

# **REQUEST FOR QUALIFICATIONS**

**Construction Management at Risk Contractor for**

**NEW COMPTemporary ARTS CENTER AT  
CITY-BROOKS COMMUNITY PARK**



**Solicitation No: 238**  
**RFQ Issue Date: December 29, 2025**

**Proposal Opening Date: Thursday, January 29, 2026**  
**Proposal Opening Time: 11:00 A.M. CT**

BREC  
Recreation and Park Commission  
for the Parish of East Baton Rouge  
6201 Florida Boulevard  
Baton Rouge, LA 70806

Project Management Team:  
BREC Planning & Engineering Department

## **TABLE OF CONTENTS**

<b>PART I – ADMINISTRATIVE AND GENERAL INFORMATION .....</b>	<b>1</b>
1.1 Introduction/Statement of Purpose .....	1
1.2 Use of CMAR Method .....	1
1.3 Project Background/Description .....	2
1.4 Project Goals and Objectives .....	4
1.5 CMAR Pre-Construction Fee and Preliminary Budget for Construction .....	4
1.6 Definitions .....	4
1.7 Current Schedule of Events .....	6
1.8 Procedures for Questions/Clarifications Prior to Submittal .....	6
1.9 Procedures for Submission .....	7
1.10 Proposal Format .....	7
1.11 Proposal Contents & Evaluation/Selection Criteria .....	7
1.12 Evaluation/Scoring Methodology (100 points) .....	12
1.13 Pass/Fail Requirements .....	13
1.14 Selection Review Committee .....	14
1.15 Interviews/Presentations .....	14
1.16 Notice of Intent to Award .....	144
1.17 Contract Negotiation .....	144
1.18 Contract Award and Execution .....	15
1.19 Communications .....	15
1.20 Confidential Information, Trade Secrets, and Proprietary Information .....	15
1.21 Errors and Omissions .....	16
1.22 Performance and Payment Bond .....	16
1.23 Changes, Addenda, Withdrawals .....	16
1.24 Material in the RFQ .....	17
1.25 Waiver of Administrative Informalities .....	17
1.26 Proposal Rejection .....	17
1.27 Ownership of Proposal .....	17
1.28 Cost of Proposal Preparation .....	17
1.29 Taxes .....	17
1.30 Proposal Validity .....	17
1.31 CMAR Contractor Responsibility .....	18
1.32 Corporation Requirements .....	18
1.33 Use of Subconsultants .....	18
1.34 Acceptance of Proposal Content .....	18
1.35 Debriefings .....	18
1.36 Insurance Requirements .....	19
1.37 Payment for Services .....	19
1.38 Termination for lack of appropriated funds .....	19
1.39 Record Ownership .....	19
1.40 Conflicting Provisions/Order of Precedence .....	19
1.41 Contract Changes .....	19
1.42 Substitution of Personnel .....	20
1.43 Governing Law .....	20
1.44 Protests .....	20

<b>PART II – CMAR SCOPE OF WORK/SERVICES.....</b>	<b>21</b>
2.1 Scope of Work (Tasks & Services) .....	211
2.2 Project Requirements .....	23
2.3 Period of Agreement.....	23
2.4 Project Location .....	23
<b>PART III – BREC Commissioners/Project Team.....</b>	<b>24</b>
3.1 BREC Project Team:.....	24

#### **ATTACHMENTS**

A. Proposal Form.....	i
B. Proposer’s Organization .....	iii
C. Corporate Resolution.....	iv
D. Potential Conflict of Interest Certification.....	v
E. Proposer Affidavit .....	vi

#### **APPENDICES**

1. SAMPLE Agreement Between Owner & Construction Manager (AIA A133-2009 as modified by BREC)
2. SAMPLE General Conditions of the Contract for Construction (A201–2017 as modified by BREC)
3. Insurance Requirements
4. Design Team Schematic Design Recap & Schedule

**REQUEST FOR QUALIFICATIONS  
CONSTRUCTION MANAGEMENT at RISK (CMAR) Contractor for  
NEW CONTEMPORARY ARTS CENTER AT  
CITY-BROOKS COMMUNITY PARK  
RFQ No. 238**

**PART I – ADMINISTRATIVE AND GENERAL INFORMATION**

**1.1 INTRODUCTION/STATEMENT OF PURPOSE**

The Recreation and Park Commission for the Parish of East Baton Rouge (BREC) is seeking within this Request for Qualifications (RFQ) to select a contractor (CMAR Contractor) to provide Construction Management at Risk (CMAR) services for the New Contemporary Arts Center at City-Brooks Community Park (Project) as described herein. CMAR Contractor services associated with this RFQ are for the Pre-Construction and Construction Phases of the Project as more fully described in RFQ Part II (CMAR Scope of Work/Services) and the draft Contract.

**1.2 USE OF CMAR METHOD**

BREC intends to use the CMAR delivery method for the Project, as authorized by La. R.S. 38:2225.2.4. Use of the CMAR delivery method approach allows the collaboration of the best construction experience with BREC's design team to maintain cost control, implementation of design and/or construction innovations, minimization of risk of construction and design issues thereby reducing contract changes during construction, improve construction delivery schedule with concurrent execution of design and construction, and overall more effective and efficient constructability of the project. For this Project, use of the CMAR delivery method is in the public interest and beneficial to BREC for reasons including, without limitation, the following:

- The method is ideal for projects like this that may require scope flexibility due to outside factors, such as complex permitting and regulatory clearance; outside funding efforts; unforeseen conditions; etc;
- The method allows the CMAR Contractor to collaborate with BREC's design team early in the design phase, allowing proactive identification and resolution of potential constructability, schedule, and quality issues before initiating construction;
- The method allows construction planning activities, including sequencing, phasing, scheduling, and procurement planning to begin during design phase, allowing opportunities for a shorter construction schedule and lower project costs;
- The method will facilitate completion of the Project within the established budget and an agreed upon Guaranteed Maximum Price (GMP) as required by law;
- The method will facilitate completion of the Project within an agreed upon maximum construction duration.
- The Owner desires to mitigate current market volatility in material and supply costs and availability.
- The Owner is committed to delivering projects that are timely and within budget. The collaborative nature of the Construction Manager at Risk Delivery Method will assist with the timely completion of the Project in a cost-effective manner;
- The Owner, the Architect, and the Contractor ~~to~~ create a dedicated project delivery team to pursue mutual goals in the timely delivery of this complex project in a cost-effective manner;
- The Owner desires to minimize potential for design and construction disputes inherent in conventional

project delivery methods;

- The Owner desires to benefit from a concurrent, collaborative design/construction process to reduce overall project risks, schedule, and cost;
- The Owner endeavors to implement an alternative project delivery method where the parties involved work with one another to identify and resolve potential issues before that matter culminates in any sort of claim or dispute;
- BREC seeks the highest quality construction for the day-to-day benefit of the building's occupants, to maximize value for funds expended, and to minimize future maintenance costs;-
- The Owner desires to foster an environment that rewards positive thinking, advanced problem solving, a "can-do" attitude, and highly collaborative relationships. The successful Proposer will be expected to assist the Team in problem resolution using creative thinking in addition to unconventional approaches that streamline the project delivery process, while at the same time achieving BREC's goals for cost, schedule, and quality of construction.

### **1.3 PROJECT BACKGROUND/DESCRIPTION**

The existing Baton Rouge Gallery, Center for Contemporary Art (BRG), is located at City-Brooks Community Park. It is near the center of the City of Baton Rouge and located at the northern edge of City Park Lake and just south of an older neighborhood known as the Garden District. The park houses the historic City Park Golf Course, a playground, open green space, tennis center, dog park, and the Knock Knock Children's Museum. The site is currently accessed by the public from Dalrymple Drive, and/or Perkins Road. The site also has great access from Interstate 10 via Dalrymple Drive. The existing building is nearing its 100th anniversary, having been built and designed in 1927 to serve as a public pool house. The existing building includes approximately 4,000 square foot total which is used by both BRG and BREC's Golf department as the clubhouse and golfcart storage facilities. This building will remain operational during construction of the new Contemporary Arts Center.

The BREC Planning and Engineering (P&E) Department is responsible for planning, designing, engineering and construction of park and recreation facilities in the most economical, efficient, and effective manner possible, commensurate with the needs of the citizens of East Baton Rouge Parish, and within the funds allotted for such facilities. The P&E Department's planning role encompasses all activities needed to carry out the Park System Master Plan and Strategic Plan. This includes managing natural resources and conservation areas, conducting site planning and designing parks and recreation facilities, implementing multi-use greenways, and prioritizing the planning, design, and construction of all capital improvement projects. Baton Rouge Gallery, Center for Contemporary Art ("BRG"), has been a part of our area's cultural landscape for more than 55 years. It was first incorporated as a 501(c)(3) nonprofit organization in 1966 and has been partners with BREC (via cooperative endeavor agreement) since 1984. Its stated mission is to "connect audiences with local and national contemporary artists through exhibitions and innovative cultural programming."

Since its founding, BRG has been, and continues to be, an artist-centered organization. Its primary purpose is to serve as a space where visitors can view, engage with, and understand the work of quality contemporary, living visual artists. One of the many ways that BRG sets itself apart from other similar arts venues/organizations is that it is anchored by its roots as an artist cooperative.

As such, the authority to invite artists to join the organization (and conversely, the authority to excuse an artist from the organization) sits solely with the current artist membership (as opposed to any staff, etc.). The artists are also intimately involved with governance of the organization with one-third of the Board of Directors being comprised of artists.

BRG is open to the public six days a week at no cost. Most programming offered is also open to all without admission charges. BRG holds as a core value that high-quality cultural experiences should be accessible to everyone.

In recent years, BRG has seen exciting, exponential growth in the public's interest in regular and special programming presented by the organization. The monthly opening receptions held on the first Wednesday of each month have routinely seen over 500 attendees and as many as 750. Other program offerings by BRG have also seen similar attendance, stretching the limits of BRG's capacity. With less than 2,800 sq/ft of interior exhibition/public space, the organization is currently very limited in what it can offer and how much of the public it can serve.

The goal of the project is for BRG to expand its facilities to allow for the enhanced presentation of exceptional art and cultural programming, serve more East Baton Rouge Parish residents, and grow an audience of engaged, enthusiastic, and devoted visitors who support and cherish the arts. As envisioned, it will create a step change in the overall quality of life for the Baton Rouge community, exponentially enhance the economic impact on it, and ensure the accessibility of high-quality cultural programming for artists and audiences alike.

When completed, this project will allow BRG to expand its current programming and engage the Public in a dynamic and adaptable environment. The design will emphasize flexibility in the gallery and its interstitial spaces – creating inviting, open spaces that can seamlessly accommodate cultural gatherings, and a diverse range of social events. In doing so, BRG aims to elevate the presentation of works created by BRG's Artist Members (primarily Louisiana-based professional artists) and simultaneously present exhibitions by contemporary artists of note from outside our state. BRG will maintain functionality as a gallery space (with some works available for purchase, etc.) but will expand on creative and engaging programming on par with leading contemporary art galleries across the country – offering innovative exhibitions, multidisciplinary events, and immersive experiences that foster community and cultural dialogue.

The new facility will:

- Demonstrate the highest level of planning and design practices that capitalize on the essential natural, historic, and visual character of the site.
- Create a strong physical and synergistic connection with the existing park site and in consideration of other projects in the area that may have a direct impact on how the community engages with the site (i.e. the adjacent University Lakes environmental and recreational enhancement project currently in progress, City-Brooks Community Park Master Planning effort, Historic Clubhouse Renovation, etc.).
- Incorporate environmental sustainability and "green" standards that complement current regional planning practices and consider natural flood management.
- Incorporate contemporary aesthetics that can coexist with and complement the existing architecture within the park.
- Contribute to the ongoing development of the City-Brooks Community Park area as a destination for Baton Rouge residents and visitors alike.
- The design of the new facility and site, including its relationship to the historic clubhouse that currently houses the gallery, will be based on rigorous analysis of the site's natural systems, as well as existing and future Master Plan park amenities, and aligned with best environmental practices. Contemporary aesthetics should be incorporated in a manner that harmonizes with the existing architecture within the park. Programmatic and administrative needs of the new facility will include, but not be limited to the following:
  - Multiple substantial exhibition spaces that allow for works from local and national artists. Spaces should elevate the works on display while allowing for an inviting and welcoming experience for visitors. Gallery space for BRG Artist Members (featuring 3-5 artists at any given time) and national/travelling exhibitions should be separate but essentially equal in scale and amenities;
  - A central and dynamic entryway space that allows for a reception area in addition to entryways to multiple facets of the overall facility's offerings;
  - Space for arts education programming;

- Flexible multi-use space able to be utilized for programming or private events;
- Administrative offices for up to 8 individual offices and space for open workspaces for up to another 15-20 individuals;
- “Back-of-the-house” area that includes storage, preparatory area (including exhibit fabrication), accessible loading dock, and easy movement between back-of-the-house areas and public-facing spaces;
- Covered outdoor space with unique visual impact that safeguards programming against inclement weather;
- Possible incorporation of outdoor sculpture garden near facility.

#### **1.4 PROJECT GOALS AND OBJECTIVES**

BREC intends to contract with a CMAR Contractor to collaborate with the Design Team throughout the Pre-Construction Phase and have responsibility for constructability and value engineering review, cost estimating and cost control, scope management, construction schedule development, and design of temporary works as described in the Pre-Construction Services section of Part II (CMAR Scope of Work/Services). The Design Team will prepare final coordinated construction documents.

Before or upon completion of final design, the CMAR Contractor will provide a GMP proposal to render construction services on the Project. If BREC and the CMAR Contractor reach an agreement on GMP and, additionally, agree upon constructability, construction phasing and sequencing, and the maximum number of contract days to complete the Project, then BREC will award the Contract for the Construction Phase to the CMAR Contractor in accordance with La. R.S. 38:2225.2.4. BREC may contract with the CMAR Contractor to undertake specific components of construction (early works), provided the undertaking benefits the Project and a GMP agreement for the undertaking can be reached.

If, after negotiation, BREC and the CMAR Contractor are not able to agree on the GMP for the Project; constructability, construction phasing and sequencing; the maximum number of contract days to complete the project; and to reach a negotiated agreement, then BREC will advertise the project for public bid utilizing the design-bid-build delivery method and the CMAR Contractor shall be prohibited from bidding on the project in accordance with La. R.S. 38:2225.2.4.

#### **1.5 CMAR PRE-CONSTRUCTION FEE AND PRELIMINARY BUDGET FOR CONSTRUCTION**

The total compensation payable to the CMAR Contractor for performance of Pre-Construction Phase services, as detailed in Part II (CMAR Scope of Work/Services), shall not exceed **\$100,000.00**. In their Proposal, Proposers must confirm their ability to perform all required Pre-Construction services for this not-to-exceed amount or clearly indicate if and why additional compensation would be necessary.

The total estimated cost for construction of the Project is \$20,000,000.00. Information included in the Proposals that pertain to evidence of bonding capacity should be based on a \$20,000,000.00 construction budget.

#### **1.6 DEFINITIONS**

- **“Addenda” or “Addendum”** means supplemental additions, deletions, and modifications to the provisions of the RFQ issued after the advertisement date of the RFQ.
- **“BREC”** means the Recreation and Park Commission for the Parish of East Baton Rouge where BREC is the Owner.
- **“BREC Project Manager”** means the BREC Planning & Engineering Department staff member assigned to oversee the Project.

- **“Contract”** means the binding documents signed and agreed upon by BREC and the CMAR Contractor for the Project, the terms and conditions of which are outlined in the Draft Pre-Construction/Construction Management Contract (AIA A133-2009 as modified by BREC) included in this RFQ as Appendix 1.
- **“Construction Management at Risk” or “CMAR”** means the construction management at risk delivery method by which an owner engages and uses a design professional for professional predesign or design services (or both) and the owner contracts separately with a construction management at risk contractor to engage in the preconstruction phase and potentially the construction phase of the Project.
- **“CMAR Contractor”** means the selected Proposer who has been awarded a contract to provide Pre-Construction services associated with the Project and may be awarded a contract to provide construction and construction management services for the Project.
- **“Department”** means the BREC Planning & Engineering Department.
- **“Design Team”** means the team of design professionals, subcontractors, and subconsultants selected and retained by BREC to provide engineering and design services for the Project.
- **“General Conditions”** means those services and associated costs as defined in AIA A201-2017 (as modified by BREC), which is attached to this RFQ as Appendix 2.
- **“Guaranteed Maximum Price” or “GMP”** means the not-to-exceed cost of construction of the Project, to be determined by and between BREC and the CMAR Contractor during the Pre-Construction Phase.
- **“Key Personnel”** means the personnel essential to successful performance of the services to be provided by the Proposer.
- The use of the term **“may”** denotes an advisory or permissible action.
- The use of the term **“must”** denotes a mandatory requirement.
- **“Project”** means the Greenwood Community Park & Baton Rouge Zoo project.
- **“Project Team”** means the team of professionals and entities selected and retained by BREC to provide various services on the Project and that the CMAR will collaborate with to successfully complete the Project on schedule and within the overall budget.
- **“Proposal”** means a submittal of information by a Proposer in response to this RFQ.
- **“Proposer”** means any entity that submits a Proposal in response to this RFQ and who will be executing contract(s) with BREC should it be selected.
- **“Request for Qualifications” or “RFQ”** means this Request for Qualification No. 198 seeking a CMAR Contractor for the Project, including all enclosures, attachments, and Addenda.
- **“Selection Review Committee”** means the group of individuals appointed by BREC to review Proposals, score the Proposers, and recommend award in accordance with La. R.S. 38:2225.2.4.
- The use of the term **“shall”** denotes a mandatory requirement.
- The use of the term **“should”** denotes desirable.
- **“State”** means the State of Louisiana.

