PROPOSAL OVERVIEW
The Minneapolis Park and Recreation Board (MPRB) seeks a Construction Management firm as Advisor (CMA) to provide professional services for the North Commons Park Phase 1 Improvements project (Project). The Project includes a new water park, a major community center expansion to include MPRB’s first field house, a renovation of the existing community center and an at-grade parking lot with other site improvements included stormwater BMPs. General project details can be reviewed through the North Commons Park Phase 1 Improvements Concept Plan which was approved by the MPRB Board of Commissioners on October 4, 2023.

PROJECT BACKGROUND
A project born from the North Service Area Vision Plan, the North Commons Park Phase 1 Improvements is the single largest investment into a neighborhood park in the 140-year history of MPRB. Located at 1801 James Avenue North in Minneapolis, the plan for North Commons Park is part of a larger effort at revitalizing an area surrounding the park and extending to and along West Broadway Avenue. Through this project, MPRB expects to bring economic development to north Minneapolis not only through the thoughtful programming of the building but also through the contracting processes required to complete the work.

This Project is funded through local, State, Federal and philanthropic sources and will be required to follow all necessary rules and regulations required of these funding sources. In the Minneapolis Park Foundation, MPRB has a partner working to advance this work throughout the duration of the design, construction, and the occupancy phases of this project along with the critical funding they bring to the Project.

MPRB plans to phase this work to allow MPRB staff to provide critical recreation and community services for the duration of the construction project.
PROJECT DESCRIPTION

In early 2022, MPRB hired FIHAN Design+Architecture and their consultant team including Locus Architecture, Ramaker and Associates (Aquatics), Meyer Borgman Johnson (Structural), HKGi (Landscape Architecture), Pierce Pini + Associates (Civil), Transportation Collaborative and Consultants (Urban Design), NEOO Partners (Community Engagement), Victus Engineering (MEP), and CPMI (Cost Estimating) to complete the Concept Design Phase of this Project (collectively called the Design Team).

Over the next 18 month, the consultant team and MPRB engaged the local community, MPRB staff and AHJs to devise a concept plan that would meet the community need and the aspirations of the Vision Plan within a realistic overall project budget ($35M). Through this process, a single Concept Plan was approved and MPRB and the design team have initiated the Schematic Design Phase for the project. In sending out this RFP, MPRB intends to deliver this project through a Construction Manager as Advisor.

Of the total project budget of $35M, $24M has been allocated to the construction of the project (does not include CMA fee). The key aspects of the Project design to be constructed are:

1. Demolition of the existing water park, parking lot, water park building, wading pool, and two ball diamonds.
2. Construction of a new water park to be approximately 40,000 SF in total area.
3. Construction of an addition to the Community Center approximately 43,000 SF to include a three-gym field house and suspended walking track.
4. Renovation of the existing Community Center (15,000 SF).
   a. This work will be delayed as MPRB staff maintain community programming during construction of the remainder of the project. Renovation work will occur once the building addition is prepared for occupancy.
5. Construction of a new parking lot for approximately 50 spaces.
6. Stormwater management as required by City of Minneapolis Chapter 54 guidelines.
7. General site improvements adjacent to water park, building expansion, and existing building.
8. Trail, sidewalk and turf improvement throughout the northern half of the park.
9. Pedestrian crossing improvements across Golden Valley Road (pending approval from Hennepin County and the City of Minneapolis).
10. Public art will be installed throughout the project.

LOCAL LABOR

Guided by the Vision Plan, this project strives to be a project for north Minneapolis, by north Minneapolis. Efforts will be made throughout the Project to identify north Minneapolis businesses and business that employ north Minneapolis residents that can participate in the construction of the Project. The CMA will be instrumental in identifying possible businesses that meet this description and with providing services to those businesses to navigate the bidding processes laid out by the City.
SMALL AND UNDERUTILIZED BUSINESS GOALS FOR CMA CONTRACT
The City of Minneapolis policy is to provide equal opportunities to all businesses, with an effort to redress discrimination in the City’s marketplace and in public contracting against Minority-owned business enterprises (MBEs) and Women-owned business enterprises (WBEs). This is accomplished through the Small and Underutilized Business Program (“SUBP”) as detailed in the Minneapolis Code of Ordinances Chapter 423. The SUBP applies to any contract over $175,000. SUBP goals are set on projects based on the project scope, subcontracting opportunities, and availability of eligible MBEs/WBEs.

The City has set the following SUBP goal to facilitate participation of eligible MBEs and WBEs (MBEs/WBEs) on this contract:

The goal on this contract will be 4% MBE/WBE (combined).*

* This project has a combined MBE/WBE goal. This SUBP goal may be met by utilizing either an MBE firm or a WBE firm, or by a combination of both MBE and WBE firms.

See SUBP Special Provisions at the end of this RFP.

SUSTAINABILITY
The pavilion and site must meet State of MN B3 standards. MPRB shall contract with a third party to do building commissioning. Design team is responsible for B3 administration and management.

PRE-PROPOSAL SITE VISIT
The park is open to the public 6am to midnight and the existing Community Center is open 3-9pm, M-F for any proposer to visit the site. Site and building access question can be submitted to Daniel Elias through email (delias@minneapolisparks.org).

PRELIMINARY PROJECT SCHEDULE
<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>CMA interviews:</td>
<td>Jan 24-31, 2024</td>
</tr>
<tr>
<td>Estimated Professional Services Agreement (PSA) execution</td>
<td>March 6, 2024</td>
</tr>
<tr>
<td>Estimated advertisement for construction bids</td>
<td>December 2024</td>
</tr>
<tr>
<td>Estimated construction bid due date</td>
<td>February 2025</td>
</tr>
<tr>
<td>Estimated construction start date</td>
<td>May 2025</td>
</tr>
<tr>
<td>Estimated construction completion</td>
<td>July 2027</td>
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</tbody>
</table>

SCOPE OF SERVICES / DELIVERABLES
The CMA shall carry out the responsibilities delineated in the scope of services outlined below and any additional responsibilities reasonably necessary and customarily provided by CMA firms conducting business in the State of Minnesota for this type of project. The CMA’s scope of services generally includes: usual and customary construction coordination and scheduling, constructability review, cost estimating for SD, DD and CD design phases, organization and support for Owner procured contracts, and allocation of activities among the Prime Contractors.

PRECONSTRUCTION PHASE
Preconstruction phase is considered to extend from point of CMA engagement through time of issuance
of building permit. The Preconstruction Services of the CMA will begin by reviewing all pre-project documents and creating a updated cost estimate. The CMA will be expected to actively participate in cost review meetings, constructability reviews, periodically provide schedules and bidding process recommendations during the design process, and ultimately develop a master project schedule and master budget prior to a building permit in the spring or 2025. More specifically, the CMA shall provide the following preconstruction phase services and activities:

**Cost Management:**

- Assist the MPRB and the Design Team to keep project within the fixed project budget.
- Provide recommendations to the Design Team and MPRB regarding materials, building components and systems and also evaluate plant materials and building systems, components and materials for long term performance, life cycle cost analysis and economy.
- Determine availability of trades and materials, identify long lead times, and advise on impacts to the Project.
- Identify north Minneapolis contractors and suppliers (or contractors that employ north Minneapolis residents) to increase local business participation in the bidding and construction phase of the Project.
- Provide cost control resources for the Design Team during the late SD, DD and CD phases of design which includes preparing estimates, providing alternate add/deduct options, and making value engineering recommendations. CMA to notify the Design Team and MPRB of potential cost issues during the development of the drawings and specifications that may have an impact on the cost of the work. Work collaboratively with the MPRB and Design Team to develop alternatives to keep the project estimates within the fixed budget.
- Prepare a project cost estimate of increasing detail and refinement through the design and documentation phases at the following intervals:
  - Provide formal review and comments, and cost estimates at 100% Schematic Design (“SD”) documents. CMA to provide value analysis/engineering ideas in conjunction with preparation of the SD estimates.
  - Provide formal review and comments, and cost estimates at 50% Design Development (“DD”) documents. CMA to provide value analysis/engineering ideas in conjunction with preparation of the DD estimates.
  - Provide formal review and comments, and cost estimates at 80% Construction Documents (“CD”). CMA to provide value analysis/engineering ideas in conjunction with preparation of the CD estimates.
- The Design Team will prepare many individual bid packages for portion of the work. CMA to develop a strategy for issuing bid packages to prime trade contractors. The purpose is to utilize this bidding package strategy to gain the most advantageous issuing of documents, to minimize construction duration while allowing the bid packages to be completed efficiently. Additional focus on identifying scopes of work of which north Minneapolis businesses can participate in the work.
Construction Planning and Scheduling:

- CMA to work with the MPRB and Design Team to develop a work plan for design activities in support of the schedule and budget for the project.

- Evaluate all systems, components, and materials for constructability, economy, long-term performance for use intended and schedule impacts, and provide recommendations for preferred options consistent with cost and schedule goals.

- Assist MPRB and Design Team to develop a plan for comprehensive safety and security during construction and integrate measure into the work scopes and bids.

- CMA to assist MPRB and Design Team is understanding and detailing the proper phasing for the project. MPRB plans to maintain staff in the existing Community Center while construction of the water park, site improvements and building addition occur. Staff will then move to the building addition before the full renovation of the existing community center commences.

Procurement:

- Prepare lists of pre-qualified trade contractors and suppliers, conduct pre-bid conferences, and actively seek and encourage participation from a wide variety of pre-qualified trade contractors to ensure that a large number of competitive bids are obtained with a special focus on north Minneapolis businesses and businesses that employ north Minneapolis residents.

- Assist north Minneapolis businesses and businesses that employ north Minneapolis residents in navigating the City bidding procedures.

- Provide work scopes dividing the Project into multiple prime construction contracts. Make recommendations to the drawings and specification that the multiple prime contracts are coordinated and that all requirements are assigned to the appropriate contractor.

- Review City Procurement paperwork including Request for Small and Underutilized Business (SUBP) Goal forms SUBP Scope of Services forms and City Target Market

- Review and analyze all bids, determine the validity of such bids, conduct thorough scope review and prepare written analyses, comparisons, and recommendations. Obtain all required bid bonds, payment and performance bonds, and insurance certificates, and assist in the preparation of construction contracts.

State of Minnesota B3:

- Provide effective support and participation as required to achieve this goal. Tasks may include coordinating commissioning and other assessment work and compliance with reporting requirements.
Other:

- Assist the MPRB in working with various governing authorities as requested.
- Assist the MPRB in gaining all necessary permits that are not the responsibility of individual trade contractors. MPRB will pay permit fees directly.
- Assist the MPRB with coordinating all utility services for construction that are not the responsibility of individual trade contractors. MPRB will pay utility costs or fees directly.
- Assist the MPRB in submitting SAC/WAC Determination letters so that fee can be paid by MPRB.

