve adjustments in the Contract Price or the Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Owner shall initiate an incidental change in the Work by issuing a written order to Construction Manager. Such written notice shall be carried out promptly and is binding on the Parties.

ARTICLE 10 PAYMENT

10.1 SCHEDULE OF VALUES Within twenty-one (21) Days from the date of execution of this Agreement, Construction Manager shall prepare and submit to Owner and Design Professional a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the GMP.

10.2 PROGRESS PAYMENTS

10.2.1 APPLICATIONS Construction Manager shall submit to Owner and, if directed, Design Professional a monthly application for payment no later than the twenty fifth (25th) Day of the calendar month for the preceding calendar month. Construction Manager's applications for payment shall be itemized and supported by Construction Manager's schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Applications for payment shall include payment requests on account of properly authorized Change Orders or Interim Directives. Owner shall pay the amount otherwise due on any payment application, as certified by Design Professional, no later than fifteen (15) Days after accepting such application. Owner may deduct from any progress payment amounts that may be retained pursuant to §10.2.4.

10.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by Construction Manager of bills of sale and proof of required insurance, or such other documentation satisfactory to Owner to establish the proper valuation of the stored materials and equipment,



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Owner's title to such materials and equipment, and to otherwise protect Owner's interests therein, including transportation to the Worksite.

10.2.3 LIEN WAIVERS AND LIENS

10.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If required by Owner, as a prerequisite for payment, Construction Manager shall provide a partial lien and claim waiver in the amount of the application for payment and affidavits from its Subcontractors and Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall Construction Manager be required to sign an unconditional waiver of lien or claim, before receiving payment or in an amount in excess of what it has been paid.

10.2.3.2 RESPONSIBILITY FOR LIENS If Owner has made payments in the time required by this article, Construction Manager shall, within thirty (30) Days after filing, remove any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If Construction Manager fails to take such action on a lien, Owner may cause the lien to be removed at Construction Manager's expense, including bond costs and reasonable attorneys' fees. This subsection shall not apply if there is a dispute pursuant to ARTICLE 13 relating to the subject matter of the lien.

10.2.4 RETAINAGE From each progress payment made before Substantial Completion, Owner may retain five percent (5%), of the amount otherwise due after deduction of any amounts as provided in §10.3, provided such percentage doesn't exceed the Law. If Owner chooses to use this retainage provision:

10.2.4.1 after the Work is fifty percent (50%) complete, Owner shall withhold no additional retainage and shall pay Construction Manager the full amount due on account of subsequent progress payments;

10.2.4.2 Owner may, in its sole discretion, reduce the amount to be retained at any time;

10.2.4.3 Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which Owner has accepted. In lieu of retainage, Construction Manager may furnish a retention bond or other security interest acceptable to Owner, to be held by Owner.

10.3 ADJUSTMENT OF CONSTRUCTION MANAGER'S PAYMENT APPLICATION Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Construction Manager is responsible under this Agreement:

10.3.1 Construction Manager's repeated failure to perform the Work as required by the Contract Documents;

10.3.2 except as accepted by the insurer providing builder's risk or other property insurance covering the Project, loss or damage arising out of or relating to this Agreement and caused by Construction Manager to Owner or others to whom Owner may be liable;

10.3.3 Construction Manager's failure to properly pay Subcontractors and Suppliers following receipt of such payment from Owner for that portion of the Work or for supplies, provided that Owner is making payments to Construction Manager in accordance with this Agreement;



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10.3.4 rejected or Defective Work not corrected in a timely fashion;

10.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion;

10.3.6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work; and

10.3.7 uninsured third-party claims involving Construction Manager or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Construction Manager furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, Owner shall give written notice to Construction Manager, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by Construction Manager in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

10.4 ACCEPTANCE OF WORK Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

10.5 PAYMENT DELAY If for any reason not the fault of Construction Manager Construction Manager does not receive a progress payment from Owner within seven (7) Days after the time such payment is due, then Construction Manager, upon giving seven (7) Days' written notice to Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Construction Manager has been received, including interest for late payment. If Construction Manager incurs costs or is delayed resulting from shutdown, delay, and start-up, Construction Manager may seek an equitable adjustment in the GMP and Dates of Substantial or Final Completion may be equitably adjusted by a Change Order in accordance with ARTICLE 9.