All other capitalized terms used, but not defined herein, shall have the meaning ascribed to such term in this RFQ.



## 1.7 CURRENT SCHEDULE OF EVENTS

Below is the proposed schedule for this selection process. BREC reserves the right to modify the RFQ process and the dates and times listed below as it deems necessary. If the RFQ process or these dates/times are modified, all prospective Proposers will be notified.

<i>Event</i>	<i>Date</i>
<b>1. Non-Mandatory Pre-Proposal Conference</b>	<b>Wednesday, January 7, 2026; 1:00 P.M. CT.</b>
2. Closing Date for Questions	Tuesday, January 13, 2026; 11:00 A.M CT.
3. BREC's Response to Written Questions	Thursday, January 15, 2026; 11:00 A.M CT.
<b>4. Proposal Submission Deadline</b>	<b>Thursday, January 29, 2026; 11:00 A.M CT.</b>
5. Selection Review Committee review period	Monday, Jan. 30, 2026 – Friday, February 6, 2026
6. Shortlist Announced for Interviews	Friday, February 6, 2026
7. Shortlist Interviews	Friday, Feb. 13, 2026
8. Commission Approval/Notice of Intent to Award	Thursday, February 26, 2026
9. Contract Execution and start of work	March 2026

## 1.8 PROCEDURES FOR QUESTIONS/CLARIFICATIONS PRIOR TO SUBMITTAL

All inquiries and/or requests for clarification must be submitted by email no later than **11:00 A.M. CT. on Thursday, January 29, 2026**. Requests for clarification received after this date will not be considered.

Submit questions by email to:

BREC Purchasing Manager  
BREC Purchasing Division  
[Richard.Terrell@brec.org](mailto:Richard.Terrell@brec.org)

**\*Note:** BREC has elected to use LaPAC, the state's online electronic bid posting and notification system that is currently contained on the Louisiana Office of State Procurement's website [LaPAC Public Menu](#) and is available for self-enrollment. In that LaPAC provides an immediate e-mail notification to subscribing proposers that a solicitation and any subsequent Addenda have been let and posted, notice and receipt thereof is considered formally given as of their respective dates of posting dates.

No negotiations, decisions, or actions shall be executed by any bidder as a result of any oral discussions with any BREC employee or BREC consultant. BREC shall only consider written and timely communications from prospective Proposers.

Inquiries shall be submitted in writing by an authorized representative of the Proposer and should clearly cross-reference the relevant section of this RFQ. Answers to questions that change or substantially clarify the solicitations shall be issued by Addenda and provided to all prospective Proposers. Proposers shall not rely on any representations, statement, or explanation other than those made in this RFQ or any Addenda. Where there appears to be conflict between this RFQ and any Addenda issued, the last Addendum issued will prevail.

All issues or protests regarding the terms or form of the RFQ should be raised in advance of submittal of Proposals and shall not be a basis to thereafter challenge this RFQ, the selection of any Proposer, or the award of any CMAR contracts.

### **Non-Mandatory Pre-Proposal Conference Call/Meeting:**

A non-mandatory Pre-Proposal for prospective Proposers will be held on **Wednesday, January 7, 2026; 1:00 P.M. CT.** at the following location:

BREC Administration Building  
6201 Florida Blvd.  
Baton Rouge, Louisiana 70806  
Room 2511  
Planning and Engineering Conference Room (2<sup>nd</sup> Floor)

The purpose of the Pre-Proposal Conference is to provide clarification as to the requirements of the RFQ, the evaluation process, scoring methodology, and any other questions or concerns raised by prospective Proposers. Therefore, prospective Proposers should present all concerns as to requirements, omissions, or discrepancies in the RFQ and associated documents to BREC at the conference. Although impromptu questions will be permitted and spontaneous answers may be provided during the conference, the official answer or position of BREC will be issued via written Addenda. Proposers are strongly encouraged to have at least one duly authorized representative attend the conference.

### **1.9 PROCEDURES FOR SUBMISSION**

Proposals should be clearly **marked** as follows:

REQUEST FOR QUALIFICATION No. 238  
CONSTRUCTION MANAGER at RISK (CMAR) Contractor for  
NEW CONTEMPORARY ARTS CENTER AT CITY-BROOKS COMMUNITY PARK  
PROPOSAL OPENING DATE/TIME: **Thursday, January 29, 2026; 11:00 A.M CT.**

Proposals shall either be **mailed or hand-delivered** to the following:

BREC Purchasing Division  
6201 Florida Boulevard  
Baton Rouge, LA 70806

Proposals that are faxed, emailed, or otherwise submitted electronically will **not** be accepted or considered. **Proposals shall be received no later than 11:00 A.M. CT., Thursday, January 29, 2026.** Postmarking by the due date will not substitute for actual receipt. BREC assumes no responsibility for delays caused by delivery service.

### **1.10 PROPOSAL FORMAT**

Ten (10) printed and bound Proposals, one (1) digital copy of the Proposal on a labeled USB flash drive, shall be provided.

Proposer's financial information should be submitted in an envelope clearly identified with the Proposer's name and marked "Confidential – Financial Documentation". Each page of the financial documents provided should also be marked "Confidential". Proposer's financial information should **not** be included on the submitted flash drive.

### **1.11 PROPOSAL CONTENTS & EVALUATION/SELECTION CRITERIA**

Proposers should submit a Proposal that highlights the experience and record of successful implementation of projects of similar type, size, and complexity performed by the Proposer. BREC and the Selection Review Committee will review the Proposals in an effort to select a CMAR Contractor that displays a successful history of Pre-Construction and Construction Phase services, a thorough understanding of the Project and delivery method, and a

track record with CMAR and similar project implementation processes on projects of similar type, size, and complexity. Proposals should be organized in a clear and concise manner and include the sections listed below.

	Cover Letter/Executive Summary
<b>Part A</b>	Business Organization, History, and Financial Condition
<b>Part B</b>	Proposer Qualifications and Experience
<b>Part C</b>	Relevant Project Experience
<b>Part D</b>	Approach & Methodology
	Required Proposal Attachments

The information requested is intended to assist the Selection Review Committee in evaluating the competency and professional qualifications of Proposers to perform the services; therefore, organizing Proposals into these sections will assist the Selection Review Committee in finding the key material and scoring the Proposals accordingly.

### **COVER LETTER/EXECUTIVE SUMMARY**

Proposers should provide a cover letter serving as an executive summary on Proposer's letterhead indicating the following:

- **Contact information:** Name, title, telephone number, email address, and mailing address of Proposer's primary point of contact during the selection process.
- **Summary:** A short statement summarizing the Proposer's commitment to the successful completion of the Pre-Construction and Construction phases of the Project. The summary should also include the Proposer's particular expertise, resources, and advantages that the Proposer will bring to BREC. The statement should explain the Proposer's ability to perform the services described in the RFQ, summarize any unique capabilities and/or resources that distinguish your firm with regard to this Project, and confirm that Proposer is willing to perform those services and enter into the Contract with BREC.
- **RFQ Compliance:** Illustrate and describe Proposer's compliance with the RFQ requirements.
- **Signature:** Proposals must be signed by those company officials or agents duly authorized to sign Proposals or contracts on behalf of the Proposer. By signing the Cover Letter and submitting a Proposal, Proposer certifies compliance with the signature authority required in accordance with Louisiana law. The person signing the Proposal must be:
  - A current corporate officer, partnership member, or other individual specifically authorized to submit a Proposal as reflected in the appropriate records on file with the secretary of state; or
  - An individual authorized to bind the company as reflected by a corporate resolution, certificate, affidavit, or other document indicating proper authority. See Attachment C (Corporate Resolution).

### **PART A — BUSINESS ORGANIZATION, HISTORY, AND FINANCIAL CONDITION**

Proposer should provide a narrative describing its business organization, and relevant history and financial information as more specifically described below:

1. **Business Organization and History:** Proposer should describe its business organization and history, including years of operation and depth of resources to provide the required services. This section should include the Proposer's legal entity, structure and size of company, including number of employees (total and local) and office locations (corporate and local).
  - If Proposer is a corporation, include date of incorporation, place of incorporation, officers and directors, and affiliates, partner corporations, and subsidiaries.

- If Proposer is a Limited Liability Company (LLC), include date of organization, place of organization, members, managing member, and identification of the majority member and its percentage interest.
- If Proposer is a joint venture (JV), include date of JV formation, name/address of each JV partner, principals of each JV partner, and identification of the majority JV partner and its percentage interest.

**2. Financial Condition:** Proposer (or in the case of a JV, each JV member) should demonstrate that it has the financial capacity to enter into the Contract with BREC and the resources to successfully complete the Project and include the following.

- Surety Letter.** Proposers shall provide evidence of bonding capacity, in the form of a letter or letters from a surety or insurance company (with a Best's Rating of A minus or better and Class VIII or better by A.M. Best and Company), stating that the Proposer is capable of obtaining separate performance and payment bonds in the amount of \$30 million to cover the obligations in the Construction Services Contract if the Proposer is awarded the Construction Services Contract. Letters indicating "unlimited" bonding capability are not acceptable.
- Financial Reports.** Proposers should include annual audited financial reports for the three (3) most recent full financial years, prepared in accordance with the Generally Accepted Accounting Principles (GAAP) and all relevant notes. Proposer shall submit one (1) copy of financials. The envelope should be clearly identified with the Proposer's name and marked "Confidential – Financial Documentation". Each page of the financial documents provided shall be marked "Confidential".

**3. Conflicts of Interest:** Proposers shall submit with its Proposal a completed Potential Conflict of Interest Certification/Disclosure (Attachment D) and disclose any existing or potential financial or legal conflicts of interest of the Proposer or any member or subcontractor of Proposer that may affect Proposer's performance of the work if selected as the CMAR Contractor or that could reasonably be perceived as conflicts of interest.

Specifically, Proposers must disclose any relationship Proposer, its parent or subsidiary, its current or former owners, officers, directors, employees, members of Proposer's team and/or others affiliated with Proposer have or in the past have had with: (1) any Selection Review Committee member identified in Section 1.14; (2) any firms and entities on BREC's Project Team identified in Section 3.1; (3) any BREC Commissioner identified in Section 3.2; or (4) anyone who has a contract or other relationship with a current or former BREC employee or relative of said employee who is or was significantly involved in the organization, preparation, or administration of this RFQ or otherwise is in a position to significantly affect the selection of the CMAR Contractor either through a decision-making capacity or through a review process.

Proposers are advised that contractors of public entities may, in certain circumstances, be deemed public employees as defined by the Louisiana Code of Governmental Ethics ("Ethics Code"). Proposers are responsible for determining that there will be no conflict or violation of the Ethics Code if awarded the Contract. Ethics issues are interpreted by the Louisiana Board of Ethics, and all potential conflicts shall be resolved with the Louisiana Board of Ethics prior to seeking a contract. The Board of Ethics for Public Employees is located at 617 North Third Street, LaSalle Building, 10<sup>th</sup> Floor, Baton Rouge, LA 70802; telephone number (225) 219-5600; toll free at 1-800-842-6630.

**4. Sanctions:** Proposer (or if a JV, each JV member) will disclose whether it is or has been the subject of any sanctions or complaints filed with the Louisiana Board of Ethics, the Louisiana Licensing Board of Contractors, or any other state or federal regulatory agency within the past ten (10) years. If so, the Proposer will provide a full description of the facts, circumstances, and outcomes of each sanction or

complaint.

5. **Litigation/Arbitration History:** Proposer should disclose whether it (or if a JV, any JV member) has been involved in any arbitration, litigation, or disciplinary proceedings within the past ten (10) years, or any other such proceedings or litigation between the Proposer and previous project owners. If so, Proposer will provide a description of the facts, circumstances, and outcomes of each.
6. **Safety Plan/Metrics:** Proposer (or if a JV, each JV member) will briefly describe its corporate safety program, training and safety education programs used, and its most recent safety record, including its Occupational Safety and Health Administration (OSHA) filings and its Experience Modification Rate (EMR). Safety record documentation for the past three (3) calendar years and copies of Proposer's EMR for the past three (3) years on insurance carrier's letterhead should be provided.

## **PART B — PROPOSER QUALIFICATIONS AND EXPERIENCE**

Proposers should provide qualifications and experience demonstrating its ability to professionally and successfully perform the CMAR Contractor services as follows:

1. **Licensure/Certifications:** Proposers shall be licensed in accordance with the rules of the Louisiana State Licensing Board for Contractors at the time of Proposal submittal and maintain licensure for the duration of the Pre-Construction and Construction contracts. Any engineering and surveying provided by CMAR Contractor will be performed in compliance with the registration law for Professional Engineers and Land Surveyors (La. R.S. 37:681 through 37:703) and the rules of the Board of Registration for Professional Engineers and Land Surveyors. Evidence of licensure and certifications, as applicable, shall be provided at the time of Proposal submission.
2. **Team Organization & Qualifications:**
  - a. **Team Organization.** Proposers should provide a proposed team organizational chart, which should be accompanied by a narrative summary indicating the functional roles, responsibilities, and designated authority of the people and entities identified. The organizational chart should identify the proposed roles and responsibilities in both the Pre-Construction and Construction phases. All subcontractors and subconsultants holding key roles on the Proposer's team should be clearly identified, as well as any and all work the Proposer intends to self perform in each phase.
  - b. **Key Personnel.** As defined herein, Key Personnel means all personnel essential to the successful performance of the services to be provided by the Proposer. Proposers should identify all Key Personnel and include resumes for each. Key Personnel resumes should include proposed role, responsibility, educational background, professional registrations, professional license numbers, years of relevant experience, and prior experience on relevant projects. For each Key Personnel, a minimum of five (5) relevant projects on which they held a key delivery role should be included. Resumes should clearly describe the role of the Key Personnel in each project listed.
    - i. The Proposer's senior project manager who will lead the Project throughout its entirety must be clearly identified. The senior project manager's resume should include projects on which he or she served in a project management capacity, preferably in the past ten (10) years. These projects should include at least two (2) projects delivered using CMAR, Progressive Design Build, or Design Build delivery method and at least three (3) projects with a construction value of \$20 million or more.
    - ii. Each project referenced should include contact information for primary and secondary references. **NOTE:** Proposer's failure to provide this information for Key Personnel will adversely affect Proposer's evaluation.

- c. Subcontractors/Subconsultants. Proposers should identify all subcontractors and subconsultants that will be included on the Proposer's project team. For each such subcontractor and subconsultant, Proposer should include a description of the entity's proposed role, responsibilities, background, professional registrations, professional license numbers, years of relevant experience, and prior experience on relevant projects.

## **PART C — RELEVANT PROJECT EXPERIENCE**

Proposers should provide the following information to demonstrate its relevant experience and performance on prior projects:

1. **Five (5) Relevant Projects**. Proposer should provide past project experience and performance information for five (5) relevant projects that Proposer has worked on that demonstrate Proposer's experience and performance and meet the following criteria:
  - a. The projects included should be comparable in size, scope, type, delivery model, and performance risk as the proposed Project;
  - b. The selected projects shall have been completed within the last fifteen (15) years;
  - c. A minimum of three (3) projects should have had a minimum of \$20,000,000 in total construction costs; and
  - d. A minimum of two (2) projects should have been delivered using CMAR, Progressive Design Build, or Design Build delivery methods.
2. **Relevant Project Information**. For each such project identified, Proposer should submit the following:
  - a. Project Description. Narrative describing each project, including the size and scope, and current status. The narrative should address the design approach, methodologies, design objectives, challenges and resolutions, and project success. The narrative should also include:
    - i. Date of actual construction start and actual substantial completion compared to planned start and planned completion, with an explanation of variances;
    - ii. Original construction budget, final construction cost, with an explanation of variances; and
    - iii. Any awards, recognition, or communications related to the project.
  - b. Key Individuals on Project. For each project, Proposer should clearly identify the key individuals, such as the project manager, project estimator, and project architect, who were responsible for the work and the firms they were employed by at the time of the project and who are Key Personnel for this Project. If the project is a joint project, Proposer should estimate the percent of the project that was the responsibility of the key individual.
  - c. References. Proposer should provide one (1) reference from the owner and one (1) reference from the designer, clearly identifying the name and current telephone number for each. Proposer is responsible for verifying the contact numbers submitted on the resume as the Selection Review Committee will make a reasonable effort to contact references based on the contact information provided. If additional information is needed on the relevant projects listed by the Proposer, BREC reserves the right to pursue additional contacts and incorporate the performance information obtained into the scoring of this section. (**NOTE:** Failure to provide this information for reference contacts will adversely affect your evaluation.)

## **PART D — APPROACH AND METHODOLOGY**

Proposers should provide a written description of its intended approach to performing the required Pre-Construction Phase and Construction services that demonstrates an understanding of the scope of services, including how the Proposer will successfully meet the Project scope, schedule, goals, and deliverables.