CONSTRUCTION PHASE

Construction phase is considered to commence at the award of the initial contract for construction and terminates when the final certificate for payment is approved. CMA construction phase services to specifically include:

Project Management Team:

- Provide competent, experienced staff, including an experienced project management team and full time construction field superintendent to coordinate the work, maintain the progress of the trade contractors, coordinate with ongoing activities and operations, and provide overall direction to the project during the construction phase. Establish on-site organization and levels of authority to carry out the overall plans of the construction team.
- Demonstrate high levels of effective, proactive project leadership.
- Work cooperatively and constructively with members of the Project Team to foster positive relationships that support positive outcomes for the team members and the project.
- CMA will be contractually obligated to not reassign key staff members to other projects without the MPRB’s prior written consent. MPRB will have approval rights of any and all new personnel assigned to this project.

Cost Control and Management:

- Implement effective cost management control and tracking procedures to provide the MPRB with the opportunity to make such decisions as required to keep project cost within the fixed budget.
- Implement and maintain a current log of pending cost issues impacting the final cost of the project and review no less than monthly with the MPRB.
- Provide drawdown and cash flow projections for the project during construction and update as necessary.
- Work with the MPRB and Design Team to develop and implement a change management process for the project. Review, evaluate, and submit for final approval all change orders. Inform MPRB Project Manager within five days of identifying potential issue.
- Promptly issue RFI’s and facilitate timely review of shop drawings.
- Review and process all applications from contractors and suppliers for progress and final payments.
Temporary Facilities

- CMA will be responsible for providing a construction trailer for on-site meetings and administrative purposes. CMA will coordinate with internet service providers for temporary services to the trailer with costs paid directly by the Owner.
- Owner will bid construction fencing, portable toilets, waste dumpsters and temporary utilities. CMA will be responsible for coordinating with these service providers to advance the construction project.

Trade Contractor Management:

- Work with the contractors to establish site mobilization, security, diversity, and safety plans. Coordinate scheduled activities and responsibilities of contractors.
- Assume overall responsibility for managing, supervising, directing, coordinating, and maintaining quality control over all aspects of construction. Inspect the work daily to ensure Owner’s objectives are being met in accordance with the drawings, specifications, all other contract documents, and applicable federal, state and local codes, ordinances, laws, rules, and regulations.
- Review and process shop drawing submittals, requests for information, proposal requests, and other required construction-related information.
- Ensure that all required permits are obtained by the trade contractor(s).
- Coordinate the activities of utility companies and regulatory agencies as they relate to owner responsibilities toward completion of the project.
- Coordinate safety programs and conduct regular safety meetings.

Coordination Meetings:

- Conduct weekly job meetings and include appropriate trade contractors, MPRB Team’s representative, and the Design Team’s representative to review open issues, schedule work, and resolve pending or upcoming issues. CMA to prepare a written agenda in advance of each meeting. CMA to maintain a list of action items with identification of responsible party and due dates for each item. CMA to distribute written meeting minutes and action item lists within three (3) working days after job meeting. Also conduct regular meetings with the trade contractors to ensure that their activities are being managed in an appropriate manner.

Construction Management

- Maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under the contract.
- Document construction progress in photos and written report and submit weekly to the MPRB and the Design Team.
- Maintain a web-based project management system to coordinate all RFI, Change Orders, Submittals, Sustitution Request, and construction related documents.
- Prepare monthly pay applications to MPRB and Architect inclusive of all contracts.
Schedule Management:

- Prepare and manage a logic-based construction schedule indicating key milestone events, dates and responsibilities.

- Provide support for the project phasing as MPRB plans to maintain staff in the existing Community Center while construction of the water park, site improvements and building addition occur. Staff will then move to the building addition before the full renovation of the existing community center commences.

- Provide regular monitoring of the actual progress vs. the scheduled progress, identifying any variances or any required coordination with non-Project activities, construction or otherwise, affecting progress of the Project. Prepare a written action plan along with an updated schedule to maintain the scheduled completion dates.

- Determine the adequacy of the trade contractors’ personnel and equipment and the availability of materials and supplies to meet the schedule. Report status no less than weekly in regular weekly coordination meetings.

- Prepare a short-term (3 to 4 week look-ahead) schedule on a weekly basis.

Project Reporting:

- Prepare a monthly report with each progress billing that details a project work status report, buy-out to schedule of value analysis, contingency status, schedule status and project progress commentary with applicable job-site photos. Provide other formal communications as requested by the MPRB.

Quality Management:

- Oversee construction of the work in strict accordance with the quality requirements established by the contract documents.

- Coordinate and schedule all required tests and inspections.

- Assist Owner and Design Team in coordinating an independent third-party commissioning report with a consultant under separate contract with MPRB.

Project Closeout:

- Secure and submit to Owner all closeout reports including guarantees, warranties, as-built drawings, maintenance and procedure manuals for new equipment, and provide sign-offs by proper authorities.

- Coordinate required Owner training with contractors; MPRB will be responsible for coordinating staff to attend and record trainings.

- Conduct a meeting 11-months past Substantial Completion to review operations and performance of all components of the project.
ADDITIONAL INFORMATION INFORMING SCOPE OF SERVICES

DESIGN TEAM
The Design Team is led by FIHAN Design+Architecture and their consultant team including Locus Architecture, Ramaker and Associates (Aquatics), Meyer Borgman Johnson (Structural), HKGi (Landscape Architecture), Pierce Pini + Associates (Civil), Transportation Collaborative and Consultants (Urban Design), NEOO Partners (Community Engagement), Victus Engineering (MEP), and CPMI (Cost Estimating).

MPRB is also directly contracted with AET (Geotechnical), Efficiency Commissioning LLC (Commissioning). MPRB will also contract with Special Inspections and Material Testing agency during the design process.

Daniel Elias, MPRB, will serve as the MPRB Project Manager for all aspects of this Project. The CMA will report to him and he will be the day-to-day representative for the Leadership Team.

LEADERSHIP TEAM
The Leadership Team consists of MPRB key staff, the Design Team, and the CMA.

BIDDING PROCEDURES
The Design Team will submit the final approved electronic documents to the City of Minneapolis Purchasing staff for bidding via their bidding portal. The city administers all bidding activities such as distribution of documents and bid procurement.

CMA RESPONSIBILITIES
CMA is not responsible for holding Buildings Risk Insurance or providing performance bonds. CMA to assist MPRB in obtaining the necessary bonds and insurance through the bidding process.

PARTNERSHIPS
Minneapolis Parks Foundation (MPF): The MPRB and the MPF are working in partnership to manage and fund the Project. MPF is the philanthropic partner of MPRB in engagement, planning, programming, and construction of park amenities.

PROPOSAL CONTENT AND SUBMISSION
Due Date: See RFP first page

Submit to: Daniel Elias
Design Project Manager, Planning Division
Minneapolis Park & Recreation Board
2117 West River Road N
Minneapolis, MN 55411
delias@minneapolisparks.org

Proposals will not be returned and will become public data upon selection.

It is the proposer’s responsibility to assure that a proposal is received in a timely manner.
PROPOSAL
Submit one electronic copy in pdf format (via email). Proposals should be no larger than 8½” x 11”, maximum of 16 pages, maximum 32 facing pages, with 10 font minimum. Cover letter, optional tab dividers, fee worksheet and SUBP Commitment Form are not included in page limit. Cover letter is limited to one face page.

Your proposal should include the following:

1. **Cover letter.** Include name, title, address, email, and phone number of the person(s) authorized to make representations for the CMA. Letter to include statement of acceptance of MPRB standard contract form and insurance requirements, statement accepting terms outlined in this Request for Proposal, and acknowledge receipt of any issued Addenda. The letter shall be signed by an individual authorized to commit the CMA to the scope of work proposed.

2. **Resumes of each member of proposed team.** Include specific roles on relevant past projects, years of professional experience, years of experience in industry, length of employment with proposing firm, role on relevant past projects, and specific qualifications applicable to this project.

3. **Project organization chart.** Indicate proposed staff for each phase of project, project executive, project manager, and on-site day-to-day project superintendent.

4. **Project approach and management capabilities including as it relates to the following areas:**
   - Commitment to building positive team working relationships.
   - Preconstruction services: Describe your firm’s approach to preconstruction services. Provide an estimate of the number of total anticipated hours for the assigned personnel prior to obtaining a building permit.
   - Cost management: Describe the level of detail included in your cost estimates as various phases of design. Describe up to three examples that demonstrate your firm’s creativity in value analysis/engineering and constructability reviews.
   - Change Management: Describe your change management process and reporting during and construction.
   - Safety: A description of your organization’s approach to managing safety on construction projects. Also include an overview of your company’s recent safety record and your company’s experience modification rate (EMR) for the last three (3) years.
   - Labor: A description of approaches your firm would take to identify north Minneapolis businesses and businesses employing north Minneapolis residents to participate in the construction of the Project.
5. **Relevant Project Experience.** Describe a minimum of two (2), but no more than five (5), projects in scope constructed within the past ten (10) years. At least one project must include a building, one must include a water park, and one must include substantial site and landscape work. (One project may provide multiple examples of relevant experience). Projects may still be in progress; disclose the stage of completion and services provided at the time of this proposal. Provide information on each project that will allow the Selection Committee to evaluate your work against the selection criteria noted in this RFP. Indicate for each project the following minimum information:
   - Name of project, location, and construction date.
   - Name of project manager and superintendent responsible for project.
   - Original contract amount versus final project cost.
   - Types of multi-purpose functions included in project.
   - Type of service and contractual relationship (general contractor, design build, agency construction manager, construction manager at risk, etc.)
   - Preconstruction services provided.
   - Client and design team contact information. Include phone number and email address.

6. **Project Schedule.**

7. **CMA FEE PROPOSAL WORKSHEETS**
   - Submit as a separate PDF:
     - Construction Manager Fee Summary
     - Hard copy attached, link to .xcel file [here](#)

8. **CITY OF MINNEAPOLIS SUBP COMMITMENT FORM**

**EVALUATION CRITERIA**
The following proposal evaluation criteria will be used to select the CMA:
   - Project understanding
   - Demonstrated experience in similar projects
   - Firm background, relevant recent experience, history of team working together
   - Experience and background of on-site, day-to-day superintendent, including reference check
   - Experience and background of project manager, including reference check
   - Demonstrated technical tools and capabilities with cost estimating, monthly reporting, change management.
   - Demonstrated approach to identifying north Minneapolis business and businesses employing north Minneapolis residents to complete the work.
   - Understanding of City of Minneapolis Project Development Review procedures
   - Understanding of MPRB/City of Minneapolis procurement requirements and procedures
   - Response to CMA General Conditions & Construction Manager Fee Worksheet
INTERVIEWS
Firms selected to interview will be asked to present their approach and describe applicable similar projects for up to 30 minutes. The Selection Committee will ask prepared and spontaneous questions for up to 25 minutes. Interviews will last no more than 55 minutes.