10.6 SUBSTANTIAL COMPLETION

10.6.1 Construction Manager shall notify Owner and, if directed, Design Professional when it considers Substantial Completion of the Work or a designated portion to have been achieved. Owner, with the assistance of its Design Professional, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by Owner without excessive interference in completing any remaining unfinished Work. If Owner determines that the Work or designated portion has not reached Substantial Completion, Owner, with the assistance of its Design Professional, shall promptly compile a list of items to be completed or corrected so Owner may occupy or use the Work or designated portion for its intended use. Construction Manager shall promptly complete all items on the list.

10.6.2 When Substantial Completion of the Work or a designated portion is achieved, Construction Manager shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of each Party for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Construction Manager to Owner and, if directed, to Design Professional for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.

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10.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

10.6.4 Upon Owner's written acceptance of the Certificate of Substantial Completion, Owner shall pay to Construction Manager the remaining retainage held by Owner for the Work described in the Certificate of Substantial Completion less a sum equal to one hundred and fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Parties as necessary to achieve Final Completion. Uncompleted items shall be completed by Construction Manager in a mutually agreed upon timeframe. Owner shall pay Construction Manager monthly the amount retained for unfinished items as each item is completed.

10.7 PARTIAL OCCUPANCY OR USE

10.7.1 Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. Construction Manager shall not unreasonably withhold consent to partial occupancy or use. Owner shall not unreasonably refuse to accept partial occupancy.

10.8 FINAL COMPLETION AND FINAL PAYMENT

10.8.1 Upon notification from Construction Manager that the Work is complete and ready for final inspection and acceptance, Owner, with the assistance of its Design Professional shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

10.8.2 When the Work is complete, Construction Manager shall prepare for Owner's written acceptance a final application for payment stating that to the best of Construction Manager's knowledge, and based on Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

10.8.3 Final payment of the balance of the GMP shall be made to Construction Manager within twenty (20) Days after Construction Manager has submitted an application for final payment, including submissions required under §10.8.4, and a Certificate of Final Completion has been executed by the Parties.

10.8.4 Final payment shall be due on Construction Manager's submission of the following to Owner:

10.8.4.1 an affidavit declaring any indebtedness connected with the Work, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Owner's property;

10.8.4.2 as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

10.8.4.3 release of any liens, conditioned on final payment being received;

10.8.4.4 consent of any surety; and

10.8.4.5 any outstanding known and unreported accidents or injuries experienced by Construction Manager or its Subcontractors at the Worksite.



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10.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of Construction Manager, Owner shall pay the balance due for any portion of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount before payment, Construction Manager shall submit to Owner and, if directed, Design Professional the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by this §10.8.

10.8.6 OWNER RESERVATION OF CLAIMS Owner's claims not reserved in writing with final payment are waived, except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects.

10.8.7 ACCEPTANCE OF FINAL PAYMENT Unless Construction Manager provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

10.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS

11.1 INDEMNITY

11.1.1 To the fullest extent permitted by law, Construction Manager shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees, Design Professional, and Others (the "Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and other property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, Subcontractors, Suppliers, Subsubcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Construction Manager shall be entitled to reimbursement of any defense costs paid above Construction Manager's percentage of liability for the underlying claim to the extent provided for by §11.1.2.

11.1.2 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Construction Manager, its officers, directors, members, consultants, agents, and employees, Subcontractors, Suppliers, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner, Design Professional, or Others, but only to the extent caused by the negligent or intentionally wrongful acts or omissions by Owner, Design Professional, or Others. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for by §11.1.1.

11.1.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Construction Manager, anyone directly or indirectly employed by Construction Manager, or anyone for whose acts Construction Manager may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Construction Manager under workers' compensation acts, disability benefit acts, or other employment benefit acts.