1. **Description of CMAR Contractor’s approach and role during Pre-Construction.** Proposers should include a description of the CMAR Contractor’s roles within and approach to the collaborative delivery process, interface with Design Team and other collaborative team members, and integration of scope management, temporary works design, operations and maintenance life cycle design and cost analysis, cost estimating, subcontractor outreach, CMP development, constructability reviews, construction planning, risk management and other CMAR Contractor functions into the overall design delivery process. This section should also include an acknowledgment of the Proposer’s ability to perform the Pre-Construction scope of services within the stated Pre-Construction Phase fee.
2. **Description of CMAR Contractor’s approach and role during Construction.** Proposer should provide the approach the performing construction and construction management services as required to deliver a constructed project within budget and schedule goals. This section should be specific with respect to project management processes; change management; definable features of work, work break down structure, risk identification, risk avoidance, and risk mitigation strategies; quality control/quality assurance, quality auditing, and deficiency reporting; scheduling and sequencing strategies; subcontractor management; and other processes required for successful project execution. This section should also include proposed construction methodologies, a description of the Proposer’s Health and Safety program (and associated approach to site safety and subcontractor adherence), and a description of the Proposer’s Quality Control program.
3. **Project Schedule.** Proposers should provide a proposed Project schedule that corresponds to the scope of services (Part II CMAR Scope of Work/Services). Proposals that do not include a Project schedule may be rejected at the option of BREC.
4. **DBE Participation Plan.** BREC is an equal opportunity employer and encourages the participation of certified Disadvantaged Business Enterprises (“DBE”) in all of its projects.

## **REQUIRED PROPOSAL ATTACHMENTS**

Proposer shall include with its Proposal all completed documents attached to this RFQ, including the following:

- Attachment A – Proposal Form
- Attachment B – Proposer Organization Form
- Attachment C – Corporate Resolution
- Attachment D – Potential Conflict of Interest Certification/Disclosure
- Attachment E – Proposer Affidavit

### **1.12 SELECTION PROCESS**

Selection will be made on the basis of Proposers’ competence and qualifications, not on the basis of fee. The following evaluation criteria and scoring chart will be used by the Selection Review Committee to score responsive Proposals:

## **SCORING AND RANKING OF PROPOSALS & VOTE TO RECOMMEND TO OWNER OR INTERVIEW**

- Scoring will be in descending order with the highest total score representing the best score.
- The scoring and ranking procedure will be as follows: The selection committee members will rank each Proposal meeting the minimum requirements either 1st, 2nd or 3rd for each of the four evaluation and

selection criteria listed in Section 5.4.1. The following scores are assigned to each rank: 1st = 3 points, 2nd = 2 points and 3rd = 1 point. The scores will then be totaled to derive a total score for each Proposer.

- After scoring and ranking the Proposers' Proposals, the selection review committee will grant an Interview/Presentation to the 3 Proposers having the highest scoring Proposals meeting the minimum criteria. In the event there are 1 or 2 Proposers, interviews will be granted to all Proposers.
- In the event that tied scores prevent a clear determination of the top 3 Proposers, the selection review committee will rank the highest scoring Proposals 1st, 2nd or 3rd to eliminate the tie(s).
- If a tie persists such that the selection review committee cannot determine the top 3 Proposers, a coin toss will be employed to break the tie.

### **INTERVIEW/PRESENTATION**

- The Proposers granted an interview by the selection review committee will be required to participate in the Interview/Presentation with the Owner.
- The Owner will schedule the time and location of the Interview/Presentation.
- Each Proposer will be responsible for travel and lodging costs associated with the Interview/Presentation.
- Interview/Presentation will be conducted as follows:
  1. Each Interview/Presentation will be 45 minutes.
  2. Of the 45 minutes, up to 30 minutes will be allowed for the presentation by the Proposer
  3. Of the 45 minutes, no less than 15 minutes will be allowed for a question and answer session with the selection review committee
- The Interview/Presentation will be held pursuant to La. R.S. 38:2225.2.4(F)(4).

### **SCORING AND RECOMMENDATION FOLLOWING INTERVIEW/PRESENTATION**

- Scoring will be in descending order with the highest total score representing the best score.
- Scoring will follow the scoring procedure outlined herein, taking into consideration the additional information provided during the Interview/Presentation.
- The Proposer receiving the highest score will be recommended in writing to the Owner by the selection review committee for the Part A: Pre-Construction Services contract award.
- In the event of a tie for first place, the Interview/Presentation rankings of each Proposer will be considered. The Proposer receiving the highest rank from each selection review committee member will be awarded one point.
- The Proposer with the most points will be recommended in writing to the Owner by the selection review committee for the Part A: Pre-Construction Services contract award.
- The scoring determinations of the selection review committee shall be final except as provided in La. R.S. 38:2225.2.4(D).

### **1.13 PASS/FAIL REQUIREMENTS**

Proposers must include all of the following in its Proposal and demonstrate the stated minimum requirements to be considered responsive with respect to this RFQ. Failure to submit any of the following will result in disqualification, and Proposer will not be further evaluated for selection as the CMAR Contractor on the Project:



1. **Cover Letter/Executive Summary** – as described in Section 1.11;
2. **Surety Letter** – as described in Section 1.11 – Part A(2)(a);
3. **Licensure/Certifications** – as described in Section 1.11 – Part B (1);
4. **Required Proposal Attachments** – as listed in Section 1.11.

#### **1.14 SELECTION REVIEW COMMITTEE**

In accordance with La. R.S. 38:2225.2.4, BREC has appointed a Selection Review Committee consisting of one (1) design professional not involved with the Project, one (1) construction professional not involved with the Project, one (1) representative of BREC, and two (2) members at large to review the Proposals, score the Proposers, and recommend award.

After receipt of the Proposals, the Selection Review Committee will evaluate and score the Proposers using the Proposal Contents & Evaluation/Selection Criteria in Section 1.11 and Scoring Process provided in Section 1.12. The Committee will issue a recommendation of award to the BREC Commission.

#### **1.15 INTERVIEWS/PRESENTATIONS**

BREC, in its sole discretion, may develop a “short-list” of the most qualified firms and request an oral presentation or interview with Proposers to further enhance its understanding of Proposers’ capabilities, resources, approach, or any other aspect of their Proposals. If presentations/interviews are requested by BREC, detailed information and requirements for presentations or interviews will be provided to the primary point of contact for each Proposer. Any commitments or representations made by a Proposer during a presentation (if any) may become formally recorded in the final Contract. Upon conclusion of presentations/interviews (if any) and deliberations by the Selection Review Committee, a recommendation of the selected CMAR Contractor will be sent to the BREC Commission. BREC reserves the right to select a Proposer and award a contract without any such interview/presentation.

#### **1.16 NOTICE OF INTENT TO AWARD**

Upon review and approval of the Selection Review Committee’s recommendation for award by the BREC Commission, a Notice of Intent to Award letter to the apparent successful Proposer will be issued. BREC will notify all unsuccessful Proposers as to the outcome of the evaluation process. The completed evaluation summary and recommendation report shall be made available to all interested parties upon request after the Notice of Intent to Award letter has been issued.

#### **1.17 CONTRACT NEGOTIATION**

The Contract arising from this selection process shall be based solely on the terms and conditions as outlined within this RFQ, including all related attachments and appendices. However, BREC reserves the right to negotiate the terms of the Contract, General Conditions, and/or services as generally referred to in this RFQ prior to execution of the Contract.

Upon the BREC Commission’s approval of the Selection Review Committee’s written recommendation, BREC will begin negotiations with the selected Proposer for the Pre-Construction services. If an agreement cannot be reached with the selected Respondent, BREC reserves the right to terminate negotiations with the selected Proposer and initiate negotiations with the next highest ranked Proposer. BREC reserves the right to include additional negotiation provisions if the inclusion is in the best interest of BREC, as determined solely by BREC.

Proposer should not submit its own standard contract terms and conditions as a response to this RFQ. Proposers need to address the specific language in the draft Contract (Appendix 1) and submit with their Proposal any exceptions or exact contract deviations that they wish to negotiate. The final Contract form shall be reviewed by the

Purchasing Division and approved by BREC Commission prior to issuance of a purchase order, if applicable to complete the process.

### **1.18 CONTRACT AWARD AND EXECUTION**

Award shall be made to the Proposer whose Proposal, conforming to the RFQ, will be the most advantageous to BREC. BREC reserves the right to enter into a Contract based on the initial offer and Proposal information received without further discussion of the Proposal submitted or further negotiations. BREC intends to award to a single Proposer, but reserves the right to contract for all or a partial list of services offered in the Proposal. The RFQ, any Addenda, and the Proposal of the selected CMAR Contractor will become part of any Contract initiated by BREC.

If the selected Proposer fails to execute the Pre-Construction Services Contract within **30 calendar** days after issuance of the Notice of Intent to Award, BREC may elect to cancel the award and commence negotiations with the next-highest-ranked Proposer.

### **1.19 COMMUNICATIONS**

From the issuance of this RFQ until Contract award, all communications concerning this solicitation, its evaluation, and negotiations are formal. All correspondence must be in writing and transmitted directly to BREC Purchasing Manager, Richard Terrell, in accordance with Section 1.8. Proposers are not permitted to communicate about this RFQ in any manner with any BREC personnel, BREC Commissioner, Selection Review Committee member, Project Team member, or any other BREC consultant or representative. If a Proposer is approached by any such individual listed above with information or questions concerning this RFQ, the Proposer shall immediately contact BREC Purchasing Manager, Richard Terrell, above for direction. Failure to abide by this formal communication requirement may cause BREC to disqualify Proposer from further consideration.

### **1.20 CONFIDENTIAL INFORMATION, TRADE SECRETS, AND PROPRIETARY INFORMATION**

The designation of certain information as trade secrets and/or privileged or confidential proprietary information shall only apply to the technical portion of Proposals. Proposals will not be considered confidential under any circumstance. Any Proposal copyrighted or marked as confidential or proprietary in its entirety may be rejected without further consideration or recourse.

For the purposes of this procurement, the provisions of the Louisiana Public Records Act (La. R.S. 44.1 *et seq.*) will be in effect. Pursuant to this Act, all proceedings, records, contracts, and other public documents relating to this procurement shall be open to public inspection. Proposers are reminded that while trade secrets and other proprietary information they submit in conjunction with this procurement may not be subject to public disclosure, protections must be claimed by the Proposer at the time of submission. Proposers should refer to the Louisiana Public Records Act for further clarification.

Proposers must clearly designate the part of their Proposal that contains a trade secret and/or privileged or confidential proprietary information as “confidential” in order to claim protection, if any, from disclosure. The Proposer shall mark the cover sheet of the Proposal with the following legend, specifying the specific section(s) of his Proposal sought to be restricted in accordance with the conditions of the legend:

*“The data contained in pages \_\_\_\_\_ of the proposal have been submitted in confidence and contain trade secrets and/or privileged or confidential information and such data shall only be disclosed for evaluation purposes, provided that if a contract is awarded to this Proposer as a result of or in connection with the submission of this proposal, BREC shall have the right to use or disclose the data*

*therein to the extent provided in the Contract. This restriction does not limit BREC's right to use or disclose data obtained from any source, including the Proposer, without restrictions."*

Further, to protect such data, each page containing such data shall be specifically identified and marked "CONFIDENTIAL".

Proposers must be prepared to defend the reasons why the material should be held confidential. If a competing Proposer or other person seeks review or copies of another Proposer's confidential data, BREC will notify the owner of the asserted data of the request. If the owner of the asserted data does not want the information disclosed, it must agree to indemnify BREC and hold BREC harmless against all actions or court proceedings that may ensue (including attorneys' fees), which seek to order BREC to disclose the information. If the owner of the asserted data refuses to indemnify and hold BREC harmless, BREC may disclose the information.

BREC reserves the right to make any Proposal, including proprietary information contained therein, available to the Purchasing Division personnel, or other BREC agencies or organizations for the sole purpose of assisting BREC in its evaluation of the Proposal. BREC shall require said individuals to protect the confidentiality of any specifically identified proprietary information or privileged business information obtained as a result of their participation in these evaluations.

If a Proposal contains confidential information, Proposer should also submit a redacted copy along with the Proposal. If Proposer does not submit the redacted copy, Proposer will be required to submit one within 48 hours of notification of a request. When submitting the redacted copy, Proposer should clearly mark the cover as such - "REDACTED COPY" - to avoid having this copy reviewed by a Selection Review Committee member. The redacted copy should also state which sections or information has been removed."

### **1.21 ERRORS AND OMISSIONS**

If a Proposer discovers any discrepancy, error or omission in this RFQ, including Attachments and Appendices, BREC shall be notified immediately via email as provided in Sections 1.8 and 1.19 and, if necessary, a written clarification and/or notification will be posted to LaPAC. No Proposer will be entitled to additional compensation for any error or discrepancy that appears in this RFQ.

BREC shall not be liable for any error or omission in Proposals. BREC reserves the right to make corrections or amendments due to patent errors identified in a Proposal by BREC or the Proposer, but BREC will not do so without Proposer's prior consent. BREC, at its option, has the right to request clarification or additional information from Proposers.

### **1.22 PERFORMANCE AND PAYMENT BOND**

The CMAR Contractor shall be required to provide performance and payment bonds in the amount of Twenty Million dollars and no/100 (\$20,000,000.00) to insure the successful performance under the terms and conditions of the Contract for Construction Services negotiated between the CMAR Contractor and BREC. The bonds shall be subject to forfeiture for failure on the part of the CMAR Contractor to perform its obligations under the Construction Contract.

### **1.23 CHANGES, ADDENDA, WITHDRAWALS**

Addenda to this RFQ may be necessary prior to the Proposal Submission Deadline and will be posted on LaPAC and made available to Proposers. Failure to acknowledge receipt of Addenda in accordance with the instructions contained in the Addenda may result in a Proposal being considered non-responsive. BREC reserves the right to revise

the Schedule of Events or revise any part of this RFQ by issuing addenda to the RFQ up to 72 hours prior to the Proposal Submission Deadline. If an addendum is issued within less than 72 hours of the Proposal Submission Deadline, an appropriate time extension for submission of Proposals will be granted. BREC also reserves the right to cancel or reissue the RFQ.

If Proposer needs to submit changes or addenda, such shall be submitted in writing prior to the Proposal Submission Deadline, signed by an authorized representative of the Proposer, cross-referenced clearly to the relevant Proposal section, and submitted in a sealed envelope. Such shall meet all requirements for the Proposal.

A Proposer may withdraw its Proposal that has been submitted at any time up to the Proposal Submission Deadline. To accomplish this, a written request signed by the authorized representative of the Proposer must be submitted to BREC Purchasing Manager, Richard Terrell, in accordance with Section 1.8.

#### **1.24 MATERIAL IN THE RFQ**

Proposals shall be based only on the material contained in this RFQ. The RFQ includes official responses to questions, Addenda, and other material, which may be provided by BREC pursuant to the RFQ.

#### **1.25 WAIVER OF ADMINISTRATIVE INFORMALITIES**

BREC reserves the right, at its sole discretion, to waive administrative informalities contained in any Proposal.

#### **1.26 PROPOSAL REJECTION**

Issuance of this RFQ in no way constitutes a commitment by BREC to award a Contract. BREC reserves the right to accept or reject, in whole or in part, all Proposals submitted and/or cancel this RFQ if it is determined to be in the best interest of BREC to do so. Failure to submit all non-mandatory information requested may result in BREC requiring prompt submission of missing information and/or a score deduction in the evaluation of the Proposal.

#### **1.27 OWNERSHIP OF PROPOSAL**

All materials submitted timely in response to this RFQ shall become the property of BREC. Selection or rejection of a Proposal does not affect this right. All Proposals submitted timely will be retained by BREC and not returned to Proposers. Any copyrighted materials in the response are not transferred to BREC.

#### **1.28 COST OF PROPOSAL PREPARATION**

Costs associated with developing the Proposal, preparing for oral presentations/interviews (if any), and any other expenses incurred by the Proposer in responding to this RFQ are entirely the responsibility of the Proposer. BREC shall not be liable for reimbursement of any of these costs.

#### **1.29 TAXES**

All taxes, other than state and local sales and use taxes from which BREC is exempt, shall be the responsibility of the CMAR Contractor.

#### **1.30 PROPOSAL VALIDITY**

All Proposals shall be considered valid for acceptance until such time an award is made, unless the Proposer provides for a different time period within its Proposal. However, BREC reserves the right to reject a Proposal if the Proposer's alternative time period is unacceptable to BREC and the Proposer is unwilling to extend the validity of its Proposal.

### **1.31 CMAR CONTRACTOR RESPONSIBILITY**

The selected Proposer shall be required to assume responsibility for all items and services offered in its Proposal whether or not it directly produces or provides them. BREC shall consider the selected Proposer to be the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the contract(s).

### **1.32 CORPORATION REQUIREMENTS**

Upon the award of the Contract, if the selected Proposer is a corporation and not incorporated under the laws of the State of Louisiana, it shall have obtained a certificate of authority to transact business in Louisiana pursuant to La. R.S. 12:301-302 from the Secretary of State of Louisiana prior to the execution of a contract.

If the selected Proposer is a for-profit corporation whose stock is not publicly traded, it shall ensure that a disclosure of ownership form has been properly filed with the Secretary of State of Louisiana.

If services are to be performed in East Baton Rouge, then evidence of a current occupational license and/or permit issued by BREC shall be supplied by the successful vendor, if applicable.

### **1.33 USE OF SUBCONSULTANTS**

The CMAR Contractor shall serve as the single prime contractor for all work performed pursuant to the Contract. The CMAR Contractor shall be responsible for all deliverables referenced in this RFQ. This general requirement notwithstanding, the CMAR Contractor may enter into subcontract arrangements. Accordingly, Proposers may submit a Proposal, which identifies subcontract(s) with others, provided that the Proposer acknowledges total responsibility for the entire Contract.

If a Proposer intends to subcontract portions of the services or to form a joint venture or other Project specific entity, the Proposer should identify each subcontractor or venture partner and should include specific designations of the tasks to be performed by the subcontractor or venture partner. Information required of the Proposer under the terms of this RFQ is also required for each subcontractor or venture partner. Unless provided for in the Contract with BREC, the CMAR Contractor shall not contract with any party other than those named in its Proposal for furnishing the work and professional services herein contracted for without the express written approval of BREC.