Interview dates and location have been established. All proposers should take note in the event they are short-listed. Time slots within these dates will be coordinated the short-listed proposers.

Interviews: January 24-31, 2024
Minneapolis Park & Recreation Board
2117 West River Road
Minneapolis, MN 55411

MPRB reserves the right to eliminate the interview phase of the selection process and select a CMA based on written proposals alone.

QUESTIONS AND ADDENDA
Questions directed to the MPRB Project Manager outside of the pre-proposal meeting shall be submitted through email. Any answers to questions that change or substantially clarify the RFP will be issued by Addendum.

Addenda will be posted on the MPRB website under Business Opportunities. In order receive email notifications of postings, sign up for email updates on the Business Opportunities webpage. Please note that emails are a courtesy and are not guaranteed. Proposers are responsible for checking the website for addenda.

See first page of RFP for relevant dates.

Contact: Daniel Elias, MPRB Project Manager, delias@minneapolisparks.org

MPRB BACKGROUND
The Minneapolis Park and Recreation Board ("MPRB") is an independent, semi-autonomous body responsible for maintaining and developing the Minneapolis Park system to meet the needs of citizens of Minneapolis. This unique structure allows independent decision-making so the MPRB can efficiently oversee a diverse system of land and water. Nine Park Board Commissioners are elected every four years: one from each of the six park districts within the city and three that serve at-large. The Board of Commissioners appoints the Superintendent to provide high-level oversight and leadership to the nationally renowned park system. Three Assistant Superintendents, all appointed by the Superintendent, oversee operations, planning and recreation with a staff of 400 + full-time and 1200 part-time employees and an annual operating budget of $54 million. The MPRB is one of five Minnesota park agencies and one of only 108 agencies in the United States that is accredited by the Commission for Accreditation of Park and Recreation Agencies ("CAPRA").

The Minneapolis Park System consists of 182 park properties, including local and regional parks,
playgrounds, triangles, golf courses, gardens, picnic areas, biking and walking paths, nature sanctuaries, and the 55-mile Grand Rounds National Scenic Byway. Together, these properties total 6,732 acres of land and water. The backbone of the park system is its full-service neighborhood recreation centers. It serves as host to approximately sixteen million visitors annually. The Park Board recently adopted a Comprehensive Plan (2007), after substantial public input, which will provide guidance through 2020.

**MPRB MISSION**
The Minneapolis Park and Recreation Board permanently preserves, protects, maintains, improves, and enhances its natural resources, parkland, and recreational opportunities for current and future generations of our region including people, plants, and wildlife.

The Minneapolis Park and Recreation Board dismantles historic inequities in the provision of park and recreation opportunities for all people to gather, celebrate, contemplate, and engage in activities that promote health, wellbeing, community, and the environment.

**ADDITIONAL INFORMATION**

**MPRB RIGHTS**
The MPRB may reject any or all proposals, parts of proposals, accept part or all of proposals and to create a project of lesser or greater scope than described in this Request for Proposal, or the respondent's reply based on the financial components submitted. The MPRB also reserves the right to cancel the contract without penalty, if circumstances arise which prevent the Board from completing the project.

**RESTRICTED DISCUSSIONS/SUBMISSIONS**
From the date of issuance of the RFP until the Project Manager takes final action, the Proposer must not discuss the proposal or any part thereof with any employee, agent, or representative of the MPRB or MPF except as expressly requested by the Project Manager in writing and as stipulated in this RFP. Violation of this restriction will result in REJECTION of the Proposer's proposal.

**INDEPENDENT PARTIES**
Except as expressly provided otherwise in the contract resulting from this RFP, if any, the Board and the Proposer shall remain independent parties and neither shall be an officer, employee, agent, representative or co-partner of, or a joint venture with, the other.

**PERFORMANCE INVESTIGATIONS**
As part of its evaluation process, the Board may make investigations to determine the ability of the Proposer to perform under this RFP. The Board reserves the right to REJECT any proposal if the Proposer fails to satisfy the Board that it is properly qualified to carry out the obligations under this RFP.

**SEVERABILITY**
If any provision of the contract resulting from this RFP, if any, is contrary to, prohibited by, or deemed invalid by applicable laws or regulations of any jurisdiction in which it is sought to be enforced, then said provision shall be deemed inapplicable and omitted and shall not invalidate the remaining provisions of such contract.
NOTICES
All notices and other matters pertaining to the contract resulting from this RFP, if any, to a party shall be in writing, shall be hand delivered, or sent by registered or certified U.S. Mail, return receipt requested, and shall be deemed to have been duly given when actually received by the addressee at the address set forth on this RFP.

INTEREST OF MEMBERS OF BOARD
The Proposer agrees that no member of the governing body, officer, employee or agent of the Board shall have any interest, financial or otherwise, direct or indirect, in the contract.

EMPLOYEE INVOLVEMENT/ COVENANT AGAINST CONTINGENT FEES
Employee Involvement: Proposer hereby certifies that, to the best of its knowledge and belief, no individual employed by the Proposer or subcontracted by the Proposer has an immediate relationship to any employee of the Board who was directly or indirectly involved in any way in the procurement of the contract, if any, resulting from this RFP or goods or services thereunder. For purposes of this provision, immediate relationship means: a current spouse, a person who currently has any interest including but limited to an equity interest in the Proposer’s business, and a person who is currently a party to a contract materially related to the work outlined in the RFP, or has any interest including but limited to an equity interest in an entity who is currently a party to a contract with the Proposer materially related to the work outlined in the RFP. Contractual party interest, as outlined above, does not include an agreement with a former owner and/or employee of the Proposer that is incident to the completed buyout of ownership interest and/or the final separation of employment with Proposer.

Covenant Against Contingency Fees: The Proposer also warrants that no person or selling agency has been employed, engaged or retained to solicit or secure any contract resulting from this RFP or any advantage hereunder upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, or in exchange for any substantial consideration bargained for, excepting that which is provided to the Proposer’s bona fide employees or to bona fide professional commercial or selling agencies or in the exercise of reasonable diligence should have been known by the Board to be maintained by the Proposer for the purpose of securing business for Proposer. In the event of the Proposer’s breach or violation of this warranty, the Board shall, subject to Proposer’s rights, have the right, at its option, to annul any contract resulting from this RFP without liability, to deduct from the charges otherwise payable by the Board under such contract the full amount of such commission, percentage, brokerage, or contingent fee, and to pursue any other remedy available to the Board under such contract, at law or in equity.

Violation of either of the above sections by Proposer shall be grounds for cancellation of the contract. Such cancellation shall not limit other contractual remedies against the Proposer provided in the contract, or in law, or in equity.

HOLD HARMLESS
The Proposer agrees to defend, indemnify and hold harmless the Board, its officers and employees, from any liabilities, claims, damages, costs, judgments, and expenses, including attorney’s fees, resulting directly or indirectly from an act of omission of the Proposer, its employees, agents or employees of subcontractors, in the performance of this contract of by reason of the failure of the Proposer to fully perform, in any respect, all of its obligations under this contract.
The Board agrees to defend and hold harmless insofar as the law allows the Proposer, its officers and employees, from any liabilities, claims, damages, costs, judgments, and expenses, including attorney’s fees, resulting directly or indirectly from an act or omission of the Board or its employees in the performance under this contract or by reason of the failure of the Board to fully perform its obligations under this contract.

DATA PRACTICES
The Proposer agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. The Proposer shall immediately report to the contract monitor any requests from third parties for information relating to this agreement. The Board agrees to promptly respond to inquiries from the Proposer concerning data requests. The Proposer agrees to hold the Board, its officers, department heads and employees harmless from any claims resulting from the Proposer’s unlawful disclosure or use of data protected under state and federal laws.

STANDARD CONTRACTUAL OBLIGATIONS AND OTHER INFORMATION

AGREEMENT
A copy of the AIA Document C132: Standard Form of Agreement Between Owner and Construction Manager as Advisor is attached. The selected CMA will be expected to complete the requirements of the agreement and submit signed copies prior to beginning work. The agreement MAY NOT be changed in any way without MPRB Board approval. This contract, if over $175,000, will require Board approval.

CHANGES
The MPRB may, from time to time, request changes in the Scope of Services to be performed by the CMA. Such changes, including any increase or decrease in the amount of the CMA’s compensation, which are mutually agreed upon shall be incorporated in written amendments to the Agreement and may require Board approval, which takes several weeks. The CMA shall monitor their budgets and plan and budget time accordingly.

PROPOSAL CONTENTS
The contents of the proposal and any clarifications to the contents submitted by the CMA shall become part of the contractual obligation and be incorporated by reference into the ensuing Agreement.

ENTIRE AGREEMENT
The Proposer’s written submission in response to this RFP shall be considered the Proposer’s formal offer. The content of the RFP, the Proposer’s submission in response to the RFP and the resulting contract, if any, shall be the entire agreement between the successful Proposer and the Board. It is understood and agreed that nothing herein or in the resulting contract is intended or should be construed as in any way creating or establishing the relationship of co-partners between the parties hereto, or in any manner whatsoever. The Proposer, if any, is, and shall remain, an independent Proposer operating in accord with the terms and conditions of the rights granted as a result of this RFP.
ATTACHMENTS TO THIS RFP

- Draft AIA Document C132: Standard Form of Agreement Between Owner and Construction Manager as Advisor
  - Special Conditions for Federal and State Grant Funded Projects (will be part of contract)
- City of Minneapolis Small and Underutilized Business Program (SUBP) Special Provisions
- City of Minneapolis SUBP Commitment Form
- City of Minneapolis SUBP MnUCP Report
- Construction Manager Fee Summary
- Draft AIA Document A132: Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition
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)

«The City of Minneapolis, acting by and through its Park and Recreation Board »« »
«2117 West River Road »
«Minneapolis, MN 55411 »
« »

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.

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ARTICLE 1 INITIAL INFORMATION
§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as “not applicable” or “unknown at time of execution.”)

§ 1.1.1 The Owner’s program for the Project:
(Insert the Owner’s program, identify documentation that establishes the Owner’s program, or state the manner in which the program will be developed.)