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11.2 INSURANCE

11.2.1 Before starting the Work and as a condition precedent to payment, Construction Manager shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance ("CGL"). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Construction Manager shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. Construction Manager's Employers' Liability, Business Automobile Liability and CGL policies shall be written with at least the following limits of liability:

11.2.1.1 Employers' Liability Insurance
(a) $1,000,000 bodily injury by accident per accident.
(b) $1,000,000 bodily injury by disease policy limit.
(c) $1,000,000 bodily injury by disease per employee.

11.2.1.2 Business Automobile Liability Insurance $1,000,000 per accident.

11.2.1.3 Commercial General Liability Insurance
(a) $1,000,000 per occurrence.
(b) $2,000,000 general aggregate.
(c) $2,000,000 products/completed operations aggregate.
(d) $1,000,000 personal and advertising injury limit.

11.2.2 Employers' Liability, Business Automobile Liability, and CGL coverages required under §11.2.1 may be provided by a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies.

11.2.3 Construction Manager shall maintain in effect all insurance coverage required under §11.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Construction Manager fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Construction Manager, or terminate this Agreement.

11.2.4 To the extent commercially available to Construction Manager from its current insurance company, insurance policies required under §11.2.1 shall contain a provision that the insurance company or its designee must give Owner written notice transmitted in paper or electronic format: (a) thirty (30) Days before coverage is nonrenewed by the insurance company and (b) within ten (10) Business Days after cancelation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Construction Manager shall furnish Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §11.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Construction Manager shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise directed in writing by Owner, before starting the Work, Construction Manager shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also (a) name



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Construction Manager, Subcontractors, Subsubcontractors, and Design Professional as named insureds; (b) be written in such form to cover all risks of physical loss except those specifically excluded by the policy; and (c) insure at least against and not exclude:

11.3.1.1 the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Construction Manager) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse, however caused;

11.3.1.2 damage resulting from defective design, workmanship, or material;

11.3.1.3 coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant or structures. Coverage shall be to the extent loss or damage arises out of Construction Manager's activities or operations at the Project;

11.3.1.4 equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment;

11.3.1.5 testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and

11.3.1.6 physical loss resulting from Terrorism.

11.3.2 The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party obtaining and maintaining the Builder's Risk Policy pursuant to §11.3.1 shall be responsible for the deductible amounts or coinsurance payments as a reimbursable expense no greater than $10,000. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Owner has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Owner shall provide a copy of the property policy or policies obtained in compliance with this §11.3.

11.3.3 If Owner elects to purchase the property insurance required by this Agreement, including all of the coverages and deductibles for the same durations specified in this §11.3, Owner shall give written notice to Construction Manager before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with this §11.3. Owner may then provide insurance to protect its interests and the interests of the Construction Manager, Subcontractors, Suppliers, and Subsubcontractors. The cost of this insurance shall be paid by Owner in a Change Order. If Owner gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Owner shall be responsible for costs reasonably attributed to such failure.

11.3.4 The Parties each waive all rights against each other and their respective employees, agents, contractors, subcontractors, suppliers, subsubcontractors, and design professionals for damages caused by risks covered by the property insurance provided under §11.3.1, except such rights as they may have to the proceeds of the insurance. To the extent of the limits of Construction Manager's Commercial General Liability Insurance specified in §11.2.1 or N/A whichever is more, Construction Manager shall indemnify and hold harmless Owner against any and all liability, claims, demands,



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damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, Subcontractor, Supplier, Subsubcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

11.3.5 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss from damage to the Work shall be upon the Party obtaining and maintaining the Builder's Risk Policy pursuant to §11.3.1 until the Date of Final Completion.

11.3.6 POLLUTION LIABILITY INSURANCE Construction Manager ☐ is/ ☒ is not required to maintain pollution liability insurance. Unless indicated affirmatively, the obligation to procure such insurance is not triggered.

11.3.6.1 If applicable: in the following amounts: [_____] per occurrence, and shall apply for [_____] year(s) after Final Completion. The policy shall cover Construction Manager's liability during construction, removal, storage, encapsulation, transport and disposal of hazardous waste and contaminated soil, and asbestos abatement. The policy shall include coverage for on-site and off-site bodily injury and loss of damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials, or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water body, whether it be gradual or sudden and accidental. The policy shall not have exclusions for mold or asbestos.