BREC is an equal opportunity employer and encourages the participation of certified Disadvantaged Business Enterprises (DBE) in all of its projects. Proposers are strongly encouraged to make good faith efforts to utilize certified DBEs for a portion of this Project.

Information required of Proposer under the terms of the RFQ, is also required for each of the Proposer's subconsultants and the subconsultants must agree to be bound by the terms of the Contract. The Proposer shall assume total responsibility for compliance.

### **1.34 ACCEPTANCE OF PROPOSAL CONTENT**

The mandatory RFQ requirements shall become contractual obligations if a Contract ensues. Failure of the successful Proposers to accept these obligations may result in the rejection of the Proposal.

### **1.35 DEBRIEFINGS**

Debriefings may be scheduled by Proposers after the Notice of Intent to Award letter has been issued and with 72 hours of advanced notice by contacting Purchasing by phone at 225-272-9200 extension 1422 or E-mail to

[Richard.terrell@brec.org](mailto:Richard.terrell@brec.org) to schedule the debriefing. Debriefings will be for the sole purpose of reviewing Proposer's own Proposal scoring results. If a Proposer wishes to view other file documents, a Public Records request in accordance with La. R.S 44:1, *et seq.* must be submitted.

### **1.36 INSURANCE REQUIREMENTS**

Upon contract award, the CMAR Contractor shall furnish BREC with certificates of insurance affecting coverage(s) required by the RFQ (see Appendix 3). The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be received and approved by BREC before work commences. BREC reserves the right to require complete certified copies of all required policies, at any time. Upon contract award, the CMAR Contractor shall include all subconsultants as insureds under its policies or shall insure that all subconsultants satisfy the same insurance requirements stated herein for the CMAR Contractor.

### **1.37 PAYMENT FOR SERVICES**

BREC Planning and Engineering Department shall pay CMAR Contractor in accordance with the Pricing Schedule set forth in the Contract. The CMAR Contractor may invoice the department monthly or at other approved intervals at the billing address designated by the department. Payments will be made by BREC within approximately thirty (30) days after receipt of a properly executed invoice, and approval by the department. Invoices shall include the contract or purchase order number, using department and product/service provided. Invoices submitted without the referenced documentation will not be approved for payment until the required information is provided. Written progress reports shall be submitted with applications for payment.

### **1.38 TERMINATION FOR LACK OF APPROPRIATED FUNDS**

Should the RFQ result in a multi-year Contract, a non-appropriation clause shall be made a part of the Contract terms as required by state statutes, allowing BREC to terminate the Contract for lack of appropriated funds on the date of the beginning of the first fiscal year for which funds are not appropriated. If the RFQ Contract services are funded by grant funds, BREC shall have the right to terminate the Contract or any issued task order for which funding is terminated.

### **1.39 RECORD OWNERSHIP**

All records, reports, documents, or other material related to any contract resulting from this RFQ and/or obtained or prepared by CMAR Contractor in connection with the performance of the services contracted for herein shall become the property of BREC, and shall, upon request, be returned by CMAR Contractor to BREC, at CMAR Contractor's expense, at termination or expiration of the Contract.

### **1.40 CONFLICTING PROVISIONS/ORDER OF PRECEDENCE**

In the event of an inconsistency between the Contract, the RFQ, and/or the CMAR Contractor's Proposal, the inconsistency shall be resolved by giving precedence first to the Contract (AIA A133-2009 Standard Form of Agreement Between Owner and Construction Manager as modified by BREC and AIA A201-2017 General Conditions of the Contract, as modified by BREC), then to the RFQ and subsequent Addenda (if any) and finally, the CMAR Contractor's Proposal.

### **1.41 CONTRACT CHANGES**

No additional changes, enhancements, or modifications to the Contract shall be made without the prior approval of Purchasing, Superintendent's Office and/or Commission. Changes to the Contract include any change in: compensation; beginning/ending date of the Contract; scope of work; and/or CMAR Contractor change through the

Assignment of Contract process. Any such changes, once approved, will result in the issuance of an amendment to the Contract.

#### **1.42 SUBSTITUTION OF PERSONNEL**

If during the term of the Contract, the CMAR Contractor or one of its subconsultants cannot provide the personnel as proposed and the CMAR Contractor requests a substitution, then that substitution shall meet or exceed the requirements stated herein. A detailed resume of qualifications and justification is to be submitted to BREC for approval prior to any personnel substitution. It shall be acknowledged by the CMAR Contractor that every reasonable attempt shall be made to assign the personnel listed in the CMAR Contractor's Proposal.

#### **1.43 GOVERNING LAW**

All activities associated with this RFQ process shall be interpreted under applicable Louisiana Law. All Proposals and contracts submitted are subject to provisions of the laws of the State of Louisiana including but not limited to L.R.S.38-2211-2296; section 1:701-710 of BREC Code of Ordinances, purchasing regulations; standard terms and conditions; special terms and conditions; and specifications listed in this RFQ.

In accordance with the provisions of Louisiana R.S. 38:2212.9 in awarding contracts after August 15, 2010, any public entity is authorized to reject the lowest bid from, or not award the Contract to, a business in which any individual with an ownership interest of five percent or more has been convicted of, or has entered a plea of guilty or nolo contendere to any state felony crime or equivalent federal felony crime committed in the solicitation or execution of a contract or bid awarded under the laws governing public contracts under the provisions of Chapter 10 of this Title, professional, personal, consulting, and social services procurement under the provisions of Chapter 16 of Title 39 of the Louisiana Revised Statutes of 1950, or the Louisiana Procurement Code under the provisions of Chapter 17 of Title 39 of the Louisiana Revised Statutes of 1950.

#### **1.44 PROTESTS**

In accordance with La. R.S. 38:2225.2.4, there shall be **no** challenge by any legal process to the choice of the successful CMAR Contractor, except on the grounds of: (a) fraud; (b) bias for pecuniary or personal reasons not related to the taxpayers' interest; or (c) arbitrary and capricious selection by BREC. If a Proposer believes it was adversely affected by BREC's procurement process or award due to one of the grounds listed above, the Proposer may file a protest as follows:

- Protests shall be submitted in writing to BREC Purchasing Manager, Richard Terrell, in accordance with Section 1.8 and specifically state the particular facts forming the basis of the protest and the relief requested.
- The written protest must be received within seven (7) days from the date the basis of the protest was or should have been known.

BREC will take action on a properly filed protest within fifteen (15) days of the receipt thereof. BREC may suspend, postpone or defer the proposal process and/or award in whole or in part upon receipt of a protest.

Protests will be reviewed by a committee appointed by the Superintendent's Office. The decision of the committee regarding the protest will be given to the Proposer in writing within ten (10) days after all pertinent information has been considered. The decision of the committee shall be a condition precedent to any other proceedings in connection with a protest and shall be considered the administrative remedy available to the protesting Proposer.

## **PART II – CMAR CONTRACTOR SCOPE OF WORK/SERVICES**

### **2.1 SCOPE OF WORK (TASKS & SERVICES)**

The project consists of the construction of a new Contemporary Arts Center for the Baton Rouge Gallery at City-Brooks Community Park. The CMAR will be responsible for:

- Pre-Construction Phase: The successful Proposer will join BREC and the Design Team to complete Pre-construction services for the project. Requirements of the CMAR are outlined in “Standard Form of Agreement Between Owner and Construction Manager as Constructor – AIA A133-2019.
- Construction Phase: Should the Owner accept the GMP proposal submitted as required by the Pre-construction services, the Contract will be amended to authorize the CMAR Proposer to perform construction phase services as the Construction Manager at Risk (CMAR). Duties of the CMAR during Construction and the general scope of work of the construction phase will be further defined in the proposed attached contract, and subject to compliance with the Owner’s General Conditions attached.

### **CMAR Scope**

The CMAR includes Pre-Construction services for working with BREC and its Design Team to assist in the completion of a comprehensive set of construction documents. These services include but are not limited to: constructability reviews; the assessment of appropriate means and methods; developing and updating the Critical Path Method (CPM) construction schedule; and providing input into the development of innovative time savings and cost savings ideas for project design. The CMAR Contractor will also provide opinions of probable construction costs (OPCCs) as part of the Pre-construction phase of the project as well as attend and actively participate in numerous meetings as required by BREC and these services throughout the project’s design. Further details of the CMAR scope are as follows:

#### **• Selection of Key Subcontractors**

The key subcontractor qualification, selection/confirmation process is anticipated to involve the entire project delivery team to determine a qualifications-based selection method after the CMAR has been selected that will:

- Encourage participation of qualified local firms (defined as any firm headquartered in the State of Louisiana) and qualified local DBE firms.
- Consider all criteria outlined in this RFQ
- Strive to ensure an appropriate fit for the Project and for the project delivery team.
- Ensure the Owner’s key project values are achieved.
- Ensure alignment with relevant sections of the proposed Contract and General Conditions.
- Comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.
- Ensure open competition by soliciting a minimum of three known suppliers or subcontractors.
- Require final approval by BREC staff. BREC reserves the right to deny use of a subcontractor.

#### **• Design Development**

The Design Team scope of services and deliverables include 30%, 60%, 90%, and 100% final plans, developed in collaboration with BREC and the CMAR Contractor on design decisions and constructability. During each of the Design Development stages, the CMAR Contractor prepares a CPM Project Schedule in accordance with the Contract requirements, OPCC in accordance with the Contract requirements, performs constructability reviews, and offers suggestions for construction phasing and innovative design and material alternatives. At the end of



each design stage, the Design Team submits Plans and Specifications for the CMAR Contractor and BREC's review, comments, and suggestions. The CMAR Contractor also reviews the Plans and Specifications and offers redline comments to improve the plans for constructability, construction logistics, clarify ambiguities, and provide consistency with the CMAR Contractor's proposed means and methods. At critical moments in the design process, it may be appropriate for the CMAR Contractor to facilitate design and constructability conversations between BREC, the Design Team, and potential subcontractors with specific trade experience that will improve the quality of the construction process. With each submission, the CMAR Contractor shall develop a list of Value-Engineering suggestions with potential cost savings and impacts on the design, scope, and schedule. This list shall be reviewed by BREC and the Design Team. Only items approved by BREC will be accepted for future documentation.

- **Opinion of Probable Construction Costs (OPCC) and Submittals**

The CMAR Contractor submits an Opinion of Probable Construction Cost (OPCC) to BREC and the Design Team at the following established pricing milestones: coinciding with the plan deliverables 50% Design Development, 100% Design Development, 50% Construction Drawings, and 90% Construction Drawings. The items with significant costs, researched and determined by BREC and the Design Team, will be discussed by the Project Team to modify the design, assumption and clarifications, production rates or other item(s) determined to be of different cost opinions. This process is used to potentially arrive at the GMP and maximum number of days.

- **OPCC Review Meetings**

The CMAR Contractor creates and updates the OPCC based on each Design Development stage plans and specifications as outlined, and an OPCC Review Meeting is to be held at each stage with BREC, the CMAR Contractor, and the Design Team. The purpose of the meeting is to discuss the CMAR Contractor's estimated items of work with pricing requiring clarification, and verification by BREC and the Design Team. Prior to the meeting, the BREC Project Manager reviews the OPCC with the Design Team and identifies all cost items that need further clarification and verification. During the Cost Review Meetings, the BREC Project Manager, the Design Team, and the CMAR Contractor attempt to reconcile pricing differences for those identified items. The reconciliation process gives all parties the opportunity to understand each other's perspectives about pricing assumptions, risk assignment, and means and methods. The CMAR Contractor shall identify the changes in the OPCC or changes that may affect the OPCC and schedule based on these factors at a minimum: design changes; new specifications; identified risks and risk mitigation; opportunities for innovation; material changes; phasing or sequencing changes; or other project limitations. The CMAR shall share with BREC and the Design Team detailed pricing, including pricing from subcontractors, where their services are utilized. These meetings occur at design stages and as often as BREC and the CMAR Contractor need to arrive at a GMP and final schedule with a decision being made by final plans.

- **Update OPCC, and Schedule**

At the conclusion of each of the OPCC Review Meetings, the CMAR Contractor must update the OPCC and Schedule to reflect all changes resulting from the Design Review Meeting and Cost Review Meeting.

- **Subsequent OPCC Submittals**

Additional OPCC submittals beyond the Design Development stages defined may be required if design refinements are required or if significant pricing variances remain. The goal, through this iterative process, is to narrow pricing differences throughout the Pre-Construction Phase, such that the GMP proposal is within an acceptable amount and within BREC's construction budget.

- **Completion of the GMP**

At the completion of 100% final plans the CMAR contractor must submit a GMP, maximum number of contract days, phasing and sequencing, and constructability for mutual agreement and determination of if the CMAR contractor is awarded the construction contract. A complete GMP package must be prepared and submitted as required in the pre-construction services contract for incorporation into the construction contract. If BREC and the CMAR contractor cannot agree on these items, the project will be advertised as a design bid build project and the CMAR contractor will not be eligible to bid pursuant to La. R.S. 2225.2.4.

## **2.2 PROJECT REQUIREMENTS**

After award and execution of the contract with the CMAR contractor, the following actions shall proceed: pursuant to La. R.S. 2225.2.4(G)(1)-(6).

- The design professional, in consultation with the CMAR contractor, shall proceed with design services.
- BREC shall obtain an opinion of probable cost of the Project from both the CMAR Contractor and the design professional when final design of the Project is at 50% Design Development, 100 Design Development, 50% Construction Drawings, and 90% Construction Drawings.
- The CMAR Contractor shall provide to BREC a GMP for construction of the Project, before or upon completion of the final design.
- If BREC and the CMAR contractor are able to negotiate, and to establish and agree upon a guaranteed maximum price, or GMP, to render construction services for the project, and additionally, to agree upon constructability, construction phasing and sequencing, and the maximum number of contract days to complete the project, BREC may then award the contract for construction services to the CMAR contractor for the construction phase of the contract.
- Once a guaranteed maximum price is agreed upon, BREC may contract with the CMAR contractor to undertake construction services. Additionally, BREC may determine and contract with the CMAR contractor to undertake specific items of construction services prior to agreement upon a GMP for such items, provided such undertaking is for the benefit of the project and a GMP for the undertaking can be agreed upon between the owner and CMAR contractor. Such items may benefit the project, including but not limited to items that require a long lead time, may further the understanding of unknown site conditions, or other items.
- If BREC and the CMAR contractor are not able to agree upon constructability, construction phasing and sequencing, the GMP for the project, the maximum number of contract days to complete the project, and to reach a negotiated agreement, then the project shall be readvertised and publicly bid utilizing the design-bid-build delivery method, provided the CMAR contractor shall be prohibited from bidding on the project.

## **2.3 PERIOD OF AGREEMENT**

The term of any contract resulting from this solicitation shall begin on or about March 2026 and is anticipated to conclude within twenty-four (24) months.

## **2.4 PROJECT LOCATION**

Location of the work: 1515 Dalrymple Drive, Baton Rouge, Louisiana 70808. Meetings/Delivery may be performed, completed, or managed at BREC's Administrative Offices – 6201 Florida Boulevard, Baton Rouge, Louisiana, 70806.

### **PART III – BREC Commissioners/Project Team**

To assist Proposers in determining and disclosing any potential conflicts of interests or potential conflicts of interest, BREC's Project Team firms and members and Commissioners are identified below.

#### **3.1 DESIGN TEAM:**

<b>NANO</b>	Architect of Record - Prime Management of Full Consultant team
<b>GS ARCH</b>	Associate Consulting Architect
<b>Reich Landscape Architects</b>	Local Landscape Architecture role
<b>TLC Engineering Solutions</b>	Mechanical, Electrical, and Plumbing Engineering
<b>Julien Engineering Consultants</b>	Civil and Structural Engineering
<b>Reed Estimating Company</b>	Cost Estimating

**PROPOSAL FORM**

BREC

Proposals will be received until **11:00 A.M. CT., Thursday, January 29, 2026** by the BREC Purchasing Division, 6201 Florida Blvd, Rm 1501, Baton Rouge, Louisiana 70806, at which time Proposals will be publicly opened.

PROPOSAL OF \_\_\_\_\_

ADDRESS \_\_\_\_\_

DATE \_\_\_\_\_

BREC  
Purchasing Manager  
6201 Florida Boulevard  
Baton Rouge, LA 70806

The undersigned hereby agrees to furnish all materials, tools, equipment, insurance and labor to perform all services required for the following Project:

**REQUEST FOR QUALIFICATIONS No. 238  
CONSTRUCTION MANAGER at RISK (CMAR) Contractor for  
NEW CONTEMPORARY ARTS CENTER AT CITY-BROOKS COMMUNITY PARK**

as set forth in the following Contract Documents:

1. Notice to Proposers
2. Request for Qualifications (Attachments and Appendices)
3. Contract
4. The following enumerated addenda: \_\_\_\_\_ receipt of which is hereby acknowledged.

The undersigned declares that the only persons or parties interested in this Proposal as principals are those named herein; that this Proposal is made without collusion of any kind with any other person, firm, association or corporation; that the undersigned has carefully examined the site of the proposed work, and proposes, and agrees, if this Proposal is accepted, to do all the work and furnish all the services specified in accordance with the requirements of the Contract Documents and to accept as full compensation therefore the total amount of the prices herein proposed, subject to any mutually agreed upon amendments.

The undersigned agrees that the Proposal is firm until time of award.

The undersigned agrees to execute the Contract and Affidavit and furnish to BREC all insurance certificates and performance bond (if applicable) required for the Project within fifteen (15) calendar days after receiving notice of award from BREC.