§ 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 Cost of the Work, as defined in Section 6.1:
(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 intends the following procurement method for the Project:
(Identify method such as competitive bid or negotiated contract.)

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

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

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

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

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

« Minneapolis Park and Recreation Board »
« 2117 West River Road North »
« Minneapolis, MN 55411 »
« »
« »

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

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

.1 Land Surveyor:
2 Geotechnical Engineer:

3 Civil Engineer:

4 Contractors, as defined in Section 1.4:

5 Separate Contractors, as defined in Section 1.4:

6 Other, if any:
(List any other consultants retained by the Owner.)

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

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

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

§ 1.1.15 The Construction Manager’s consultants retained under Supplemental Services:
§ 1.1.16 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 the Initial Information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Construction Manager’s services, schedule for the Construction Manager’s services, and the Construction Manager’s compensation. The Owner shall adjust the Owner’s budget for the Cost of the Work and the Owner’s anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

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

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

ARTICLE 2 CONSTRUCTION MANAGER’S RESPONSIBILITIES

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

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

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

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

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

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

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

§ 2.8 The Construction Manager shall maintain the following insurance until termination of this Agreement.

§ 2.8.1 Commercial General Liability with policy limits of not less than “Two Million” ($2,000,000) general aggregate, “Two Millions” ($2,000,000) products – completed operations “Two Million” ($2,000,000) personal and advertising injury, “Three Hundred Thousand” ($300,000) each occurrence fire damage and “Five Thousand” ($5,000) medical expense any one person. The policy shall be on an “occurrence” basis, shall include contractual liability coverage, and the Owner shall be named an additional insured. The amount of coverage will be automatically increased if the project amount is expected to exceed “Two Million” ($2,000,000) or involves potentially high risk activity.

§ 2.8.2 Automobile Liability covering vehicles owned, and non-owned vehicles used and/or hired, by the Construction Manager with policy limits of not less than “One Million” ($1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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

§ 2.8.4 Workers’ Compensation at statutory limits and Coverage B - Employers Liability with policy limits not less than “One Hundred Thousand” ($100,000) each accident, “Five Hundred Thousand” ($500,000) disease – policy limit and “One Hundred Thousand” ($100,000) disease each employee.

§ 2.8.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than “Two Million” ($2,000,000) per claim and “Two Millions” ($2,000,000) in the aggregate.

§ 2.8.6 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.

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

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

§ 2.10 A centralized electronic document management system will be used on the Project, and the Construction Manager shall be designated the Responsible Project Participant in section 3.5 of E203-2013, responsible for managing and maintaining the centralized electronic document management system. The centralized electronic document management system shall include all items listed in Article 3 of E203, and the following:

(List any items to be included that are not listed in Article 3 of E203-2013.)
§ 2.11 The Construction Manager shall retain all Project related documents and information it receives, and the Owner and Architect shall have access to the documents and information. The Construction Manager shall transmit the documents and information to the Owner at final completion.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER’S BASIC SERVICES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.2.22 The Construction Manager, with the assistance of the Architect, shall assist the Owner in preparing Contracts for Construction. The Construction Manager shall advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors.

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

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

§ 3.3 Construction Phase

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

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

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

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

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

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

§ 3.3.7 In accordance with the Contract Documents and the latest approved Project schedule, and utilizing information from the Contractors, the Construction Manager shall review, analyze, schedule and coordinate the overall sequence of construction and assignment of space in areas where the Contractors are performing Work.
§ 3.3.8 The Construction Manager shall coordinate all tests and inspections required by the Contract Documents or governmental authorities, observe the on-site testing and inspections, and arrange for the delivery of test and inspection reports to the Owner and Architect.

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

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

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

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

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

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

1. Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor’s Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor’s Application and Certificate for Payment to the Architect.

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

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

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

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payment; or (4) ascertained how or for what purpose that Contractor has used money previously paid on account of the Contract Sum.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.3.23 The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.
§ 3.3.24 With the Owner’s maintenance personnel, the Construction Manager shall observe the Contractors’ final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

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

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

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

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

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

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES
§ 4.1 Supplemental Services
§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Supplemental Services only if specifically designated in the table below as the Construction Manager’s responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Construction Manager is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

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

<table>
<thead>
<tr>
<th>Supplemental Services</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 4.1.1.1 Measured drawings</td>
<td>Construction Manager</td>
</tr>
<tr>
<td>§ 4.1.1.2 Tenant-related services</td>
<td>Owner or not provided</td>
</tr>
</tbody>
</table>

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User Notes: (2020493107)
§ 4.1.1.3 Commissioning

§ 4.1.1.4 Development of a commissioning plan

§ 4.1.1.5 Sustainable Project Services pursuant to Section 4.1.3

§ 4.1.1.6 Furniture, furnishings and equipment delivery, and installation coordination

§ 4.1.1.7 Furniture, furnishings and equipment procurement assistance

§ 4.1.1.8 Assistance with site selection

§ 4.1.1.9 Assistance with selection of the Architect

§ 4.1.1.10 Furnish land survey

§ 4.1.1.11 Furnish geotechnical engineering services

§ 4.1.1.12 Provide insurance advice

§ 4.1.1.13 Provide supplemental Project risk analysis and mitigation strategies

§ 4.1.1.14 Stakeholder relationships management

§ 4.1.1.15 Owner moving coordination

§ 4.1.1.16 Coordination of Owner’s Separate Contractors

§ 4.1.1.17 Other Supplemental Services

§ 4.1.2 Description of Supplemental Services

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

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

« »

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

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

« »

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement. The Owner shall compensate the Construction Manager as provided in Section 11.2.

§ 4.2 Construction Manager’s Additional Services

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

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

.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner’s schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6. Services necessitated by sections 6.4 and 6.6 shall not be considered additional services;

.2 Services necessitated by the enactment or revision of codes, laws, regulations or official interpretations after the date of this Agreement;


.3 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner’s other consultants or contractors;

.4 Preparation of documentation for alternate bid or proposal requests proposed by the Owner;

.5 Preparation for, and attendance at, a public presentation, meeting or hearing;

.6 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;

.7 Consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work; or

.8 Assistance to the Initial Decision Maker.

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

.1 Providing assistance to the Initial Decision Maker in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work.

.2 Services required in an emergency to coordinate the activities of a Contractor or Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.15.

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

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

ARTICLE 5 OWNER’S RESPONSIBILITIES

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

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

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

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

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

§ 5.6 Unless provided by the Construction Manager, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the...
site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

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

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

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

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

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

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

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

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

§ 5.16 Before executing the Contracts for Construction, the Owner shall coordinate the Construction Manager’s duties and responsibilities set forth in the Contracts for Construction with the Construction Manager’s services set forth in this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.
§ 5.17 The Owner shall provide the Construction Manager access to the Project site prior to commencement of the Work and shall obligate the Contractors to provide the Construction Manager access to the Work wherever it is in preparation or progress.

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

ARTICLE 6 COST OF THE WORK
§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager’s Consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

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

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

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

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

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

ARTICLE 7 COPYRIGHTS AND LICENSES
The Construction Manager and the Construction Manager’s consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager’s consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.
ARTICLE 8  CLAIMS AND DISPUTES

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

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

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

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

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

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

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Click the appropriate box.)
[ ] Arbitration pursuant to Section 8.3 of this Agreement
§ 8.3 Arbitration

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

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

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

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

§ 8.3.4 Consolidation or Joinder

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

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

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

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

ARTICLE 9   TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager’s option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, the Construction Manager shall give seven days’ written notice to the Owner before suspending services. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Construction Manager all sums due prior to suspension and any expenses incurred in the interruption
and resumption of the Construction Manager’s services. The Construction Manager’s fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

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

Section 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Construction Manager terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Construction Manager the following termination fee:

(Set forth below the amount of any termination fee, or the method for determining any termination fee.)

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

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

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

Section 10.4 If the Owner requests the Construction Manager to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager for review at least 14 days prior to the requested dates of execution. If the Owner requests the Construction Manager to execute consents reasonably required to facilitate assignment to a lender, the Construction Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Construction Manager for review at least 14 days prior to execution. The Construction Manager shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.
§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Construction Manager.

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

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

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

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

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

ARTICLE 11 COMPENSATION

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

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

§ 11.1.2 For Construction Phase Services in Section 3.3:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

§ 11.2 For the Construction Manager’s Supplemental Services designated in Section 4.1.1, and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)
§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation.)

« »

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

« »

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager’s consultants are set forth below. The rates shall be adjusted in accordance with the Construction Manager’s and Construction Manager’s consultants’ normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« »

<table>
<thead>
<tr>
<th>Employee or Category</th>
<th>Rate ($0.00)</th>
</tr>
</thead>
</table>

§ 11.6 Compensation for Reimbursable Expenses
§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Construction Manager and the Construction Manager’s consultants directly related to the Project, as follows:
.1 Transportation and authorized out-of-town travel and subsistence;
.2 Long distance services, dedicated data and communication services, teleconferences, Project websites, and extranets;
.3 Permitting and other fees required by authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, and standard form documents;
.5 Postage, handling, and delivery;
.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
.7 Professional photography, and presentation materials requested by the Owner;
.8 If required by the Owner, and with the Owner’s prior written approval, the Construction Manager’s consultants’ expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Construction Manager’s consultants;
.9 All taxes levied on professional services and on reimbursable expenses;
.10 Site office expenses; and
.11 Other similar Project-related expenditures.

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager’s consultants plus « » percent ( « » %) of the expenses incurred.

§ 11.7 Construction Manager’s Insurance. (provision omitted)

§ 11.8 Payments to the Construction Manager
§ 11.8.1 Initial Payment
§ 11.8.1.1 An initial payment of « » ($ « ») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner’s account in the final invoice.

§ 11.8.2 Progress Payments
§ 11.8.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts
unpaid « » ( « » ) 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.)

« » % « »

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

« »

ARTICLE 13 SCOPE OF THE AGREEMENT
§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager.

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

.1 AIA Document C132™–2019, Standard Form Agreement Between Owner and Construction Manager as Adviser

.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

.3 Exhibits:

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


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

« »

[ « » ] Other Exhibits incorporated into this Agreement:

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

« »

.4 Other documents:

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

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

**OWNER (Signature)**

«Margret Forney: »«President »

(Printed name and title)

**CONSTRUCTION MANAGER (Signature)**

« »« »

(Printed name and title)
Special Conditions for Federal and State Grant Funded Contracts (Revised: October, 2020)

I. General Compliance:

The Subrecipient or Contractor agrees to comply with the requirements of all applicable Federal and State laws, regulations and policies issued pursuant to grant funds in this Contract. The Subrecipient or Contractor further agrees to use funds available under this Contract to supplement rather than supplant funds otherwise available. By entering into this Contract with the City, the Subrecipient or Contractor agrees to be bound by any and all requirements and obligations established by the Federal or State governmental entity that provided funds to the City that were used to pay for the Subrecipient or Contractor's activities or services.