11.4 ADDITIONAL GENERAL LIABILITY COVERAGE Owner ☒ shall/ ☐ shall not require Construction Manager to purchase and maintain additional liability coverage. If required, Construction Manager shall provide:

11.4.1 ☒ Additional Insured. Owner shall be named as an additional insured on Construction Manager's CGL specified, for on-going operations and completed operations, excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of Construction Manager, or those acting on Construction Manager's behalf, in the performance of Construction Manager's work for Owner at the Worksite. The insurance of the Construction Manager and its Subcontractors (both primary and excess) shall be primary to any insurance available to the Additional Insureds. Any insurance available to the Additional Insureds shall be excess and non-contributory.

11.4.2 ☒ OCP. Construction Manager shall provide an Owners' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL specified, or limits as otherwise required by Owner.

Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by Owner directly or the costs may be reimbursed by Owner to Construction Manager by increasing the Contract Price to correspond to the actual cost required to purchase and maintain the coverage. Before commencing the Work, Construction Manager shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Owner has been named as an additional insured, as applicable.

11.4.3 ROYALTIES, PATENTS, AND COPYRIGHTS Construction Manager shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or



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systems selected by Construction Manager and incorporated in the Work. Construction Manager shall defend, indemnify, and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Owner agrees to defend, indemnify, and hold Construction Manager harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Owner or Design Professional.

11.5 BONDS Performance and Payment Bonds ☒ are/ ☐ are not required of Construction Manager. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to Owner. Owner's acceptance shall not be withheld without a reasonable cause. The penal sum of the bonds shall each be one hundred percent (100%) of the GMP. Construction Manager shall endeavor to keep its surety advised of changes potentially impacting the GMP and Contract Time, though Construction Manager shall require that its surety waives any requirement to be notified of any alteration or extension of time.

ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION

12.1 SUSPENSION BY OWNER FOR CONVENIENCE

12.1.1 OWNER SUSPENSION Should Owner order Construction Manager in writing to suspend, delay, or interrupt the performance of the Work for the convenience of Owner and not due to any act or omission of Construction Manager or any person or entity for whose acts or omissions Construction Manager may be liable, then Construction Manager shall immediately suspend, delay, or interrupt that portion of the Work for the time period ordered by Owner.

12.1.2 Any action taken by Owner that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all of the Work does not constitute a suspension of Work under this section.

12.2 NOTICE TO CURE A DEFAULT If Construction Manager persistently fails to supply enough properly qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards a Law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Construction Manager may be deemed in default.

12.2.1 After receiving Owner's written notice, if Construction Manager fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then Owner shall give Construction Manager a second notice to correct the default within three (3) Business Days after receipt. The second notice to Construction Manager, and if applicable, the surety, may include, that Owner intends to terminate this Agreement for default absent appropriate corrective action.

12.2.2 If Construction Manager fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing reasonable means; (c) withhold payment due to Construction Manager; and (d) as Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the

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default, and charge Construction Manager, the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

12.2.3 In the event of an emergency affecting the safety of persons or property, Owner may immediately commence and continue satisfactory correction of such default without first giving written notice to Construction Manager, but shall give Construction Manager prompt written notice.

12.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

12.3.1 Upon expiration of the second notice to cure pursuant to §12.2, and absent appropriate corrective action, Owner may terminate this Agreement by written notice. Termination for default is in addition to any other remedies available to Owner under §12.2. Termination for default is in addition to any other remedies available to Owner under §12.2. If Owner's costs arising out of Construction Manager's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid GMP, Construction Manager shall be liable to Owner for such excess costs. If Owner's costs are less than the unpaid GMP, Owner shall pay the difference to Construction Manager. If Owner exercises its rights under this section, upon the request of Construction Manager, Owner shall furnish to Construction Manager a detailed accounting of the costs incurred by Owner.