The undersigned further agrees that the work will begin on the date specified in the Notice to Proceed, projected to be on or about March 2026 and shall be diligently prosecuted at such rate and in such manner as, in the opinion of

BREC's Representative is necessary for the prosecution of the work within the times specified in the Contract, it being understood that time is of the essence.

The price for performance of Pre-Construction Services shall be One Hundred Thousand dollars and no/100 (\$100,000.00). The price for performance of Construction Services will be negotiated and accepted pursuant to RS 38:2225.2.4.

---

(SIGNATURE)

---

(Typed Name and Title)

**THE ATTACHED BIDDER'S ORGANIZATION SHEET MUST BE COMPLETED TO INDICATE WHETHER  
BIDDER IS AN INDIVIDUAL, PARTNERSHIP, ETC.**

**PROPOSER'S ORGANIZATION**

Proposer is:

**AN INDIVIDUAL**

Individual's Name: \_\_\_\_\_

Doing business as: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

**A PARTNERSHIP**

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

Name of person authorized to sign: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Email: \_\_\_\_\_

**A LIMITED LIABILITY COMPANY**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Name of person authorized to sign: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Email: \_\_\_\_\_

**A CORPORATION**

**IF PROPOSAL IS BY A CORPORATION, THE CORPORATE RESOLUTION MUST BE SUBMITTED WITH BID.**

Corporation Name: \_\_\_\_\_

Address: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

Name of person authorized to sign: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Email: \_\_\_\_\_

**IF PROPOSAL IS BY A JOINT VENTURE, ALL PARTIES TO THE BID MUST COMPLETE THIS FORM.**

**CORPORATE RESOLUTION**

A meeting of the Board of Directors of \_\_\_\_\_  
a corporation organized under the laws of the State of \_\_\_\_\_  
and domiciled in \_\_\_\_\_ was held this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_\_\_  
and was attended by a quorum of the members of the Board of Directors.

The following resolution was offered, duly seconded and after discussion was unanimously adopted by said quorum:

**BE IT RESOLVED**, that \_\_\_\_\_  
\_\_\_\_\_

is hereby authorized to submit proposals and execute agreements on behalf of this corporation with BREC, for the Parish of East Baton Rouge.

**BE IT FURTHER RESOLVED**, that said authorization and appointment shall remain in full force and effect, unless revoked by resolution of this Board of Directors and that said revocation will not take effect until the Finance Director of BREC, shall have been furnished a copy of said resolution, duly certified.

I, \_\_\_\_\_, hereby certify that I am the Secretary of \_\_\_\_\_  
\_\_\_\_\_

a corporation created under the laws of the State of \_\_\_\_\_ domiciled in \_\_\_\_\_  
\_\_\_\_\_;

that the foregoing is a true and exact copy of a resolution adopted by a quorum of the Board of Directors of said corporation at a meeting legally called and held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, as said resolution appears of record in the Official Minutes of the Board of Directors in my possession.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
**SECRETARY**

**POTENTIAL CONFLICT OF INTEREST CERTIFICATION**

**Proposer Name:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

Proposer hereby indicates that it has determined that, to the best of its knowledge and belief:

- ☐ NO potential organizational conflict of interest exists.
- ☐ A potential organizational conflict of interest exists as follows:

**Attach additional sheets as necessary. Describe nature of the potential conflict(s):**

**Describe measures proposed to mitigate the potential conflict(s):**

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

If a potential conflict has been identified, please provide name and phone number for a contact person authorized to discuss this disclosure certification with BREC personnel and legal counsel.

**Name:** \_\_\_\_\_

**Phone:** \_\_\_\_\_



**PROPOSER AFFIDAVIT**

**Recreation and Park Commission for the Parish of East Baton Rouge (BREC)**

**BEFORE ME**, the undersigned authority, personally came and appeared

\_\_\_\_\_

who, being duly sworn did depose and say:

That he is a duly authorized representative of \_\_\_\_\_  
receiving value for services rendered in connection with:

**REQUEST FOR QUALIFICATIONS No. 238  
CONSTRUCTION MANAGER at RISK (CMAR) Contractor for  
NEW CONTEMPORARY ARTS CENTER AT CITY-BROOKS COMMUNITY PARK**

a public project of BREC, Parish of East Baton Rouge, Louisiana: that he has employed no person, corporation, firm, association, or other organization, either directly or indirectly, to secure the public contract under which he received payment, other than persons regularly employed by him whose services in connection with the construction, alteration, or demolition of the public building or project or in securing the public contract were in the regular course of their duties for him; and that no part of the Contract price received by him was paid or will be paid to any person, corporation, firm, association, or other organization for soliciting the Contract, other than the payment of their normal compensation to persons regularly employed by him whose services in connection with the construction of the public building or project were in the regular course of their duties for him.

This affidavit is executed in compliance with the provisions of La. R.S. 38:2224.

\_\_\_\_\_  
Affiant's Signature

**SWORN TO AND SUBSCRIBED** before me, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ in Baton Rouge, Louisiana.

\_\_\_\_\_  
**NOTARY PUBLIC**

### **SAMPLE FORM OF AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AIA A133-2009 AS MODIFIED BY BREC**

Part A: Pre-Construction Services - design assist

Part B: Construction Services - where the Construction Manager is also the Constructor. If awarded, will be awarded under two (2) separate contracts.

<p>INFORMATION PURPOSES ONLY FINAL CONTRACT PENDING REVIEW BY ALL PARTIES</p>
---

# DRAFT AIA® Document A133™ – 2019

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

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

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

« »« »  
« »  
« »  
« »

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

« »« »  
« »  
« »  
« »

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

« »  
« »

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

« »« »  
« »  
« »  
« »

The Owner and Construction Manager agree as follows.

### **ADDITIONS AND DELETIONS:**

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

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

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

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

## EXHIBIT B INSURANCE AND BONDS

### ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

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

« »

§ 1.1.2 The Project's physical characteristics:

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

« »

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

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

« »

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

- .1 Design phase milestone dates, if any:

« »

- .2 Construction commencement date:

« »

- .3 Substantial Completion date or dates:

« »

- .4 Other milestone dates:

« »

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

« »

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

« »

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

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

« »

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

« »

« »

« »

« »

« »

« »

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

« »

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

**.1 Geotechnical Engineer:**

<< >>< >>  
<< >>  
<< >>  
<< >>  
<< >>

**.2 Civil Engineer:**

<< >>< >>  
<< >>  
<< >>  
<< >>  
<< >>

**.3 Other, if any:**

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

<< >>

**§ 1.1.11 The Architect's representative:**

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

<< >>  
<< >>  
<< >>  
<< >>  
<< >>  
<< >>

**§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:**

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

<< >>  
<< >>  
<< >>  
<< >>  
<< >>  
<< >>

**§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:**

*(List any Owner-specific requirements to be included in the staffing plan.)*

<< >>

**§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:**

*(List any Owner-specific requirements for subcontractor procurement.)*

<< >>

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

<< >>

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

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

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

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

### § 2.2 Relationship of the Parties

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

### § 2.3 General Conditions

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

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

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 3.1 Preconstruction Phase

#### § 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the

Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

### **§ 3.1.3 Consultation**

**§ 3.1.3.1** The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

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

**§ 3.1.3.3** The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### **§ 3.1.4 Project Schedule**

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

### **§ 3.1.5 Phased Construction**

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

### **§ 3.1.6 Cost Estimates**

**§ 3.1.6.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

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

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



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

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

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

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

#### § 3.1.11 Subcontractors and Suppliers

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

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

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

#### § 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### § 3.1.13 Compliance with Laws

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

#### § 3.1.14 Other Preconstruction Services

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

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

« »

### § 3.2 Guaranteed Maximum Price Proposal

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

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

**§ 3.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

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

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

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

**§ 3.2.8** The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

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

### **§ 3.3 Construction Phase**

#### **§ 3.3.1 General**

**§ 3.3.1.1** For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

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

### **§ 3.3.2 Administration**

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

**§ 3.3.2.2** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

### **§ 3.3.2.3 Monthly Report**

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

### **§ 3.3.2.4 Daily Logs**

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

### **§ 3.3.2.5 Cost Control**

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

## **ARTICLE 4 OWNER'S RESPONSIBILITIES**

### **§ 4.1 Information and Services Required of the Owner**

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

**§ 4.1.2** Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

**§ 4.1.3** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

**§ 4.1.4.2** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands;

adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 4.1.4.3** The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

#### **§ 4.2 Owner's Designated Representative**

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

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

#### **§ 4.3 Architect**

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

### **ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

#### **§ 5.1 Compensation**

**§ 5.1.1** For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

« »

**§ 5.1.2** The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

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

« »

**Individual or Position**

**Rate**

**§ 5.1.2.1** Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such

as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

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

## § 5.2 Payments

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

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

« » % « »

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

« »

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

« »

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

« »

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

§ 6.1.6 Liquidated damages, if any:

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

« »

§ 6.1.7 Other:

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

« »

### § 6.2 Guaranteed Maximum Price

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

### § 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The



Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 6.3.1.1** The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

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

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

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

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

## **ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 7.1 Costs to Be Reimbursed**

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

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

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

### **§ 7.2 Labor Costs**

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

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

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

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

« »

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

**§ 7.2.4** Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions,

provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

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

### **§ 7.3 Subcontract Costs**

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

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

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

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

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

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

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

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

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

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

### **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

**§ 7.6.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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

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

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

**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

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

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

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

**§ 7.6.7** Costs of document reproductions and delivery charges.

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

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

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

**§ 7.6.11** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

## **§ 7.7 Other Costs and Emergencies**

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

**§ 7.7.2** Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

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

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

## **§ 7.8 Related Party Transactions**

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



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

#### **§ 7.9 Costs Not To Be Reimbursed**

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

#### **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

**§ 8.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

#### **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 9.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

**§ 9.1.1** When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the

difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 9.2** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

## **ARTICLE 10 ACCOUNTING RECORDS**

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## **ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

### **§ 11.1 Progress Payments**

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

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

« »

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

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

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

**§ 11.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

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

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

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

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

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

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

#### § 11.1.8 Retainage

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

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

<< >>

§ 11.1.8.1.1 The following items are not subject to retainage:

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

<< >>

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

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

« »

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

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

« »

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

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

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

**§ 11.1.12** In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## **§ 11.2 Final Payment**

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

**§ 11.2.2** Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

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

**§ 11.2.2.2** Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 11.2.2.3** If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

« »

**§ 11.2.4** If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

### **§ 11.3 Interest**

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

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

« » % « »

## **ARTICLE 12 DISPUTE RESOLUTION**

### **§ 12.1 Initial Decision Maker**

**§ 12.1.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

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

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

« »

« »

« »

« »

### **§ 12.2 Binding Dispute Resolution**

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

*(Check the appropriate box.)*

[ « » ] Arbitration pursuant to Article 15 of AIA Document A201–2017

[ « » ] Litigation in a court of competent jurisdiction

[ « » ] Other: *(Specify)*



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

## ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

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

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

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

### § 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

### § 13.2.2 Termination by the Owner for Cause

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

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

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

### § 13.2.3 Termination by the Owner for Convenience

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

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

« »

## § 13.3 Suspension

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

## ARTICLE 14 MISCELLANEOUS PROVISIONS

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

### § 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

## § 14.3 Insurance and Bonds

### § 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than « » (\$ « ») for each occurrence and « » (\$ « ») in the aggregate for bodily injury and property damage.

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

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than « » (\$ « ») each accident, « » (\$ « ») each employee, and « » (\$ « ») policy limit.

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

#### § 14.3.1.6 Other Insurance

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

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

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

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

### § 14.3.2 Construction Phase

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

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™-2019 Exhibit B, and elsewhere in the Contract Documents.

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

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



<< >>

§ 14.5 Other provisions:

<< >>

**ARTICLE 15 SCOPE OF THE AGREEMENT**

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
(Insert the date of the E203-2013 incorporated into this Agreement.)

<< >>

- .6 Other Exhibits:  
(Check all boxes that apply.)

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

<< >>

[ ☐ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

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

<< >>

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

OWNER (Signature)

<< >><< >>

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

<< >><< >>

(Printed name and title)

**GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION  
AIA A201–2017 AS MODIFIED BY BREC**

INFORMATION PURPOSES ONLY  
FINAL CONTRACT PENDING  
REVIEW BY ALL PARTIES

# DRAFT AIA® Document A201™ – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

<< >>  
<< >>

THE OWNER:

(Name, legal status and address)

<< >>< >>  
<< >>

THE ARCHITECT:

(Name, legal status and address)

<< >>< >>  
<< >>

### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### ADDITIONS AND DELETIONS:

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

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

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

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.



## INDEX

(Topics and numbers in bold are Section headings.)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

### Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

### Access to Work

**3.16**, 6.2.1, **12.1**

### Accident Prevention

**10**

### Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,  
10.2.8, 13.3.2, 14.1, 15.1.2, **15.2**

### Addenda

1.1.1

### Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, **15.1.5**

### Additional Inspections and Testing

9.4.2, 9.8.3, **12.2.1**, **13.4**

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

### Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

### Advertisement or Invitation to Bid

1.1.1

### Aesthetic Effect

4.2.13

### Allowances

**3.8**

### Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

### Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,  
3.12.10.1, 4.2.7, 9.3.2, **13.4.1**

### Arbitration

8.3.1, **15.3.2**, **15.4**

## ARCHITECT

**4**

### Architect, Definition of

**4.1.1**

### Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,  
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, **12.1**, **12.2.1**,  
**13.4.1**, **13.4.2**, **14.2.2**, **14.2.4**, **15.1.4**, **15.2.1**

### Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,  
4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4,  
9.4.2, 9.5.4, 9.6.4, **15.1.4**, **15.2**

### Architect's Additional Services and Expenses

2.5, **12.2.1**, **13.4.2**, **13.4.3**, **14.2.4**

### Architect's Administration of the Contract

3.1.3, 3.7.4, **15.2**, 9.4.1, 9.5

### Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

### Architect's Authority to Reject Work

3.5, 4.2.6, **12.1.2**, **12.2.1**

### Architect's Copyright

1.1.7, **1.5**

### Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,  
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,  
**13.4.2**, **15.2**

### Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, **13.4**

### Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, **13.4.2**

### Architect's Interpretations

4.2.11, 4.2.12

### Architect's Project Representative

4.2.10

### Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,  
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,  
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,  
9.7, 9.8, 9.9, **10.2.6**, **10.3**, **11.3**, **12**, **13.3.2**, **13.4**, **15.2**

### Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, **11.3**

### Architect's Representations

9.4.2, 9.5.1, 9.10.1

### Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, **13.4**

### Asbestos

**10.3.1**

### Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, **10.3.3**

### Award of Separate Contracts

6.1.1, 6.1.2

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

**5.2**

## Basic Definitions

**1.1**

### Bidding Requirements

1.1.1

### Binding Dispute Resolution

8.3.1, 9.7, 11.5, **13.1**, **15.1.2**, **15.1.3**, **15.2.1**, **15.2.5**,  
**15.2.6.1**, **15.3.1**, **15.3.2**, **15.3.3**, **15.4.1**

### Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

### Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, **11.1.3**, **11.5**

### Building Information Models Use and Reliance

**1.8**

### Building Permit

3.7.1

## Capitalization

**1.3**

### Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

### Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7,  
9.10.1, 9.10.3, **14.1.1.3**, **14.2.4**, **15.1.4**

### Certificates of Inspection, Testing or Approval

13.4.4  
Certificates of Insurance  
9.10.2  
**Change Orders**  
1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3,  
7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1,  
9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2  
**Change Orders**, Definition of  
**7.2.1**  
**CHANGES IN THE WORK**  
2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,  
11.5  
**Claims**, Definition of  
**15.1.1**  
Claims, Notice of  
1.6.2, 15.1.3  
**CLAIMS AND DISPUTES**  
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4  
Claims and Timely Assertion of Claims  
15.4.1  
**Claims for Additional Cost**  
3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**  
**Claims for Additional Time**  
3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**  
**Concealed or Unknown Conditions, Claims for**  
**3.7.4**  
Claims for Damages  
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3,  
11.3.2, 14.2.4, 15.1.7  
Claims Subject to Arbitration  
15.4.1  
**Cleaning Up**  
**3.15**, 6.3  
Commencement of the Work, Conditions Relating to  
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,  
6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**  
**Commencement of the Work**, Definition of  
**8.1.2**  
**Communications**  
3.9.1, **4.2.4**  
Completion, Conditions Relating to  
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,  
9.10, 12.2, 14.1.2, 15.1.2  
**COMPLETION, PAYMENTS AND**  
**9**  
Completion, Substantial  
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1,  
9.10.3, 12.2, 15.1.2  
Compliance with Laws  
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2,  
13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3,  
15.2.8, 15.4.2, 15.4.3  
Concealed or Unknown Conditions  
3.7.4, 4.2.8, 8.3.1, 10.3  
Conditions of the Contract  
1.1.1, 6.1.1, 6.1.4  
Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2,  
15.4.4.2  
**Consolidation or Joinder**  
**15.4.4**  
**CONSTRUCTION BY OWNER OR BY**  
**SEPARATE CONTRACTORS**  
1.1.4, **6**  
**Construction Change Directive**, Definition of  
**7.3.1**  
**Construction Change Directives**  
1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3,  
**7.3**, 9.3.1.1  
Construction Schedules, Contractor's  
3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2  
**Contingent Assignment of Subcontracts**  
**5.4**, 14.2.2.2  
**Continuing Contract Performance**  
**15.1.4**  
**Contract**, Definition of  
**1.1.2**  
**CONTRACT, TERMINATION OR**  
**SUSPENSION OF THE**  
5.4.1.1, 5.4.2, 11.5, **14**  
Contract Administration  
3.1.3, 4, 9.4, 9.5  
Contract Award and Execution, Conditions Relating  
to  
3.7.1, 3.10, 5.2, 6.1  
Contract Documents, Copies Furnished and Use of  
1.5.2, 2.3.6, 5.3  
**Contract Documents**, Definition of  
**1.1.1**  
**Contract Sum**  
2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4,  
**9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2,  
12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**  
**Contract Sum**, Definition of  
**9.1**  
Contract Time  
1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5,  
7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1,  
8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2,  
14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5  
**Contract Time**, Definition of  
8.1.1  
**CONTRACTOR**  
**3**  
**Contractor**, Definition of  
**3.1**, **6.1.2**  
**Contractor's Construction and Submittal**  
**Schedules**  
**3.10**, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2  
Contractor's Employees  
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6,  
10.2, 10.3, 11.3, 14.1, 14.2.1.1  
**Contractor's Liability Insurance**  
**11.1**