A. Conduct:

Prohibition Against Lobbying - The Subrecipient or Contractor is prohibited from using funds provided herein or personnel employed in the administration of the program or project for political activities, lobbying or political patronage, pursuant to 2 C.F.R. Section 326 and Section 450.

Prohibition Against Employee Activities -- The Subrecipient or Contractor is prohibited from using the funds provided herein for advocating unionization or anti-unionization activities (See 29 U.S.C. Sections 141, 157 and 158).

Conflicts of Interest Within the Subrecipient or Contractor's Organization -- The Subrecipient or Contractor shall comply with 2 C.F.R. Section 318 (c) (2), which prohibits the sub-contracting of work or services to any parent, subsidiary, or affiliate of the Subrecipient or Contractor unless an impartial, competitive procurement method has been used to award the sub-contract.

B. Materials Produced by Subrecipient or Contractor

Grantor Recognition - The Subrecipient or Contractor shall ensure recognition of the role of the Grantor Agency identified by the City in providing the scope of work or services through this Contract (2 C.F.R. Part 200 Appendix II). In addition, the City will either own or retain a license in any intellectual property developed by the Subrecipient or Contractor as a result of this Contract (2 C.F.R. Section 315). The Subrecipient or Contractor may publish any research findings and will include a reference to the support provided herein in all publications made possible with funds made available under this Contract (37 C.F.R. Part 401).

Basis for Payment -- The payments to the Subrecipient or Contractor shall be based upon the Subrecipient or Contractor's satisfaction of specific requirements of the Grantor Agency and upon the production of Deliverables as indicated in the Scope of Services (See 31 U.S.C. Sections 6301 through 6308 and 2 C.F.R. Section
C. Employment Restrictions:

Notifications - The Subrecipient or Contractor's executive management will ensure that a notice of its affirmative commitments in regards to the U.S. Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 et seq., and 29 C.F.R. Part 1910) and the Minnesota's Occupational Safety and Health Act of 1973 and Minnesota's Employee Right to Know Act of 1983 (MINNESOTA STATUTES, SECTIONS 182.65-.676) and all regulations promulgated thereunder, as now or hereafter amended, is made available to the Subrecipient or Contractor's employees and any applicable labor unions or worker's representatives.

Infringement Upon CBAs -- The Subrecipient or Contractor may not impair existing contracts for services or collective bargaining agreements nor displace currently employed workers, including no reduction in non-overtime, wages or benefits. Participants will not replace laid off employees nor infringe on other employees' promotional opportunities (Refer to 29 U.S.C. Section 157 and 29 C.F.R. Part 5).

II. Administrative Restrictions

A. Fees. The Subrecipient or Contractor is prohibited from charging an enrolled individual a fee for referral or program services (45 C.F.R. Part 92).

B. Use of Economic Procurement Methods Which Avoid Duplicative Acquisitions - The Subrecipient or Contractor shall comply with 2 C.F.R. Section 318(d) and maintain efficient and non-duplicative procurement methods.

III. General Federal and State Requirements

A. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794 et seq.) as now or hereafter amended, which prohibits discrimination against individuals with disabilities in any federally assisted program or activity.

B. Hatch Act (5 U.S.C Section 1501-1508, 7321-7326) (See also 18 U.S.C. Sections 210-211, 594 et seq.) as now or hereafter amended, which prohibits the use of funds provided or personnel employed under this Contract from being used to conduct or engaging in certain political activities.

C. Endangered Species Act of 1973 (7 U.S.C. Section 136, 16 U.S.C. Section 1531 et seq.) as now or hereafter amended, which prohibits harm against plants, animals or habitats protected under the Act.

D. Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) as now or hereafter amended, which regulates wage, hour and other employment practices that govern the use of funds provided and the employment of personnel under this Contract.
E. The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as now or hereafter amended, which prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.

F. The Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), as now or hereafter amended, which prohibits discrimination against qualified individuals on the basis of disability.

G. Title IX of the Education Amendments of 1972 (20 U.S.C. Sections 1681-1688), as now or hereafter amended, which prohibits discrimination on the basis of sex in educational programs and in any activities receiving federal financial assistance.

H. Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.), as now or hereafter amended, which prohibits discrimination against an individual on the basis of race, color or national origin in any program or activity receiving federal financial assistance. These regulations apply to all employers, including State and Local governments, public and private employment agencies, and labor organizations.

I. Drug Free Workplace Act of 1988 (41 U.S.C. Sections 8102 et seq.) as now or hereafter amended, and all regulations promulgated thereunder, including 2 C.F.R. Part 182 (as adopted by HUD at 2 C.F.R. Part 2429.10 et seq.), which require each grantee or sub-grantee (an "employer") to make a continuing good faith effort to maintain a drug free workplace, and mandate certain actions the "employer" must take to achieve this requirement.

J. Promotion of Religion (40 U.S.C. Section 121 et seq.), which prohibits the promotion of religious activities or interests using federal grant funds.

K. Regulations -- The Subrecipient or Contractor agrees to comply with the requirements, as applicable, of:

- Executive Order 12259: "Leadership and Coordination of Fair Housing in Federal Housing Programs" (46 Fed. Reg. 1253 (Dec. 31, 1981))
- Executive Order 12549: "Debarment and Suspension" (51 Fed. Reg. 6370 (Feb. 18, 1986))
- Executive Order 13132: "Federalism" (64 Fed. Reg. 43255 (Aug. 4, 1999))
- Executive Order 12926 and 42 U.S.C. Section 1971 et seq.: "Voter registration services for program participants"
- Executive Order 13279: "Non-discrimination against Religious Organizations"
- 24 C.F.R. Parts 84-85: "Non-Profit Organizations; Local Governments" (for HUD-funded contracts)
- 2 C.F.R. Part 200: "Uniform Grant Guidance"
- Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Section 3601 et seq.) (Also
known as the Fair Housing Act)

42 C.F.R. Chapter I, Subchapter D: "Grants" (Department of Health & Human Services)


37 C.F.R. Part 401: "Rights to Inventions made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements"

49 C.F.R. Part 24: "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs"


L. Cost Certification. Before the City releases any of the funds covered by this Contract, the Subrecipient or Contractor shall sign the following certification statement:

ALL PAYMENTS REQUESTED ARE FOR APPROPRIATE PURPOSES AND ARE IN ACCORDANCE WITH THE PROVISIONS OF THE GRANT APPLICATION OR PROPOSAL AND THE CONTRACT.

M. Non-procurement Debarment and Suspension. The Subrecipient or Contractor agrees to comply with 2 C.F.R. Part 180, Subpart C and to require each subcontractor, supplier or other party with whom the Subrecipient or Contractor contracts regarding the funding received pursuant to "covered transactions" as defined in 2 C.F.R. Part 180, Subpart B.

If the funding agency is the U.S. Department of Housing and Urban Development, Subrecipient or Contractor shall also comply with 2 C.F.R. Part 2424 and 2 C.F.R. Part 180, Subpart C.

If the funding agency is the U.S. Department of Health and Human Services, Subrecipient or Contractor shall also comply with 2 C.F.R. Part 376, Subpart C.


IV. Additional Conditions for Projects Involving Construction
A. Labor Standards

The Subrecipient or Contractor agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. § 3141 et seq.), as amended (further regulations and requirements are found at: http://www.wdol.gov/dba.aspx), the applicable provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701 et seq.), the Copeland "Anti-Kickback" Act (18 U.S.C. Section 875), and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Contract. The Subrecipient or Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part and shall make such documentation available to the City for review upon request.

B. Land Covenants

This Contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and 24 C.F.R. Part 1. In regard to the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Contract, the Subrecipient or Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United State are beneficiaries of and entitled to enforce such covenants. The Subrecipient or Contractor, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

C. Environmental Conditions

1) **Air and Water:** The Subrecipient or Contractor agrees to comply with the following regulations insofar as they apply to the performance of this Contract: 1) Clean Air Act (42 U.S.C. Section 7401 et seq.), as amended; 2) Federal Water Pollution Control Act (the Clean Water Act) (33 U.S.C. Sections 1251-1387), as amended, including regulations relating to inspection, monitoring, entry, and reports pursuant to 33 U.S.C. Section 1318, information and other requirements specified in the regulations and guidelines issued thereunder; 3) Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R. Part 745, as amended; 4) National Environmental Policy Act of 1969 (42 U.S.C. Section 4321 et seq.), as amended; and 5) HUD Environmental Review Procedures (24 C.F.R. Part 58), as amended.

2) **Lead-Based Paint:**
   (a) Residential Structures - The Subrecipient or Contractor agrees that any construction or rehabilitation of residential structures with assistance
provided under this Contract may be subject to HUD Lead-Based Paint Regulations (see 24 C.F.R. Part 35). Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning. The Subrecipient or Contractor shall also comply with the regulations contained in 40 C.F.R. Part 745, Subpart E for any renovation, repair and paint (RRP) work that occurs at any residential property constructed prior to 1978.

(b) Commercial and Public Structures -- The Contractor shall comply with the regulations contained in 40 C.F.R. Part 745, Subpart L, including the licensing and work practices standards for public and commercial buildings, bridges and super structures.

D. Historic Preservation


E. Progress Payments and Retainage

Unless otherwise prohibited by conditions for payment and receipt of the federal grant by the City, this Contract shall be subject to the provisions for security for completion of performance provided in Minnesota Statutes, Sections 15.71 through 15.74.

V. Federal Funding Accountability and Transparency Act of 2006 (FFATA)

(31 U.S.C. Section 6101 et seq.)