12.3.2 If Owner or Others perform work under this section, Owner shall have the right to take and use any materials and supplies for which Owner has paid and located at the Worksite for the purpose of completing any remaining Work. Owner or Others performing work under §12.3 shall also have the right to use construction tools and equipment belonging to the Construction Manager or its subcontractors and located on the Worksite for the purpose of completing the remaining Work but only after Construction Manager's written consent which shall not be unreasonably withheld. If Owner uses Construction Manager's construction tools and equipment in accordance with this subsection, then Owner shall indemnify and hold harmless Construction Manager and applicable Subcontractors and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with Owner's use of Construction Manager's or applicable subcontractor's construction tools and equipment. Immediately upon completion of the Work, any remaining materials, supplies, or equipment not consumed or incorporated in the Work shall be returned to Construction Manager in substantially the same condition as when they were taken, reasonable wear and tear excepted.

12.3.3 If Construction Manager files a petition under the Bankruptcy Code, this Agreement shall terminate if: (a) Construction Manager or Construction Manager's trustee rejects the Agreement; (b) a default occurred and Construction Manager is unable to give adequate assurance of required performance; or (c) Construction Manager is otherwise unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

12.3.4 Owner shall make reasonable efforts to mitigate damages arising from Construction Manager's default, and shall promptly invoice Construction Manager for all amounts due pursuant to §12.2 and §12.3.

12.4 TERMINATION BY OWNER FOR CONVENIENCE

12.4.1 Upon Construction Manager's receipt of written notice from Owner, Owner may, without cause, terminate this Agreement. Construction Manager shall immediately stop the Work, follow Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.



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12.4.2 If Owner terminates this Agreement for convenience, Construction Manager shall be paid (a) for the Work performed to date including Overhead and profit; (b) for all demobilization costs and costs incurred resulting from termination, but not including Overhead or profit on Work not performed; and (c) reasonable attorneys' fees and costs related to termination; and (d) a premium as follows: N/A.

12.4.3 If Owner terminates this Agreement, Construction Manager shall:

12.4.3.1 execute and deliver to Owner all papers and take all action required to assign, transfer, and vest in Owner the rights of Construction Manager to all materials, supplies, and equipment for which payment has been or will be made in accordance with the Contract Documents and all subcontracts, orders, and commitments which have been made in accordance with the Contract Documents;

12.4.3.2 exert reasonable effort to reduce to a minimum Owner's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination;

12.4.3.3 cancel any subcontracts, orders, and commitments as Owner directs; and

12.4.3.4 sell at prices approved by Owner any materials, supplies, and equipment as Owner directs, with all proceeds paid or credited to Owner.

12.5 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE

12.5.1 Seven (7) Days after Owner's receipt of written notice from Construction Manager, Construction Manager may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of Construction Manager for any of the following reasons:

12.5.1.1 under court order or order of other governmental authorities having jurisdiction;

12.5.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Construction Manager, materials are not available; or

12.5.1.3 suspension by Owner for convenience pursuant to §12.1.

12.5.2 In addition, upon seven (7) Days' written notice to Owner and an opportunity to cure within three (3) Days, Construction Manager may terminate this Agreement if Owner:

12.5.2.1 fails to furnish reasonable evidence pursuant to §4.2 that sufficient funds are available and committed for Project financing, or

12.5.2.2 assigns this Agreement over Construction Manager's reasonable objection, or

12.5.2.3 fails to pay Construction Manager in accordance with this Agreement and Construction Manager has stopped Work in compliance with §10.5, or

12.5.2.4 otherwise materially breaches this Agreement.

12.5.3 Upon termination by Construction Manager in accordance with this section, Construction Manager shall be entitled to recover from Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable Overhead and profit on Work not performed.



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12.6 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

ARTICLE 13 DISPUTE MITIGATION AND RESOLUTION

13.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, Construction Manager shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution proceedings. If Construction Manager continues to perform, Owner shall continue to make payments in accordance with this Agreement.

13.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that a resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected below.