Contractor's Relationship with Separate Contractors and Owner's Forces  
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors  
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect  
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations  
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work  
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents  
3.2

Contractor's Right to Stop the Work  
2.2.2, 9.7

Contractor's Right to Terminate the Contract  
14.1

Contractor's Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent  
3.9, 10.2.6

Contractor's Supervision and Construction Procedures  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation  
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications  
1.5, 2.3.6, 3.11

Copyrights  
1.5, **3.17**

Correction of Work  
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1

**Correlation and Intent of the Contract Documents**  
**1.2**

**Cost**, Definition of  
**7.3.4**

Costs  
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

**Cutting and Patching**  
**3.14**, 6.2.5

Damage to Construction of Owner or Separate Contractors  
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work  
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for  
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7

Damages for Delay  
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

**Date of Commencement of the Work**, Definition of  
**8.1.2**

**Date of Substantial Completion**, Definition of  
**8.1.3**

**Day**, Definition of  
**8.1.4**

Decisions of the Architect  
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2

**Decisions to Withhold Certification**  
9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of  
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions  
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

**Delays and Extensions of Time**  
**3.2**, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5

**Digital Data Use and Transmission**  
**1.7**

Disputes  
6.3, 7.3.9, 15.1, 15.2

**Documents and Samples at the Site**  
**3.11**

**Drawings**, Definition of  
**1.1.5**

Drawings and Specifications, Use and Ownership of  
3.11

Effective Date of Insurance  
8.2.2

**Emergencies**  
**10.4**, 14.1.1.2, **15.1.5**

Employees, Contractor's  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials  
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work  
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**

**Failure of Payment**  
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work  
(See Defective or Nonconforming Work)

**Final Completion and Final Payment**  
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's  
2.2.1, 13.2.2, 14.1.1.4

## **GENERAL PROVISIONS**

### **1**

#### **Governing Law**

##### **13.1**

Guarantees (See Warranty)

#### **Hazardous Materials and Substances**

##### **10.2.4, 10.3**

Identification of Subcontractors and Suppliers  
5.2.1

#### **Indemnification**

3.1.7, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

#### **Information and Services Required of the Owner**

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,  
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,  
14.1.1.4, 14.1.4, 15.1.4

#### **Initial Decision**

##### **15.2**

#### **Initial Decision Maker, Definition of**

1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

#### **Injury or Damage to Person or Property**

##### **10.2.8, 10.4**

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

#### **Instruments of Service, Definition of**

##### **1.1.7**

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5,

##### **11**

#### **Insurance, Notice of Cancellation or Expiration**

##### **11.1.4, 11.2.3**

#### **Insurance, Contractor's Liability**

##### **11.1**

Insurance, Effective Date of

8.2.2, 14.4.2

#### **Insurance, Owner's Liability**

##### **11.2**

#### **Insurance, Property**

##### **10.2.5, 11.2, 11.4, 11.5**

Insurance, Stored Materials

9.3.2

## **INSURANCE AND BONDS**

### **11**

Insurance Companies, Consent to Partial Occupancy  
9.9.1

Insured loss, Adjustment and Settlement of

11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

#### **Interest**

##### **13.5**

#### **Interpretation**

1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

#### **Labor and Materials, Equipment**

1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,  
10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,  
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,  
15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,  
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,  
11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,  
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,  
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,  
15.1.2, 15.1.3, 15.1.5

#### **Materials, Hazardous**

##### **10.2.4, 10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,  
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and  
Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

#### **Mediation**

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,  
15.4.1.1

#### **Minor Changes in the Work**

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

## **MISCELLANEOUS PROVISIONS**

### **13**

#### **Modifications, Definition of**

##### **1.1.1**

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,  
10.3.2

#### **Mutual Responsibility**

##### **6.2**

#### **Nonconforming Work, Acceptance of**



9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of  
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,  
12.2

#### **Notice**

**1.6**, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4,  
3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4,  
8.2.2 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1,  
13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5,  
15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance  
11.1.4, 11.2.3

#### **Notice of Claims**

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5,  
15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections  
13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2,  
14.3.1

#### **OWNER**

**2**

**Owner**, Definition of

##### **2.1.1**

**Owner**, Evidence of Financial Arrangements

**2.2**, 13.2.2, 14.1.1.4

**Owner**, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5,  
9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1,  
13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2,  
4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1,  
7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2,  
10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4,  
15.2.7

**Owner's Insurance**

##### **11.2**

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

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

**2.5**, 14.2.2

**Owner's Right to Clean Up**

##### **6.3**

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

##### **6.1**

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

##### **2.4**

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

**Ownership and Use of Drawings, Specifications**

**and Other Instruments of Service**

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12,  
5.3

**Partial Occupancy or Use**

9.6.6, **9.9**

**Patching, Cutting and**

**3.14**, 6.2.5

Patents

3.17

**Payment, Applications for**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,  
14.2.3, 14.2.4, 14.4.3

**Payment, Certificates for**

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,  
9.10.3, 14.1.1.3, 14.2.4

**Payment, Failure of**

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

**Payment Bond, Performance Bond and**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

**Payments, Progress**

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

**PAYMENTS AND COMPLETION**

**9**

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

**Performance Bond and Payment Bond**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

**Permits, Fees, Notices and Compliance with Laws**

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

**PERSONS AND PROPERTY, PROTECTION**

**OF**

**10**

Polychlorinated Biphenyl

10.3.1

**Product Data**, Definition of

**3.12.2**

**Product Data and Samples, Shop Drawings**

3.11, **3.12**, 4.2.7

**Progress and Completion**

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

**Progress Payments**

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

**Project**, Definition of

**1.1.4**

Project Representatives

4.2.10

**Property Insurance**

10.2.5, **11.2**

**Proposal Requirements**

1.1.1

**PROTECTION OF PERSONS AND PROPERTY**

**10**

Regulations and Laws

1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Rejection of Work  
4.2.6, 12.2.1

Releases and Waivers of Liens  
9.3.1, 9.10.2

Representations  
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

Representatives  
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work  
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage  
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

**Review of Contract Documents and Field Conditions by Contractor**  
**3.2**, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect  
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor  
3.12

**Rights and Remedies**  
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, **13.3**, 14, 15.4

**Royalties, Patents and Copyrights**  
**3.17**

Rules and Notices for Arbitration  
15.4.1

**Safety of Persons and Property**  
**10.2**, 10.4

**Safety Precautions and Programs**  
3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4

**Samples**, Definition of  
**3.12.3**

**Samples, Shop Drawings, Product Data and**  
3.11, **3.12**, 4.2.7

**Samples at the Site, Documents and**  
**3.11**

**Schedule of Values**  
**9.2**, 9.3.1

Schedules, Construction  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors  
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

**Separate Contractors**, Definition of  
**6.1.1**

**Shop Drawings**, Definition of  
**3.12.1**

**Shop Drawings, Product Data and Samples**  
3.11, **3.12**, 4.2.7

**Site, Use of**  
**3.13**, 6.1.1, 6.2.1

Site Inspections  
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's  
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Special Inspections and Testing  
4.2.6, 12.2.1, 13.4

**Specifications**, Definition of  
**1.1.6**

**Specifications**  
1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

Statute of Limitations  
15.1.2, 15.4.1.1

Stopping the Work  
2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials  
6.2.1, 9.3.2, 10.2.1.2, 10.2.4

**Subcontractor**, Definition of  
**5.1.1**

**SUBCONTRACTORS**  
**5**

Subcontractors, Work by  
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

**Subcontractual Relations**  
**5.3**, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3

Submittal Schedule  
3.10.2, 3.12.5, 4.2.7

**Subrogation, Waivers of**  
6.1.1, **11.3**

**Substances, Hazardous**  
**10.3**

**Substantial Completion**  
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 15.1.2

**Substantial Completion**, Definition of  
**9.8.1**

Substitution of Subcontractors  
5.2.3, 5.2.4

Substitution of Architect  
2.3.3

Substitutions of Materials  
3.4.2, 3.5, 7.3.8

**Sub-subcontractor**, Definition of  
**5.1.2**

Subsurface Conditions  
3.7.4

**Successors and Assigns**  
**13.2**

**Superintendent**  
**3.9**, 10.2.6

**Supervision and Construction Procedures**  
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers  
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of  
9.8.5, 9.10.2, 9.10.3

Surveys  
1.1.7, 2.3.4

### **Suspension by the Owner for Convenience 14.3**

Suspension of the Work  
3.7.5, 5.4.2, 14.3  
Suspension or Termination of the Contract  
5.4.1.1, 14

### **Taxes**

3.6, 3.8.2.1, 7.3.4.4

### **Termination by the Contractor**

14.1, 15.1.7

### **Termination by the Owner for Cause**

5.4.1.1, 14.2, 15.1.7

### **Termination by the Owner for Convenience 14.4**

Termination of the Architect  
2.3.3  
Termination of the Contractor Employment  
14.2.2

## **TERMINATION OR SUSPENSION OF THE CONTRACT**

### **14**

#### **Tests and Inspections**

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4

### **TIME**

### **8**

#### **Time, Delays and Extensions of**

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7,  
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

#### **Time Limits**

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,  
5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,  
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14,  
15.1.2, 15.1.3, 15.4

#### **Time Limits on Claims**

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

## **UNCOVERING AND CORRECTION OF WORK**

### **12**

#### **Uncovering of Work**

#### **12.1**

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

#### **Use of Site**

3.13, 6.1.1, 6.2.1

#### **Values, Schedule of**

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, 15.1.7

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

#### **Waivers of Subrogation**

6.1.1, 11.3

#### **Warranty**

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,  
15.1.2

Weather Delays

8.3, 15.1.6.2

#### **Work, Definition of**

#### **1.1.3**

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,  
13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. In defining and interpreting the scope of Work, the Contract Documents shall take precedence in the following order: AIA Document A102-2007 and attached Exhibits including modifications, AIA Document A201-2007 including modifications, Addenda issued prior to execution of the Agreement and Modifications issued after execution of the Agreement, Specifications, Drawings. The Contract Documents include all items necessary for the proper execution and completion of the Work by Contractor. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

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

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

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

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

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

#### § 1.1.8 Initial Decision Maker

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

## § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; any known differences between the requirements of the Drawings and the Specifications or any known differences noted within the Drawings themselves or within the Specifications themselves have been referred to the Owner and Architect by Contractor and have been clarified to the satisfaction of Contractor. Any performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Dimensions to be utilized shall be figures, measurements, or computations based on given figures, rather than scale or rule.

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

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

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. In the event of conflicting provisions among the Contract Documents that were not called to the Owner's or Architect's attention, prior to the execution of the Contract, the Architect shall determine which of the conflicting requirements shall govern, generally taking as a guideline the more stringent requirement or more expensive material, unless, in the opinion of the Architect, and subject to the Owner's approval, another requirement is more appropriate. The Contractor shall perform the Work at no additional cost and/or time to the Owner in accordance with the Architect's decision.

## § 1.3 Capitalization

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

## § 1.4 Interpretation

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

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

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

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

## § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to



whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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

### **§ 1.7 Digital Data Use and Transmission**

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

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

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

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

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

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

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

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

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

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

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

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

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

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

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

**§ 2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. In connection with the forgoing, prior to any work occurring, Contractor shall be responsible for verifying the location of all utility lines, telephone lines and cables, sewer lines, water pipes, gas lines, electrical lines, including without limitation, all buried pipelines and buried telephone cables, and shall perform the Work in such manner so as to avoid damaging any such lines, cables, pipes and pipelines.

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

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

### **§ 2.4 Owner’s Right to Stop the Work**

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

### **§ 2.5 Owner’s Right to Carry Out the Work**

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

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

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 General**

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

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

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

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

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

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

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

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

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

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



Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

**§ 3.3.4** The Contractor shall engage subcontractors, vendors and workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a workmanlike manner under the full-time supervision of an approved superintendent. The Contractor shall be liable for all property damage, including but not limited to repairs and replacements of the Work. Further, the Contractor shall advise the Owner and Architect: (a) if a specified product deviates from good construction practices; (b) if following the Specifications will adversely affect any warranties; and (c) of any objections which the Contractor may have to the Specifications. Nothing contained in section 1.1.3 shall alter the responsibilities established in this section.

### **§ 3.4 Labor and Materials**

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

**§ 3.4.1.1** The Contractor shall inspect all materials delivered to the Project to ensure that all materials, equipment and labor incorporated into or working on the Project meets or exceeds industry standards for quality and craftsmanship. Contractor shall reject any materials that will not conform with the Contract Documents when properly installed. All material delivered to the job site shall be handled in a manner to preclude inclusion of any foreign substances or causing of any discoloration therein and to prevent any damage thereto which might reduce its effectiveness as part of the Work.

**§ 3.4.1.2** Unless otherwise provided in the Contract Documents, all equipment, material, and articles incorporated into the Work shall be new and of the most suitable grades for the intended purpose. Materials shall conform to manufacturer's standards in effect at the date of execution of the Agreement and shall be installed in strict accordance with the manufacturer's latest directions. Contractor shall, if required by Owner or Architect, furnish satisfactory evidence as to the kind or quality of any materials.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By making a request for substitutions, Contractor represents and warrants the following: (1) that Contractor has investigated the proposed product or material and determined that it is equal or superior in all respects to that specified; (2) that Contractor shall provide an equal or greater warranty for the substitution that the Contractor would for that specified; (3) that Contractor certifies that the cost data presented is complete and includes all related costs under the Contract, except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and (4) that Contractor will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects. Any substitutions for specified materials, equipment, or systems proposed by or through the Contractor shall be effective only upon written approval and authorization by Owner and Architect. Upon such written approval, the substitution shall become part of the Contract Documents as if specifically incorporated therein by the Architect or its subconsultants and agents.

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

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that the workmanship materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The

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

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

### **§ 3.6 Taxes**

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

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

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

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

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

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14-3 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party the Contractor disputes the Architect's determination or recommendation, that party the Contractor may submit a Claim as provided in Article 15.

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

### **§ 3.8 Allowances**

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

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

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2. Contractor shall submit the Change Order to the Owner prior to incurring any costs greater than the allowance. Under no circumstances shall Contractor incur any costs greater than an allowance on behalf of Owner without prior written authorization of Owner. Notwithstanding anything to the contrary, and notwithstanding if Contractor incurs costs greater than allowances, unless a Change Order is executed by Contractor and Owner prior to commencement of allowances, Contractor shall not be entitled to, and waives any right to receive, additional consideration, or any other compensation with respect to such allowance, whether based on implied consent, quantum merit or otherwise.

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

**§ 3.9 Superintendent**

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

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

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

**§ 3.9.4** The Contractor shall further provide a list of the key members of Contractor's staff for Owner's approval. The list shall be attached and incorporated into the Contract Documents as Exhibit A. Such key members of Contractor's staff shall not be changed without the written consent of the Owner, unless such person becomes unable to perform his or her duties due to death, disability or termination of employment, or unless Owner requests removal. If a key member is no longer capable of performing in the capacity described in the attached Exhibit, or is removed by the Owner, the Owner and the Contractor shall agree on a mutually acceptable substitute.

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

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

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

Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

**§ 3.10.4** In the event any revised schedule or progress report indicates delays in achievement of any Milestone Date, the contractor shall propose in written form a proactive, realistic, and achievable plan (the "Corrective Plan") to correct the delay, including overtime, additional shifts, supplementing subcontractor forces and/or additional labor if necessary. Corrective Plan shall indicate the date by which the progress of the Work will recover and comply with the construction schedule, and shall be subject to the approval of the Owner and the Architect. In no event shall any revised schedule, progress report or Corrective Plan constitute an adjustment in the Contract Time or Contract Amount, or any Milestone Date unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order. Owner reserves the right to withhold all or any portion of Contractor's Fee for which Contractor is at fault for Contractor's failure to reach a Milestone Date within the scheduled time.

### **§ 3.11 Documents and Samples at the Site**

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

**§ 3.11.1** At the date of Substantial Completion and as a condition precedent to Final Payment, the Contractor shall furnish the following documents to the Owner: Record drawings showing the field changes and selections (all changes and selections to be approved by the Owner and the Architect in advance) affecting the general construction, mechanical, electrical, plumbing, and all other work, and indicating how and where the Work was actually installed. These shall consist of carefully drawn markings on a set of reproducible prints of the Architect's Drawings obtained and paid for by Contractor. The Contractor shall maintain at the job site on (1) set of Architect's Drawings and indicate thereon each field change as it occurs.

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

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

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

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

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

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

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified

materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

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

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

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

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

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

**§ 3.12.11** Substitutions of material or equipment on an "or equal" basis shall not be proposed or requested in shop drawings or sample submittals unless approval is promptly requested after award of any Subcontract, providing to Owner and Architect all supporting data and samples as will permit a fair evaluation of the proposed substitution with respect to quality, performance, serviceability, warranty, and cost difference.