The FFATA applies to direct federal grants received by the City, which are provided as a sub award (sub grant, sub contract or sub recipient) to a first tier contractor or vendor. The City is obligated to report to a website maintained by the US Office of Management and Budget (OMB) certain information about entities that receive a sub award of federal funds in an amount of $25,000 or more. As a sub awardee, sub recipient or contractor being paid in whole or in part by the City with federal grant proceeds, your organization is required to register with the Central Contractor Registry (CCR) and comply with the requirements of the Federal Sub-award Reporting System (FSRS). As a sub awardee of federal funds, the company/entity is required to obtain a unique, federal identification number (DUNS) and report total compensation of certain executive level members of the company/entity (see www.fsrs.gov for details).
VI. Certifications Regarding Covered Telecommunications Equipment or Services and Lobbying

Pursuant to 2 CFR Part 200.216, FAR Council Interim Rule Section 889, subsection (A)(1)(B), and 31 U.S.C. Section 1352, prior to the City's release of any of the funds covered by this Contract, the Subrecipient or Contractor shall sign the following certification statement:

The undersigned hereby certifies, to the best of his or her knowledge and belief, that:

1) THE UNDERSIGNED ENTITY DOES NOT USE ANY "COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES" AS DESCRIBED IN 2 CFR PART 200.216 AND FAR COUNCIL INTERIM RULE SECTION 889, SUBSECTION (A)(1)(B) OF THE JOHN S. MCCAIN NATIONAL DEFENSE AUTHORIZATION ACT, AS A SUBSTANTIAL OR ESSENTIAL COMPONENT OF ANY SYSTEM, OR AS CRITICAL TECHNOLOGY AS PART OF ANY SYSTEM, NOR DO THE ITEMS, EQUIPMENT, AND/OR SERVICES TO BE PROVIDED TO THE CITY PURSUANT TO THE ATTACHED CONTRACT QUALIFY AS SUCH "COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES." "COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES" INCLUDES ALL TELECOMMUNICATIONS EQUIPMENT OR SERVICES PRODUCED OR PROVIDED BY HUAWEI TECHNOLOGIES COMPANY OR ZTE CORPORATION, AND VIDEO SURVEILLANCE AND TELECOMMUNICATIONS EQUIPMENT OR SERVICES PRODUCED OR PROVIDED BY HYTERA COMMUNICATIONS CORPORATION, HANGZHOU HIKVISION DIGITAL TECHNOLOGY COMPANY, OR DAHUA TECHNOLOGY COMPANY, OR ANY SUBSIDIARIES OR AFFILIATES OF THE AFOREMENTIONED ENTITIES.

2) NO FEDERAL APPROPRIATED FUNDS HAVE BEEN PAID, OR WILL BE PAID, BY OR ON BEHALF OF THE UNDERSIGNED, TO ANY PERSON FOR INFLUENCING OR ATTEMPTING TO INFLUENCE AN OFFICER OR EMPLOYEE OF AN AGENCY, A MEMBER OF CONGRESS, AN OFFICER OR EMPLOYEE OF CONGRESS, OR AN EMPLOYEE OF A MEMBER OF CONGRESS IN CONNECTION WITH THE AWARDING OF ANY FEDERAL CONTRACT, THE MAKING OF ANY FEDERAL GRANT, THE MAKING OF ANY FEDERAL LOAN, THE ENTERING INTO OF ANY COOPERATIVE AGREEMENT, AND THE EXTENSION, CONTINUATION, RENEWAL, AMENDMENT, OR MODIFICATION OF ANY FEDERAL CONTRACT, GRANT, LOAN, OR COOPERATIVE AGREEMENT.

3) IF ANY FUNDS OTHER THAN FEDERAL APPROPRIATED FUNDS HAVE BEEN PAID OR WILL BE PAID TO ANY PERSON FOR
INFLUENCING OR ATTEMPTING TO INFLUENCE AN OFFICER OR EMPLOYEE OF ANY AGENCY, A MEMBER OF CONGRESS, AN OFFICER OR EMPLOYEE OF CONGRESS, OR AN EMPLOYEE OF A MEMBER OF CONGRESS IN CONNECTION WITH THIS FEDERAL CONTRACT, GRANT, LOAN, OR COOPERATIVE AGREEMENT, THE UNDERSIGNED SHALL COMPLETE AND SUBMIT STANDARD FORM-LLL, "DISCLOSURE FORM TO REPORT LOBBYING," IN ACCORDANCE WITH ITS INSTRUCTIONS.

4) THE UNDERSigned SHALL REQUIRE THAT THE LANGUAGE OF THIS CERTIFICATION BE INCLUDED IN THE AWARD DOCUMENTS FOR ALL SUBAWARDS AT ALL TIERS (INCLUDING SUBCONTRACTS, SUBGRANTS, AND CONTRACTS UNDER GRANTS, LOANS, AND COOPERATIVE AGREEMENTS) AND THAT ALL SUBRECIPIENTS SHALL CERTIFY AND DISCLOSE ACCORDingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 2 CFR Part 200.216, FAR Council Interim Rule Section 889, subsection (A)(I)(B), and 31 U.S.C. Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

IN WITNESS WHEREOF, I have set my hand this _____ day of __________,  

_____

BY: _______________________________________________  
TITLE: _______________________________________________  
FOR: _______________________________________________  
(Organization)
City of Minneapolis Small and Underutilized Business Program (SUBP)
North Commons Park Phase 1 Improvements

I. Overview

The City of Minneapolis policy is to provide equal opportunities to all businesses, with an effort to redress discrimination in the City’s marketplace and in public contracting against Minority-owned business enterprises (MBEs) and Women-owned business enterprises (WBEs). This is accomplished through the Small and Underutilized Business Program (“SUBP”) as detailed in the Minneapolis Code of Ordinances Chapter 423. The SUBP applies to any contract over $175,000. SUBP goals are set on projects based on the project scope, subcontracting opportunities, and availability of eligible MBEs/WBEs.

The City has set the following SUBP goal to facilitate participation of eligible MBEs and WBEs (MBEs/WBEs) on this contract:

**The goal on this contract will be 4% MBE/WBE (combined).**

* This project has a combined MBE/WBE goal. This SUBP goal may be met by utilizing either an MBE firm or a WBE firm, or by a combination of both MBE and WBE firms.

Only eligible MBEs/WBEs count towards the SUBP goals. A MBE/WBE is eligible if they are:

1. Certified as a Disadvantaged Business Enterprise (DBE). This is the only MBE/WBE certification accepted by the SUBP.
2. DBE-certified within the scope of work that they will perform.
3. Performing a commercially useful function. An MBE/WBE performs a commercially useful function when it executes a distinct element of work and carries out its responsibilities by actually performing, managing, and supervising the work involved.
4. Located within the City’s marketplace, which includes only the Minnesota Counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Le Sueur, Mille Lacs, Ramsey, Scott, Sherburne, Sibley, Washington, and Wright; and the Wisconsin Counties of Pierce and St. Croix.

Attached is a list of local DBE-certified MBEs and WBEs that perform relevant scopes of service. However, this list is updated periodically and may not be exhaustive. Consultants should search for additional DBE-certified MBE and WBE firms using the Minnesota Unified Certification Program (MnUCP) directory, here: [http://mnucp.metc.state.mn.us/](http://mnucp.metc.state.mn.us/).

Consultants must make a Good Faith Effort to meet the SUBP goal. This means that Consultants must make every necessary and reasonable effort to subcontract with MBEs/WBEs. Commitment to use MBEs/WBEs, Good Faith Efforts to include MBE/WBE participation, and compliance with SUBP will be a factor in the selection of proposals.

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1. The firm’s principal place of business must be located within the City’s marketplace at the time of bid opening or solicitation. Principal place of business means the primary physical location at which or from which a business performs, is maintained, or operates.
2. A firm’s DBE certification, and business location, should be verified by checking in the online MnUCP Directory. A firm’s current profile in that directory is evidence of current DBE certification. If a Consultant identifies a business that is not yet certified, but may qualify for certification as MBE/WBE, the Consultant should encourage the business to immediately begin the application process for certification with the MnUCP. The Consultant should include this in their Good Faith Efforts documentation.
II. GOOD FAITH EFFORTS EVALUATION

If a Consultant does not meet the SUBP goal, the Consultant shall demonstrate its good faith efforts to do so. To determine if the Consultant demonstrated good faith efforts to meet the SUBP goal, the following list of factors may be considered:

1. Soliciting through all reasonable and available means (attendance at pre-proposal meetings, advertising and/or written notices) the interest of all eligible MBEs/WBEs certified in the scopes of work of the contract. The proposer must solicit MBEs/WBEs in sufficient time prior to proposal due date to allow MBEs/WBEs time to respond to solicitations. The proposer must determine with reasonable certainty if the MBEs/WBEs are interested by taking appropriate steps to follow up on initial solicitations.
2. Selecting portions of the work to be performed by eligible MBEs/WBEs in order to increase the likelihood that the SUBP goal will be achieved. This includes, where appropriate, breaking out contract work into smaller units to facilitate MBE/WBE participation, even when a proposer might otherwise prefer to perform these work items with its own forces.
3. Providing interested eligible MBEs/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. The proposer must negotiate in good faith with interested eligible MBEs/WBEs and provide written documentation of such negotiation with each such business.
5. A proposer should consider a number of factors in negotiating with potential MBE/WBE sub-consultants, and should take into consideration an eligible MBE or WBE’s price and capabilities and scheduling as well as the established contract goal. However, the fact that there may be some additional costs involved in finding and using eligible MBE’s/WBE’s is not in itself sufficient reason for a proposer’s failure to meet the established MBE/WBE goal, as long as such costs are reasonable. The ability or desire to perform the work of a contract with its own organization does not relieve the proposer of the responsibility to make good faith efforts. Proposers are not, however, required to accept higher quotes from eligible MBE’s/WBE’s if the price difference is excessive or unreasonable.
6. The proposer must offer information regarding, and make reasonable efforts to assist, solicited eligible MBEs/WBEs in obtaining bonding, lines of credit or insurance as required by the city or by the proposer; provided that the proposer need not provide financial assistance toward this effort.
7. Effectively using the services of minority/woman community organizations; minority/woman contractors’ groups; local, state and federal business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the solicitation and placement of MBEs/WBEs.
8. Whether the apparent successful proposer met or exceeded the average eligible MBE/WBE participation obtained by other proposers responding to the same City publication.

III. REQUIRED DOCUMENTATION

1. The proposer must thoroughly document its efforts to solicit and incorporate eligible MBE/WBE participation to meet the SUBP goal. The following must be submitted with the proposal:
   a. **SUBP Commitment Form**, listing all sub-consultants, contractors, suppliers, and service providers that will be used on the project. This completed form will be used to determine whether the proposer is committing to meeting the SUBP goal. The commitments listed by the proposer on this form are a material condition of contract award, and constitute minimum commitments on this contract.
2. If the **SUBP Commitment Form** does not demonstrate verifiable MBE/WBE participation sufficient to meet the SUBP goal, then the proposer must submit documentation demonstrating that the proposer made sufficient good faith efforts (GFE) to meet the SUBP goal. This GFE documentation will be due upon request by the City. This GFE documentation includes:
   a. **Good Faith Efforts Checklist**: A checklist based on the factors that may be considered in determining whether a proposer made good faith efforts to meet the SUBP goal.
   b. **Supporting Documentation to Demonstrate Good Faith Efforts**: The proposer must submit documentation evidencing the efforts taken to achieve the SUBP goal. The documentation may
include, but is not limited to, copies of solicitation emails, quotes received, faxes, and phone call logs. Any such documentation of solicitations to MBE/WBE firms must clearly include the identification of the recipient firm(s).