13.3 MITIGATION If the Parties select one of the dispute mitigation procedures provided in this section, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in §13.5. The Parties agree that the dispute mitigation procedure shall be:

☒ Project Neutral ("Neutral")
☐ Dispute Review Board (DRB).

13.3.1 MITIGATION PROCEDURES As soon as practicable after the execution of this Agreement, the Neutral or DRB shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of responsibilities, including requirements for nonbinding findings. Costs and expenses of the Neutral or DRB shall be shared equally by the Parties. A Neutral or DRB shall be available to either Party, upon request, throughout the course of the Project, and shall make regular visits to the Project so as to maintain an up-to-date understanding of the Project progress and issues and to enable the Neutral or DRB to address matters in dispute between the Parties promptly and knowledgeably.

13.3.2 If the matter remains unresolved following the issuance of the nonbinding findings or such findings are not made within five (5) Business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in §13.5.

13.3.3 If the Parties agree to use a DRB, then the dispute mitigation procedures and time requirements in §13.3.1 and §13.3.2. shall be governed by the specifications and agreement applicable to that DRB.

13.4 MEDIATION If direct discussions pursuant to §13.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under §13.3, the Parties shall endeavor to resolve the matter by

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mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

13.5 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

☐ Arbitration using:

☐ the current Construction Industry Arbitration Rules of the AAA and administered by the AAA;
☐ the current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by JAMS; or
☐ the current arbitration rules of [_____] and administered by [_____].

Unless the Parties mutually agree otherwise in writing, if arbitration is selected as the binding dispute resolution procedure and this Agreement does not specify the arbitration rules to be utilized, then the arbitration shall be conducted using the current Construction Industry Arbitration Rules of the AAA and the arbitration shall be administered by the AAA.

☒ Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

13.6 COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

13.7 VENUE To the extent permitted by Law, the venue of any binding dispute resolution procedure shall be the location of the Project.

13.8 MULTIPARTY PROCEEDING All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding, if possible. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

13.9 LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by Construction Manager which Construction Manager may have under lien laws.

ARTICLE 14 MISCELLANEOUS

14.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Parties and not for the benefit of any third party.

14.2 ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign their interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement

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shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Construction Manager or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Construction Manager than this Agreement. If such assignment occurs, Construction Manager shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

14.3 GOVERNING LAW & VENUE Missouri law shall govern this Agreement. Venue for any dispute that results in litigation shall lie exclusively in the Circuit Court of Jasper County, Missouri.

14.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.5 NOTICE Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

14.6 NO WAIVER OF PERFORMANCE Either Party's failure to insist upon any of its rights, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

14.7 TITLES The titles given to the articles are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.8 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms before execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

ARTICLE 15 CONTRACT DOCUMENTS

15.1 EXISITING CONTRACT DOCUMENTS The Contract Documents in existence at the time of execution of this Agreement are as follows:

(a) Other: Conceptual Plans
(b) Exhibit A: Existing Conditions - Aerial

15.2 INTERPRETATION OF CONTRACT DOCUMENTS

15.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, Construction Manager shall perform the Work as though fully described on both.

15.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, Construction Manager shall immediately submit the matter to Owner for clarification. Subject to an equitable adjustment in the



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GMP, Dates of Substantial or Final Completion pursuant to ARTICLE 9 or a dispute mitigation and resolution, Owner's clarifications are final and binding.

15.2.3 Where figures are given, they shall be preferred to scaled dimensions.

15.2.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

15.2.5 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement; (c) subject to §15.2.2 the drawings, specifications, and addenda issued before the execution of this Agreement; (d) approved submittals; (e) information furnished by Owner pursuant to §3.15.4 or designated as a Contract Document in §15.1; (f) other Contract Documents listed in this Agreement.

OWNER: City of Joplin, Missouri

BY: _____ NAME: Nicholas Edwards TITLE: City Manager

WITNESS: _____ NAME: _____ TITLE: _____

CONSTRUCT MANAGER: Branco Enterprises, Inc.

BY: _____ 8/23/2024 NAME: Justin Branham TITLE: President

WITNESS: _____ NAME: _____ TITLE: _____

END OF DOCUMENT.

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