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Owner shall have the right to refuse admittance to the site to any employee of the Contractor or Subcontractors whose presence the Owner deems hostile to the Owner's interest.



### § 3.14 Cutting and Patching

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

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

### § 3.15 Cleaning Up

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

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

### § 3.16 Access to Work

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

### § 3.17 Royalties, Patents and Copyrights

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

### § 3.18 Indemnification

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

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

### § 3.19 LIENS

§ 3.19.1 Contractor agrees to keep the Work as well as the entire Project and premises free and clear from all construction liens, and any constitutional, statutory, or common-law liens, garnishments, encumbrances, notices, and any other claim (the "Lien Claims"). If any Lien Claims are filed or recorded relating to Contractor's Work, the Project or premises, which in any way relate to this Agreement, Contractor shall defend, indemnify and hold Owner

harmless against said Lien Claims at Contractor's sole cost. If any such lien is recorded by anyone or any entity in relation to the Work, the Owner shall have the right, among other provisions of the Contract Documents and law, to: (1) require Contractor to have the lien discharged by posting a bond with appropriate surety within five (5) calendar days of written notice by Owner to Contractor; (2) retain from any payment due Contractor or to become due Contractor, an amount sufficient to indemnify Owner against said lien or claim of lien, including bond premiums and attorney's fees, and to apply same in such manner as Owner deems necessary to secure protection and/or satisfy such claims and liens.

**§ 3.19.2** In the event such lien is not discharged, Owner shall have the right to terminate the Agreement for cause or to bond off said lien(s) and recover from Contractor all costs incurred as a result of termination, including, without limitation, bond premiums, and attorney's fees.. If a lien is filed by any Subcontractor, laborer or supplier, Contractor shall be solely responsible for the amount of the lien plus any and all incidental costs and shall cause the lien to be extinguished or canceled, so that such lien shall not constitute a cloud, lien, or encumbrance against the ownership of the Project by the Owner. Owner, upon receipt of a notice that a lien may be claimed by any third party pertaining to the Work, has the right to make payment jointly on behalf of the Contractor or its Subcontractor to such third party.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

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

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

### **§ 4.2 Administration of the Contract**

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

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

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

### **§ 4.2.4 Communications**

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

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

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

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

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

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

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

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

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

§ 4.2.13 The Architect will make its decisions and recommendations to the Owner on matters relating to aesthetic effect will be final if regarding consistency with the intent expressed in the Contract Documents. The Owner will make final decisions on these matters.

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



## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

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

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

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

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

§ 5.2.5 To the extent Contractor wishes to change a Subcontractor, Contractor shall provide Owner with written notification. Acceptable reason for change of a Subcontractor pursuant to Paragraph 5.2.4 shall be limited to the following:

- .1 Business failure of Subcontractor;
- .2 Inability of Subcontractor to provide bonds where required; and
- .3 Failure of Subcontractor to perform according to approved schedule, quality requirements, or other provisions of the Contract Documents.

~~§ 5.2.6 Prior to solicitation of bids from Subcontractors and material suppliers, Contractor shall submit to the Owner and Architect a proposed list of bidders. The Owner reserves the right to approve and add to such bidders list. After Contractor's completion of its bid solicitation, Contractor shall submit to Owner a detailed comparative analysis of subcontractor bids together with Contractor's recommendations for award. Owner's approval of any subcontractor shall not make Owner responsible for the selection of the subcontractor.~~

§ 5.2.7 Within 10 (ten) calendar days after Contractor's execution of a subcontract, Contractor shall deliver to Owner the fully executed subcontract agreement.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the

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

#### **§ 5.4 Contingent Assignment of Subcontracts**

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

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

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

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

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

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

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

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

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

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

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

## § 6.2 Mutual Responsibility

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

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

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

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

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

## § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

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

§ 7.1.4 Notwithstanding anything provided in Article 15 of these General Conditions, Contractor must promptly (within ~~thirtyfourteen~~ (1430) days) submit a request for a Change Order of the event giving rise for the requested Change Order. Contractor's failure to timely request the change shall result in Contractor's waiver and release of its ability to seek an adjustment to the GMPContract Amount.

### § 7.2 Change Orders

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

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

§ 7.2.2 A Change Order is conclusively and irrefutably presumed to include all adjustments in Contract Time and Contract Sum Amount and GMP necessary to complete the change to the Work and related parts of the Work. Unless expressly reserved therein, an executed Change Order shall constitute a final settlement of all matters and pending claims by Contractor relating to the change in the Work which is the subject of the Change Order including, but not limited to, all direct and indirect costs associated with such change, any adjustments to the Contract Sum, and any and all adjustments to the construction schedule. Any schedule impact or cost impact that is not included in the Change Order at the time of execution of the Change Order by both parties shall be irrevocably waived.

§ 7.2.3 Contractor's Change Order shall provide either (i) a lump sum; (ii) unit price or (iii) a not-to-exceed amount properly itemized and supported by sufficient substantiating data to permit evaluation by Owner and Architect. Notwithstanding anything to the contrary, and notwithstanding if Contractor performs such changed Work, unless a Change Order is executed by Contractor and Owner prior to commencement of the changed Work the Contractor shall not be entitled to, and forever waives any right to receive, additional consideration, or any other compensation with respect to such changed Work, whether based on implied consent, quantum meruit or otherwise. If Owner and Contractor fail to agree on a lump sum, unit price or not-to-exceed amount, and Contractor is nonetheless directed by Change Order to proceed with performance of the changes to the Work pursuant to a Change Order, then the adjustment to the contract Sum, if any, shall subject to the provisions of this Article 7.

§ 7.2.4 Failure of Contractor and Owner to agree on an adjustment of the Contract Sum or extension of the contract Time for performance under this Contract shall not excuse Contractor from proceeding with the prosecution and performance of the Work as changed and ordered in writing by Owner. Owner shall have the right in its sole discretion to require Contractor to commence performance of changes to the Work. Contractor shall not, under any circumstances, be entitled to any compensation, fee, or cost increases of any nature whatsoever for any changed Work performed without prior written consent and approval by Owner.

### **§ 7.3 Construction Change Directives**

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

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

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

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

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

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

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

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

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

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

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

#### § 7.4 Minor Changes in the Work

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

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

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

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

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



## § 8.2 Progress and Completion

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

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. Except as otherwise specifically provided in § 8.3 of these General Conditions, the Contractor shall bear all Costs within the Contract Sum, for overtime or acceleration and all additional expenses which may arise in order to achieve Substantial Completion within the Contract Time.

## § 8.3 Delays and Extensions of Time

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

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

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

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the ~~Architect-Owner~~ before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the ~~Architect-Owner~~. The initial schedule of values shall be consistent with the most recent budget estimate or Guaranteed Maximum Price prepared by Contractor and shall include actual Subcontractor bids. The schedule of values shall be included with each Application for Payment. Ultimately, the schedule of values shall reflect any adjustment of the Contract Sum of the Work pursuant to the Agreement. This schedule, unless objected to by the ~~Architect-Owner~~, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the ~~Architect-Owner~~ and supported by such data to substantiate its accuracy as the ~~Architect-Owner~~ may require, and unless objected to by the ~~Architect-Owner~~, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### § 9.3 Applications for Payment

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

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

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

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

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

**§ 9.3.4** Any allowances included in the Application for Payment shall be separately itemized with supporting data attached.

#### **§ 9.4 Certificates for Payment**

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

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

#### **§ 9.5 Decisions to Withhold Certification**

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

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

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

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

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

## **§ 9.6 Progress Payments**

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

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

### **§ 9.6.3 Deleted**

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

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

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

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

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



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

### **§ 9.7 Failure of Payment**

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

### **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. As used herein, the Owner's "intended use" of the Work includes Owner's ability to occupy and utilize all common areas and amenities for their intended purposes. Under no circumstances shall the Work or any portion thereof be deemed to be substantially complete unless and until (1) certificates of occupancy and completion governing the entire Project, have been issued by all appropriate governmental authorities having jurisdiction over the Project; (2) all Project systems included in the Work are operational as designed and scheduled and accepted by Owner and Architect; (3) all designated or required governmental inspections and certifications have been made and posted; (4) all training and instruction of the Owner's personnel and the operation of systems and equipment is completed; (5) all final finishes within the Contract Documents are in place and installed to the satisfaction of the Architect; (6) all required documents and manuals and warranties are received; and (7) the Owner has submitted written approval of Substantial Completion. In general, the only remaining Work shall be minor in nature, so that the Owner can occupy the Work on that date for its intended use and the completion of the Work by the Contractor would not materially affect, interfere, or hamper the normal business operations or intended use of Owner. As a further condition of Substantial completion, acceptance and/or certification, the Contractor shall certify that all remaining Work will be completed within Thirty (30) calendar days or as agreed upon following the date of Substantial Completion.

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

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

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

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

any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### § 9.9 Partial Occupancy or Use

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

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

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

### § 9.10 Final Completion and Final Payment

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

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

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

certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

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

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

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

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

### **§ 10.2 Safety of Persons and Property**

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

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

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

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

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

**§ 10.2.5** The Contractor shall promptly remedy at its sole cost expense, damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.1.8.

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

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

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

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ~~24~~three (3) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 Hazardous Materials and Substances

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

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

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project by Contractor, any Subcontractor supplier or any entity for whom any of them is responsible. Should Contractor become aware that a material is toxic, Contractor shall advise, in writing, Owner and Architect and shall not proceed using such material.

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

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

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

### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.



## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Insurance and Bonds

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

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

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

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

§ 11.1.5 All policies of insurance provided by Contractor hereunder shall expressly: (a) name Owner as an additional insured (except any worker's compensation and employer's liability insurance policies), and (b) waive any right of subrogation against Owner. Insurance afforded to owner as an additional insured is primary insurance. If owner has other insurance that is applicable to the loss, it will be on an excess or contingent basis.

§ 11.1.6 Contractor shall furnish to Owner copies of Certificates of Insurance herein required which shall specifically set forth evidence of all coverage required herein. Contractor shall furnish to Owner copies of any endorsements that are subsequently issued amending coverage or limits.

### § 11.2 Owner's Insurance

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

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

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual

cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Waivers of Subrogation**

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

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

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

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

### **§ 11.5 Adjustment and Settlement of Insured Loss**

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

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

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### § 12.2 Correction of Work

#### § 12.2.1 Before Substantial Completion

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

#### § 12.2.2 After Substantial Completion

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

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

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

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

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

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

### § 12.3 Acceptance of Nonconforming Work

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

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

### § 13.2 Successors and Assigns

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

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

### § 13.3 Rights and Remedies

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

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

### § 13.4 Tests and Inspections

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

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

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

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

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

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



### § 13.5 Interest

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

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

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

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

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

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

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

### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 is bankrupt or otherwise takes action evidencing insolvency;
- .6 fails or refuses to provide insurance or proof of insurance as required by the Contract Documents; or
- .7 fails to meet established Milestone Dates and/or implement a satisfactory Corrective Plan to assure future Milestone Dates will be met.

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

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

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract. Owner shall withhold payments to contractor until the Work is completed and shall thereafter pay Contractor for the Work satisfactorily completed, less any costs or damages incurred as a result of the breach. Nothing herein shall be deemed to affect Owner's rights at law or in equity.

### § 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

### § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

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

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

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

§ 14.4.4 In no event shall Owner be liable to Contractor for any unabsorbed overhead and unrealized profits respecting the terminated Work. Contractor's invoice for compensation in the event of termination must be supported by sufficient records and documentation to enable Owner to verify all amounts claimed by Contractor. Upon termination pursuant to this section, Owner shall have no further obligation to Contractor respecting the terminated portions of the Work, except for its obligation as described above.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

### **§ 15.1.3 Notice of Claims**

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

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

### **§ 15.1.4 Continuing Contract Performance**

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

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

### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### **§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

### **§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

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

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

## § 15.2 Initial Decision

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

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

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

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

## § 15.3 Mediation

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

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

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

#### **§ 15.4 Arbitration**

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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

#### **§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.



INFORMATION PURPOSES ONLY
---------------------------

### Insurance Requirements for:

REQUEST FOR QUALIFICATIONS No. 238

CONSTRUCTION MANAGER at RISK (CMAR) for

NEW CONTEMPORARY ARTS CENTER AT CITY-BROOKS COMMUNITY PARK

**CMAR CONTRACTOR'S AND SUB-CONSULTANT'S INSURANCE:** CMAR Contractor and any sub-consultants shall carry and maintain at least the minimum insurance as specified below until completion and acceptance of the work covered by this Contract. CMAR Contractor shall not commence work under this Contract until certificates of insurance have been approved by BREC Purchasing Division. Insurance companies listed on certificates must have industry rating of A-, Class VI or higher, according to Best's Key Rating Guide. CMAR Contractor is responsible for assuring that its sub-consultants meet these insurance requirements.

- |    |  |                                      |                            |
|----|--|--------------------------------------|----------------------------|
| A. | Commercial General Liability on an occurrence basis:   | General Aggregate<br>Each Occurrence | \$2,000,000<br>\$1,000,000 |
| B. | Business Auto Policy<br>Any Auto; or Owned, Non-Owned & Hired:   | Combined Single Limit                | \$1,000,000                |
| C. | Standard Workers Compensation - Full statutory liability for State of Louisiana with Employer's Liability Coverage.            |                                      |                            |
| D. | BREC must be named as additional insured on all general liability policies described above.                                    |                                      |                            |
| E. | Professional Liability coverage for errors and omissions:  | \$1,000,000                          |                            |
| F. | Certificates must provide for thirty (30) days written notice to Certificate Holder prior to cancellation or change.           |                                      |                            |
| G. | The Certificate Holder should be shown as: BREC,<br>Attn: Purchasing Division, 6201 Florida Blvd, Baton Rouge, Louisiana 70806 |                                      |                            |

## **SCHEMATIC DESIGN SUBMITTAL**

Design team submittal showing scope, schedule, site considerations, design investigations & studies.



Project Understanding

The new Contemporary Arts Center will advance the Baton Rouge Gallery’s growth and strengthen its role as a cultural anchor in Baton Rouge, the State of Louisiana, and beyond. Its design will favor warmth, openness, flexibility, and dialogue with the community and City-Brooks Community Park—acting as a beacon for the arts and the community.

The Center will balance dedicated artist member galleries with adaptable exhibition and event spaces that support a wide range of programming and long-term financial sustainability. A generous covered porch, enhanced event lawn, warm natural materials, and a clearly defined entry sequence will create a sense of hospitality from the moment visitors arrive.

Set within the heart of City-Brooks Community Park, the Center must engage with the historic golf course, the University Lakes Project, and the park’s layered cultural and ecological history. The design will serve as a bridge between past and future, linking people, stories, and place through shared experience.

Dedicated art storage, efficient back-of-house functions, and improved loading access in the new Center will ensure smooth day-to-day operations for BRG. Removing the 2001 Clubhouse addition will open the door to creating a more cohesive campus layout—allowing the new Center and existing Clubhouse to function in harmony, supporting shared use, and coordinated programming across the site.

Inspirational Precedents



INSIGHTS FROM SD 25%	QUALITIES	TAKEAWAYS
Finding Yourself at the Gallery	→ For All	→ Welcoming Canopy/Lack of Threshold
Art in the Kitchen	→ Informal	→ Art is Where the Party is
Program as Swiss Army Knife	→ Flexible	→ Every Space Matters, Facilitates Multiple Users
Inside Out, Outside In	→ Inviting	→ Actual + Formal Transparency
Architecture in the Round	→ Engaging	→ Five Facades, Porch as Presence
A Beacon in the Park	→ Memorable	→ Day + Night Presence
Stitching City-Brooks Park Through Art	→ Connecting	→ Visual Procession
A Working Building	→ Functional	→ First Wednesday, Every Wednesday
Responsive + Responsible	→ Resilient	→ Prioritize Site Context + Climate Conditions



Our Interactive Approach

The design process will be shaped by input from BREC, BRG, Board and artist members, and the broader community.

Coordination with BREC + BRG Staff

To ensure consensus, coordinated sessions will:

- Align design with BRG’s Strategic Plan, programming, operational and revenue goals
- Align design with BREC’s master plan and programming of the park
- Coordinate with the CMAR team
- Meet accessibility, technical, and sustainability standards
- Keep design progress on track with funding and scheduling milestones

Engagement with Board + Artist Members

To build collective ownership and long-term buy-in for BRG, we recommend a series of workshops with BRG’s Board and select Artist Members to:

- Clarify programmatic needs and spatial priorities
- Provide input on materials, aesthetics, and experience

Community Participation

The community, City Park Neighborhood Association, and Friends of City-Brooks Park will be part of the process. Our team will facilitate opportunities, such as:

- Walking the site together
- Space planning exercises and scenario modeling
- Pop-up installations or spatial mock-ups
- Open house events in City-Brooks Park venues, modeled after BRG’s “First Wednesdays”

Alignment with Long-Term Operations

Design decisions will prioritize operational efficiency, flexibility, and community engagement, including:

- Artist Member galleries and adaptable exhibition spaces
- Rentable areas for events and workshops
- Integrated indoor-outdoor programming spaces (e.g., a covered porch and expanded event lawn)
- A warm, welcoming public presence
- Efficient back-of-house operations, including storage and loading
- Stronger physical and cultural connections to City-Brooks Park, the golf course, + University Lakes Project

Fundraising + Advocacy Support

In support of BRG’s fundraising with Campbell + Company, and BREC’s capital outlay requests, our team will:

- Design compelling visual materials and messaging
- Participate in meetings as needed
- Recommend public + private funding opportunities

Incorporation of Existing Schematic Design

We will build on the 25% schematic design, carrying forward its successful elements while carefully refining areas that require further exploration. **Having participated in the early phase, our team understands the project’s intent and can advance the design with a focus on listening and investigation:**

- Entry sequence, massing, architectural expression, and material palette to create a stronger, more welcoming cultural landmark
- Program adjacencies and spatial flexibility to support evolving operations and long-term sustainability
- Confirming priorities and making design decisions that address previous gaps

These refinements will enhance the building’s presence and accessibility, reinforcing its role as a welcoming cultural landmark rooted in the park.