3. The contract may be monitored through the Contract Compliance Information Management System (CCIMS)/B2Gnow software, or other method specified by the Minneapolis Department of Civil Rights (MDCR). If specified by MDCR, the prime consultant and its sub-consultants will be responsible for entering information into the specified software. Such information will include, but may not be limited to, payment amounts made to the prime consultant and payment amounts made to MBE and WBE sub-consultants. The prime consultant and its sub-consultants will also be responsible for maintaining the appropriate records to document their compliance and for producing such records if audited.

IV. Post-Award Substitutions
A Consultant shall not substitute, reduce participation of, or eliminate MBE/WBE sub-consultants listed in the SUBP Commitment Form without prior written approval of the Minneapolis Department of Civil Rights. A Consultant who substitutes, reduces participation of, or removes an MBE/WBE sub-consultant listed in the SUBP Commitment Form without prior written approval shall be subject to a fine of up to $10,000 per violation, or any of the penalties listed below. The Consultant must make good faith efforts to replace an MBE/WBE sub-consultant that is unable to perform with another MBE/WBE to perform the same scope of work.

V. Penalties for Non-Compliance
Compliance with SUBP is a material condition of the contract. The City may take the following actions wholly, partly, or in any combination:

a) Temporarily withhold cash payments pending correction of the deficiency.

b) Permanently withhold payment for all or part of the activity not in compliance with this chapter if the deficiency cannot be corrected, or the entity refuses to correct the deficiency.

c) Suspend or debar the noncompliant consultant, sub-consultant, supplier or vendor as ineligible for all current or potential contracts with the City or supported by City funds.

d) Designate the noncompliant consultant, sub-consultant, supplier or vendor as high-risk for future contracts and require of the consultant, sub-consultant, supplier or vendor increased reporting requirements, mandatory audits and similar measures.

The City will monitor compliance with the SUBP throughout the contract. Compliance with the MBE/WBE goal and other SUBP requirements will be a material condition of the contract and failure to comply may be deemed a breach of contract.

Please review Minneapolis Code of Ordinances Chapter 423 for more information or the contact the City of Minneapolis Civil Rights Department (612.673.2086) or contractcompliance@minneapolismn.gov.
LIST ALL known consultants (including your company), sub-consultants, sub-contractors, suppliers, and service providers that will be used on the project.

Make additional copies of this form as necessary.

This completed form should show how the proposer intends to include minority-owned and women-owned business enterprises (MBEs and WBEs) to meet the SUBP goal(s). By completing this form you are committing to using the MBE and WBE firms listed for at least the dollar amounts that you listed in this form.

A consultant shall not substitute, reduce participation of, or eliminate MBE/WBE sub-consultants listed in this form without prior written approval of the Minneapolis Department of Civil Rights. A consultant who substitutes or removes an MBE/WBE sub-consultant listed in this form without prior written approval shall be subject to a fine of up to $10,000 per violation, or other penalties listed in ordinance §423.120.

Only MBEs and WBEs certified as Disadvantaged Business Enterprise (DBE) count toward the SUBP goal(s). Place a mark “x” in the appropriate column below if a firm is DBE-certified as an MBE or WBE.

To count toward the SUBP goal(s), the MBE/WBE must be DBE certified in the scope of work it will perform, and the MBE/WBE must have its principal place of business located within the Minnesota counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Le Sueur, Mille Lacs, Ramsey, Scott, Sherburne, Sibley, Washington, and Wright, and the Wisconsin counties of Pierce and St. Croix.

If an MBE/WBE subcontracts work to a non-MBE/WBE, the value of that work will not count toward the SUBP goal(s).

An MBE/WBE must perform a commercially useful function to count toward the SUBP goal(s). An MBE/WBE performs a commercially useful function when it executes a distinct element of work and carries out its responsibilities by actually performing, managing, and supervising the work involved.

This form is due with your proposal. Failing to complete and submit this form, or indicating “not applicable,” may result in a non-responsive proposal.

1 For more information about the Small and Underutilized Business Program (SUBP) goals, see the SUBP Special Provisions published with this RFP, and review Minneapolis Ordinances Chapter 423.

2 A firm’s DBE certification, and business location, should be verified by checking in the online MnUCP Directory: http://mnucp.metc.state.mn.us/. A firm’s current profile in that directory is evidence of current DBE certification.
CITY OF MINNEAPOLIS – DEPARTMENT OF CIVIL RIGHTS
SUBP COMMITMENT FORM
2nd St N Bikeway Project

<table>
<thead>
<tr>
<th>Company Name</th>
<th>City, State</th>
<th>Phone &amp; Email</th>
<th>Contact Method (fax, phone, email)</th>
<th>Date of Solicitation</th>
<th>Scope of Work</th>
<th>Quote Amount</th>
<th>DBE-certified MBE</th>
<th>DBE-certified WBE</th>
</tr>
</thead>
<tbody>
<tr>
<td>YOUR FIRM HERE &gt;</td>
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</table>
### THIS FORM IS DUE WITH YOUR PROPOSAL.

<table>
<thead>
<tr>
<th>Company Name</th>
<th>City, State</th>
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<th>Date of Solicitation</th>
<th>Scope of Work</th>
<th>Quote Amount</th>
<th>DBE-certified MBE</th>
<th>DBE-certified WBE</th>
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</tr>
</tbody>
</table>

Check here if your company intends to self-perform all work and DOES NOT intend to subcontract out any work for this project: ☐

*If your company is not DBE-certified, checking this box means that your company will need to demonstrate good faith efforts (GFE) to meet the SUBP goal, in order to be awarded the contract. All GFE documents and supporting evidence will be due upon request by the City.*

The proposer certifies that the foregoing is correct, and that all known consultants (including your company), sub-consultants, sub-contractors, suppliers, and service providers that will be used on the project are listed herein.

*Failure to complete and submit this form may result in your proposal being deemed non-responsive.*

---

Proposer Company Name  
Contact Name & Title  
Phone & Email  
Date
# City of Minneapolis Small and Underutilized Business Program (SUBP)

## North Commons Park Phase 1 Improvements

This report lists MBEs and WBEs that have been certified by the Minnesota Uniform Certification Program (MnUCP) in scopes of services relevant to this project. If additional scopes of services are identified, the MnUCP online directory (http://mncert.mn.gov/) should be utilized to find additional certified MBEs and WBEs in those scopes.

The scopes of services are categorized using the North American Industry Classification System (NAICS). For definitions and more information about NAICS Codes visit the U.S. Census Bureau (http://www.census.gov/eos/www/naics/).

<table>
<thead>
<tr>
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<td>Company</td>
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<td>ACTION CONSTRUCTION TRANSPORTATION LLC DBA ACTION CONSTRUCTION SERVICES</td>
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<td>ADVANCED DESIGN CONTRACTING LLC</td>
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<tr>
<td>A-L COMPANY INC</td>
<td>ANG, BOON</td>
</tr>
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<td>AMANI CONSTRUCTION AND RENOVATIONS LLC</td>
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<tr>
<td>AMIT ENTERPRISE LLC</td>
<td>LIMKAR, RAVI</td>
</tr>
<tr>
<td>BENTON-CLAUGHTERT CONTRACTING LLC</td>
<td>CLAUGHTERT, BILL</td>
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<tr>
<td>BLOCK5 LLC</td>
<td>HASHI, SAKARIA</td>
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<tr>
<td>BOGAR CONSTRUCTION CO LLC</td>
<td>SMITH, MARVIN</td>
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<tr>
<td>D&amp;J STEELE CONSTRUCTION INC</td>
<td>STEELE, DONALD</td>
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<tr>
<td>DIAMOND DEVELOPMENT INC</td>
<td>BUCKNER, BABETTE M</td>
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<tr>
<td>EDEN RESOURCES</td>
<td>DEAN, MARIHA</td>
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<td>EMERSE CONSTRUCTION LLC</td>
<td>MYLES, LESLIE</td>
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<td>ESTOREMASTERS LLC DBA UNITED DEVELOPERS</td>
<td>BADEWA, ADEYINKA</td>
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<tr>
<td>FIHAN DESIGN+ ARCHITECTURE</td>
<td>FALADE, WALE</td>
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<td>FORESIGHT</td>
<td>MARK VARGAS</td>
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<td>GIA GROUP</td>
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<td>HERITAGE ARCHITECTURE STUDIO LLC</td>
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<td>KORTECH CONSULTING CO</td>
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<td>LV BUILDERS LLC</td>
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<td>M&amp;M CONSTRUCTORS LLC</td>
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<td>MIDWEST SELECT CONTRACTING LLC</td>
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<td>OBRA3 LLC</td>
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<td>ONE DESIGN LLC</td>
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<td>PROSPECT ENGINEERING AND CONTRACTING COMPANY LLC</td>
<td>JINADU, ADEDOJA</td>
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<td>PWS INC</td>
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</tr>
<tr>
<td>RAVEN CONSTRUCTION INC.</td>
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<td>RESTORATION &amp; CONSTRUCTION SERVICES LLC</td>
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<td>THE ELITE RENOVATION LLC</td>
<td>CLAY, VALENTINO</td>
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<td>THE MARTINEZ GROUP LLC DBA PCR BUILDS</td>
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<td>THERMAL CONSTRUCTION SPECIALISTS</td>
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<td>VILLAGE CONSTRUCTION LLC</td>
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## Preconstruction Phase Services

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<th>Quantity</th>
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<td>HR</td>
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<tr>
<td>Preconstruction Manager</td>
<td></td>
<td>HR</td>
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<td>Cost Estimator</td>
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<tr>
<td>Senior Project Manager</td>
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<tr>
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<tr>
<td>Assistant Project Manager</td>
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<tr>
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<td>Project Accountant</td>
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<td>Assistant Superintendent</td>
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<tr>
<td>Health &amp; Safety Director</td>
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**Preconstruction Fees:** $0

## Construction Phase Services & Equipment (Based on 27-month construction duration)

<table>
<thead>
<tr>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Rate</th>
<th>Total</th>
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<tbody>
<tr>
<td>Project Executive</td>
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**Total Construction Fees:** $0

## Construction Cost

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<thead>
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<th>Description</th>
<th>(Est.)</th>
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<tr>
<td>Construction Manager Fee</td>
<td>$24,000,000</td>
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**Construction Manager Total Estimated Compensation:** $0
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)

«The City of Minneapolis, acting by and through its Park and Recreation Board- »« »
«2117 West River Road »
«Minneapolis, MN 55411 »
« »

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

« »
« »
« »
« »

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

« »
« »
« »

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

« »
« »
« »
« »

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

« »
« »
« »
« »

The Owner and Contractor agree as follows.
TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS
2 THE WORK OF THIS CONTRACT
3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION
4 CONTRACT SUM
5 PAYMENTS
6 DISPUTE RESOLUTION
7 TERMINATION OR SUSPENSION
8 MISCELLANEOUS PROVISIONS
9 Enumeration of Contract Documents

EXHIBIT A INSURANCE AND BONDS
EXHIBIT B DETERMINATION OF THE COST OF THE WORK

ARTICLE 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. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT
The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION
§ 3.1 The date of commencement of the Work shall be:
(Select one of the following boxes.)