Aligning Project Schedule

**Close coordination with BREC, BRG, Campbell + Company, and the CMAR will produce a schedule that aligns construction with key funding cycles.** Public capital outlay requests are submitted each November, with typical legislative approval expected in June, and our timeline will reflect these milestones set forth by BREC and BRG. At the same time, we will support BRG’s ongoing fundraising efforts by providing design materials and updates to keep donors and stakeholders engaged throughout.

**Leveraging our experience delivering large-scale projects over \$20M under Louisiana FP+C and CMAR processes for more than a decade,** we will streamline decision-making and documentation to keep the project on track and on budget.

Approach, Procedures, + Methodology

Schematic Design Completion (25% → 100%)

We will refine the existing schematic design into a fully developed package that reflects the site’s potential and the organization’s vision, including:

- Validating program, site integration, and spatial adjacencies
- Refining building massing, entry sequence, and materiality
- Coordinating with consultants and CMAR for cost and constructability
- Presenting design at 50% and 100% milestones

**DELIVERABLES:** final schematic design with a preliminary cost estimate in collaboration with the CMAR delivery method.

Design Development (DD)

We will transform the approved schematic design into a coordinated architectural and engineering package suitable for pricing, including:

- Developing floor plans, elevations, and sections
- Integrating civil, structural, MEP, and landscape systems
- Selecting and documenting materials, finishes, and equipment
- Coordinating pricing with CMAR for early value management

**DELIVERABLES:** DD drawings, outline specifications, an updated cost estimate, and code, accessibility, and sustainability review.

Construction Documents (CD)

Produce a coordinated set of documents for bidding, permitting, and construction, including:

- Finalizing all construction drawings and specifications
- Completing consultant coordination and QA/QC
- Submitting for permitting and regulatory approvals
- Preparing bid-ready documentation
- Consulting with CMAR throughout for pricing

**DELIVERABLES:** 50% and 100% CD packages, final specifications, and permitting + bid documents.

Bidding + Permitting

Our team will assist CMAR in securing contractor pricing as well as:

- Distribute documents to contractors
- Respond to RFIs
- Conduct pre-bid meetings
- Issue addenda if needed
- Review and compare bids
- Submit for permit

**DELIVERABLES:** Bid package, addenda (if applicable), bid evaluation memo

Construction Administration (CA) + Close-Out

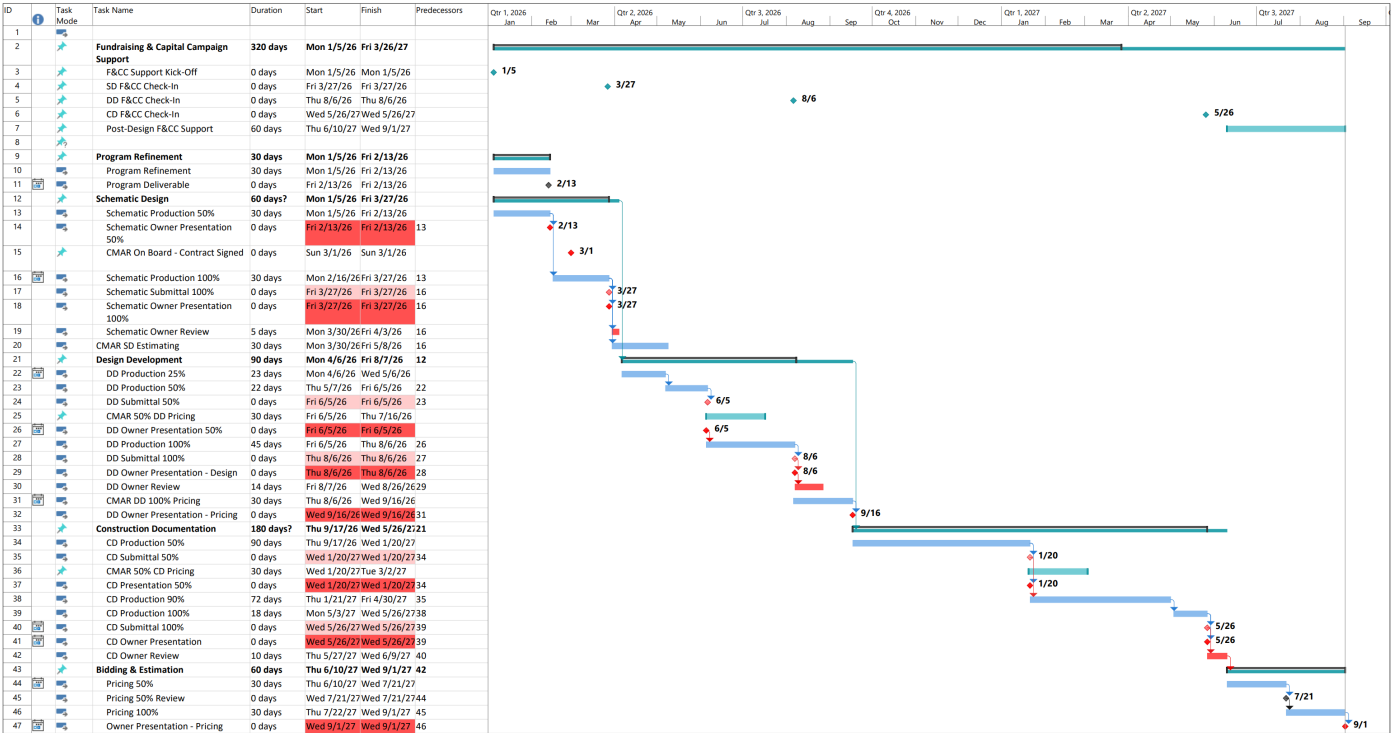
Once construction funding is secured, we’ll provide responsive oversight to ensure the project is built to spec, on time, and within budget. We will:

- Review submittals, RFIs, and shop drawings
- Conduct site visits and issue field reports
- Lead OAC meetings and respond to contractor inquiries
- Monitor quality and progress
- Coordinate final walkthrough and punch list
- Review O+M manuals and warranties
- Confirm as-built drawings and close-out documents
- Provide post-occupancy support and close-out

Project Communication + Coordination

Throughout all phases, we will maintain clear communication with BRG, BREC, and the CMAR through:

- Regular design and coordination meetings
- Real-time updates on budget, schedule, and deliverables
- Collaborative platforms for sharing documents and feedback





Site Considerations

The following design explorations present initial ideas for how a new building and site strategy might support the project goals. These studies are intended to inform the ongoing development of the 25% Schematic Design package and help shape a clear and compelling vision as the project evolves.

**PRIORITIZING CONNECTION:** By linking programs, people, and place, we'll strengthen relationships among the new building, existing Clubhouse, event lawn, golf facilities, and City-Brooks Park.

**LAYERED HISTORY:** Visible and hidden stories, from Indigenous communities to the Baton Rouge Swim-In, inform the design, with landscape and architecture honoring the past while supporting contemporary use.

**ARRIVAL LANDSCAPE:** Drawing inspiration from the Live Oaks, strong landscape cues form an entry sequence that sets the tone for the experience beyond.

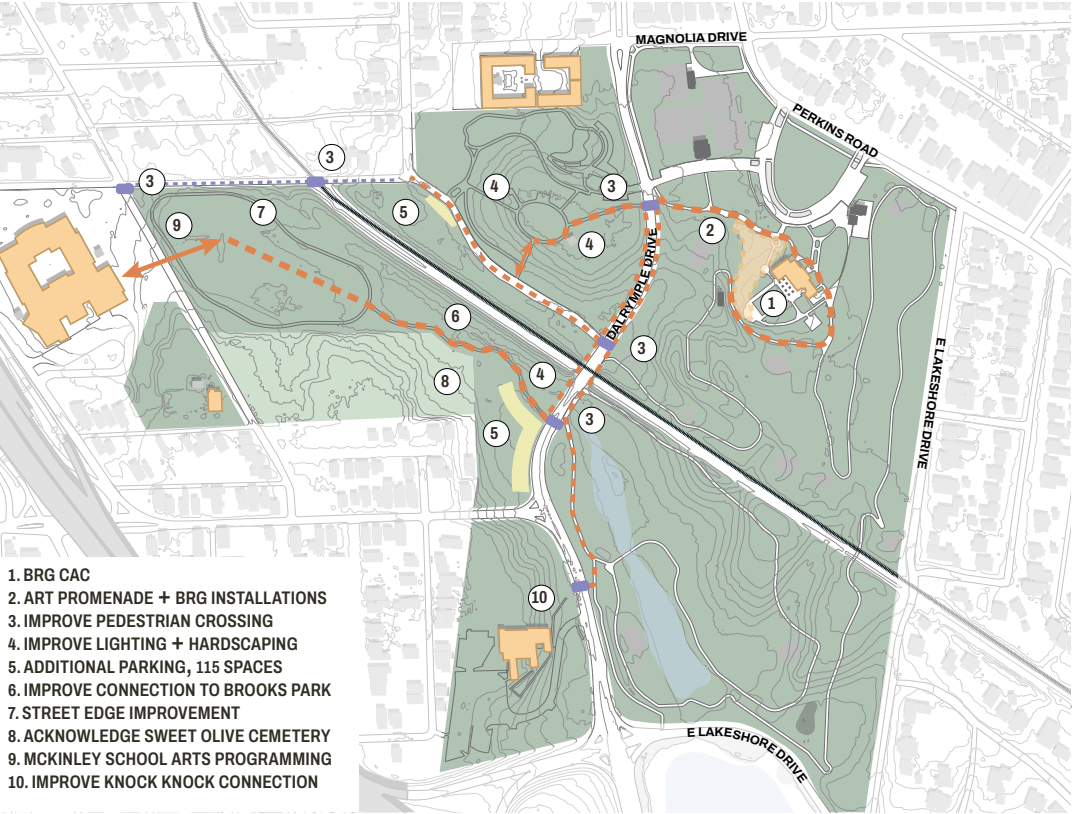
**CIRCULATION + WAYFINDING:** A widened path from the horseshoe lawn establishes a clear arrival sequence, improving access and loading.

**INCLUSIVE TRANSITIONS:** A gentle ramp and terrace taper into the open lawn, linking the two buildings with a soft slope that supports visitors of all ages and extending programming naturally to the central events lawn.

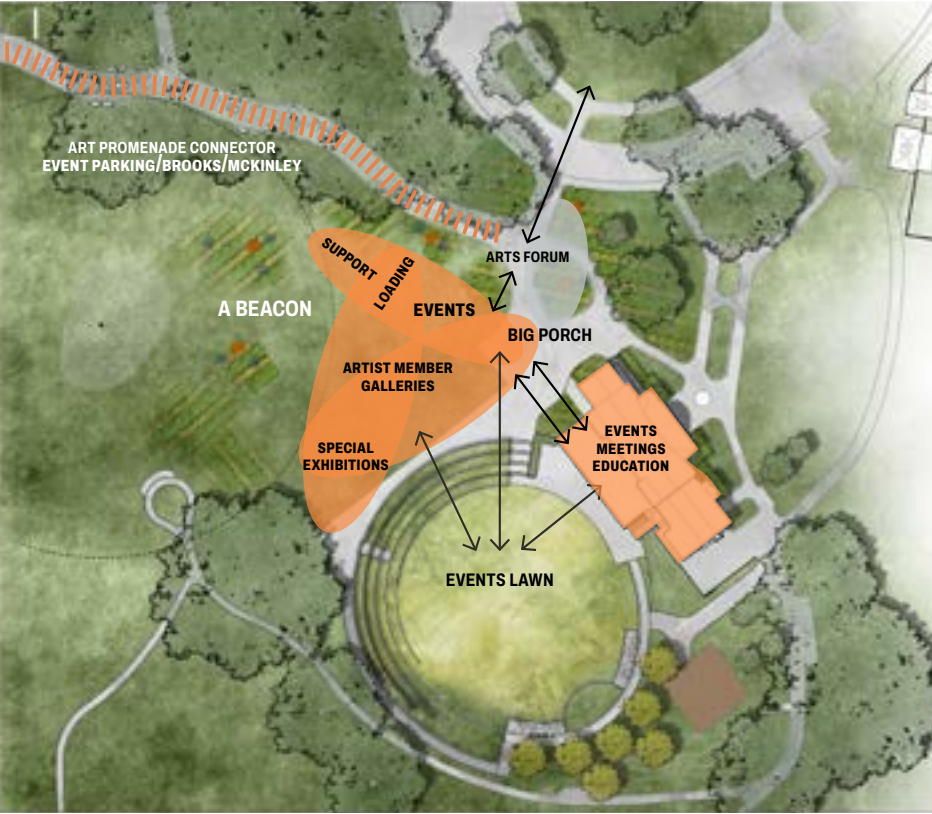
**MULTIPURPOSE EVENT LAWN:** The lawn serves as a flexible community hub, supporting golf tournaments, training, and casual play, while also hosting BRG programs like First Wednesdays, fundraisers, and seasonal events. Broader community gatherings with BREC can maximize the value of the indoor-outdoor amenity.

**EXISTING BRG SPACE:** The site and new building will respect the legacy of the Clubhouse, creating a complementary relationship programmatically and architecturally.

**PARKING + ACCESSIBILITY:** Upgraded and expanded parking, intuitive wayfinding, enhanced lighting, and universally accessible paths ensure that arrival and navigation across the site are safe, clear, and welcoming.



ART MASTER PLAN SITE CONNECTIONS



A CONNECTED PROGRAMMATIC SITE PLAN



HISTORY OF CITY-BROOKS PARK + POOL



CURRENT BRG HOME + CLUBHOUSE



VISIBILITY + MATURE LIVE OAK TREE CANOPY



UNIVERSITY LAKES PROJECT



HISTORIC CITY-BROOKS PARK GOLF COURSE



PARKING + ACCESSIBILITY



## A Series of Design Investigations

**FOSTERING INCLUSIVITY:** Designed for participation and connection, the Center must create an accessible environment reflecting the ethos of BRG, BREC, and the Baton Rouge community.

**CONTEXTUALLY SENSITIVE:** With an architectural language that draws material cues from the adjacent City-Brooks Clubhouse, the Center must assert its presence while maintaining dialogue with the site's existing character and scale. Carefully scaled volumes can allow the building to

respond to the park's historic canopy, topography, and surrounding structures.

**ELEVATING THE ARRIVAL EXPERIENCE:** The entry sequence should guide visitors from the park into the heart of the Center. A generous entry threshold, transparent facades, and layered architectural moments can create a sense of arrival that is functional and ceremonial.

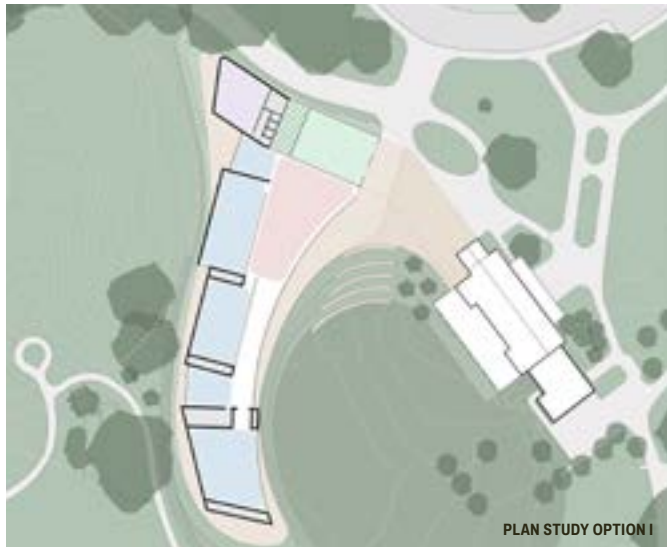
**PROGRAMMATIC FLEXIBILITY:** Galleries, studios, and

event spaces must accommodate a range of programs, from rotating member exhibitions to educational workshops, performances, and community events.

**WORLD-CLASS EXHIBITION SPACE:** We are committed to creating professional-grade galleries, with lighting, environmental controls, and spatial proportions that meet contemporary curatorial standards.

**A COHESIVE DESTINATION:** The new Center must work

in concert with the existing Clubhouse. Shared outdoor spaces, reconfigured access points, and complementary architectural gestures can contribute to a unified campus that enhances visitor flow and expands programming possibilities.



### Investigations

Our design investigations center on the concept of a large, covered plaza that can activate the new Contemporary Arts Center and Clubhouse and establishes a strong programmatic connection between the two.

By blurring the boundary between interior and exterior, a light-filled, welcoming entry can lead into a flexible events space, with operable partitions allowing for the separation or seamless transition of lobby, events, and exhibition galleries.

Opposite the events space, we've explored strategies for efficiently integrating a centralized and multi-purpose area for loading, storage, restrooms, and administrative offices.

These two iterations on potential gallery spaces share the concept of operability allowing them to be as open or closed to suit various exhibition needs. The flexible gallery spaces are oriented toward the events lawn beyond, fostering a dynamic visual and spatial dialogue during evening events and serving as a luminous focal point within the grander park context.

- 1. Lobby
- 2. Events
- 3. Galleries
- 4. Administrative
- 5. Storage + Support





## Conceptual Design Studies