[ ] The date of this Agreement.
[ ] A date set forth in a notice to proceed issued by the Owner.
[ ] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

[ ]

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

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion of the Project or Portions Thereof
§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:
(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)
§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates:

<table>
<thead>
<tr>
<th>Portion of Work</th>
<th>Substantial Completion Date</th>
</tr>
</thead>
</table>

§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete

§ 3.4.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:

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

- [ ] Not later than « » (« ») calendar days from the date of commencement of the Work.
- [ ] By the following date: « »

§ 3.4.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:

<table>
<thead>
<tr>
<th>Portion of Work</th>
<th>Date to be substantially complete</th>
</tr>
</thead>
</table>

§ 3.4.3 If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

- [ ] Stipulated Sum, in accordance with Section 4.2 below
- [ ] Cost of the Work plus the Contractor’s Fee, in accordance with Section 4.3 below
- [ ] Cost of the Work plus the Contractor’s Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)

§ 4.2 Stipulated Sum

§ 4.2.1 The Contract Sum shall be « » ($ « »), subject to additions and deductions as provided in the Contract Documents.

§ 4.2.2 Alternates

§ 4.2.2.1 Alternates, if any, included in the Contract Sum:

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
</tr>
</thead>
</table>

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

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)
§ 4.2.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
</tr>
</thead>
</table>

§ 4.2.4 Unit prices, if any:
(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Units and Limitations</th>
<th>Price per Unit ($0.00)</th>
</tr>
</thead>
</table>

§ 4.3 Cost of the Work Plus Contractor’s Fee without a Guaranteed Maximum Price
§ 4.3.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

§ 4.3.2 The Contractor’s Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor’s Fee.) « »

§ 4.3.3 The method of adjustment of the Contractor’s Fee for changes in the Work:
« »

§ 4.3.4 Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work:
« »

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

§ 4.3.6 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Units and Limitations</th>
<th>Price per Unit ($0.00)</th>
</tr>
</thead>
</table>

§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner’s review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.

§ 4.4 Cost of the Work Plus Contractor’s Fee with a Guaranteed Maximum Price
§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

§ 4.4.2 The Contractor’s Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor’s Fee.) « »

§ 4.4.3 The method of adjustment of the Contractor’s Fee for changes in the Work:
« »

§ 4.4.4 Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work:
§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed « » percent (« » %) of the standard rental rate paid at the place of the Project.

§ 4.4.6 Unit Prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Units and Limitations</th>
<th>Price per Unit ($0.00)</th>
</tr>
</thead>
</table>

§ 4.4.7 Guaranteed Maximum Price
§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed « » ($« »), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 4.4.7.2 Alternates
§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
</tr>
</thead>
</table>

§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
<th>Conditions for Acceptance</th>
</tr>
</thead>
</table>

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
</tr>
</thead>
</table>

§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption.)

« »

§ 4.4.8 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.

§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.

§ 4.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)

« »

§ 4.6 Other:
ARTICLE 5  PAYMENTS
§ 5.1 Progress Payments
§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and Architect, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

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

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

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

§ 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum
§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor’s Applications for Payment.

§ 5.1.4.2 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.

§ 5.1.4.3 In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.4.3.1 The amount of each progress payment shall first include:
   .1 That portion of the Contract Sum properly allocable to completed Work;
   .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
   .3 That portion of Construction Change Directives that the Architect determines, in the Architect’s professional judgment, to be reasonably justified.

§ 5.1.4.3.2 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 A232–2019;
   .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor 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 A232–2019; and
   .5 Retainage withheld pursuant to Section 5.1.7.
§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price

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

§ 5.1.5.2 Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.

§ 5.1.5.3 In accordance with AIA Document A232-2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

1. The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;
2. That portion of Construction Change Directives that the Architect determines, in the Architect’s professional judgment, to be reasonably justified; and
3. The Contractor’s Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor’s Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 5.1.5.3.2 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 A232–2019;
3. Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor 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 A232–2019;
5. The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 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 5.1.7.

§ 5.1.5.4 The Owner, Construction Manager and Contractor 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 Contractor shall execute subcontracts in accordance with those agreements.

§ 5.1.5.5 In taking action on the Contractor’s Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor 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.

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

§ 5.1.5.7 If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.
§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price

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

§ 5.1.6.2 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor 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 Contractor’s Fee.

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

§ 5.1.6.2.2 The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

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

§ 5.1.6.3 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 Contractor on account of that portion of the Work and for which the Contractor 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.

§ 5.1.6.4 In accordance with AIA Document A232-2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.4.1 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 Contractor’s Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor’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 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 5.1.6.4.2 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 A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor 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 A232–2019;

.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 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 5.1.7.

§ 5.1.6.5 The Owner and the Contractor 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 Contractor shall execute subcontracts in accordance with those agreements.

§ 5.1.6.6 In taking action on the Contractor’s Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor 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.

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

§ 5.1.6.8 If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to when the Work of this Contract is substantially complete, 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.)

« »

§ 5.1.7.1.1 The following items are not subject to retainage:

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

« »

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

(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)

« »

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:

(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)

« »
§ 5.2 Final Payment
§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum
§ 5.2.1.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when
1. the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; and
2. a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect.

§ 5.2.1.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

« »

§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price
§ 5.2.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when
1. the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
2. the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and
3. a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

§ 5.2.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

« »

§ 5.3 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 6 DISPUTE RESOLUTION
§ 6.1 Initial Decision Maker
The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as 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.)

« »
« »
« »
« »

§ 6.2 Binding Dispute Resolution
For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows: (Check the appropriate box.)


[ ❌ ] Litigation in a court of competent jurisdiction.
If the Owner and Contractor 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 7  TERMINATION OR SUSPENSION
§ 7.1 Where the Contract Sum is a Stipulated Sum
§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

§ 7.1.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows: (Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price
§ 7.2.1 Termination
§ 7.2.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

§ 7.2.1.2 Termination by the Owner for Cause
§ 7.2.1.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:
.1 Take the Cost of the Work incurred by the Contractor to the date of termination;
.2 Add the Contractor’s Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor’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 A232–2019.

§ 7.2.1.2.2 When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232–2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.

§ 7.2.1.3 Termination by the Owner for Convenience
If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

§ 7.3 Suspension
The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term “profit” shall be understood to mean the Contractor’s Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.

ARTICLE 8 MISCELLANEOUS PROVISIONS
§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:
(Name, address, email address, and other information)

§ 8.3 The Contractor’s representative:
(Name, address, email address, and other information)

§ 8.4 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, 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.)

§ 8.7 Relationship of the Parties
Where the Contract is based on the Cost of the Work plus the Contractor’s Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with
the Owner to cooperate with the Architect and exercise the Contractor’s skill and judgment in furthering the interests of
the Owner; to furnish efficient business administration 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 and approve, in a timely manner, information required by the Contractor and to
make payments to the Contractor in accordance with the requirements of the Contract Documents.

§ 8.8 Other provisions:

### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- **.1** AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition
- **.4** 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.)*

<table>
<thead>
<tr>
<th>Drawings</th>
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<tr>
<th>Specifications</th>
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<td>Section</td>
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<tr>
<th>Addenda, if any:</th>
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<tbody>
<tr>
<td>Number</td>
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Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

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<thead>
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<th>Other Exhibits:</th>
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<td>(Check all boxes that apply and include appropriate information identifying the exhibit where required.)</td>
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</table>

- **[ ☒ ]** AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:
  
  *(Insert the date of the E235-2019 incorporated into this Agreement.)*

<table>
<thead>
<tr>
<th>The Sustainability Plan:</th>
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<tbody>
<tr>
<td>Title</td>
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</table>
Supplementary and other Conditions of the Contract:

<table>
<thead>
<tr>
<th>Document</th>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
</table>

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’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)
«Margret Forney: »«President »
(Printed name and title)

CONTRACTOR (Signature)
« »« 
(Printed name and title)
This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the «  » day of «  » in the year «  »
(In words, indicate day, month, and year.)

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

« »
« »

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

« »
« »

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

« »
« »

TABLE OF ARTICLES

A.1 GENERAL
A.2 OWNER’S INSURANCE
A.3 CONTRACTOR’S INSURANCE AND BONDS
A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL
The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A232™–2019, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER’S INSURANCE
§ A.2.1 General
Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor’s request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ A.2.2 Liability Insurance
The Owner shall be responsible for purchasing and maintaining the Owner’s usual general liability insurance.

§ A.2.3 Required Property Insurance
§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk “all-risks” completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

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

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

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<thead>
<tr>
<th>Causes of Loss</th>
<th>Sub-Limit</th>
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§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to false work and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s, Construction Manager’s, and Contractor’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

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

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<thead>
<tr>
<th>Coverage</th>
<th>Sub-Limit</th>
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§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

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

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures
If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, “all-risks” property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Optional Extended Property Insurance.
The Owner shall purchase and maintain the insurance selected and described below.
(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner’s property, or the inability to conduct normal operations due to a covered cause of loss.

- **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

- **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

- **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

- **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

- **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured’s business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

- **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

- **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
ARTICLE A.3 CONTRACTOR’S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner’s written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor’s Commercial General Liability and excess or umbrella liability policy or policies.

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

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect and the Architect’s consultants, and the Construction Manager and the Construction Manager’s consultants, as additional insureds for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor’s negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner’s general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect’s consultants, and the Construction Manager and the Construction Manager’s consultants, CG 20 32 07 04.

§ A.3.2 Contractor’s Required Insurance Coverage

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

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than $« » each occurrence, $« » general aggregate, and $« » aggregate for products-completed operations hazard, providing coverage for claims including

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

.2 personal injury and advertising injury;

.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;

.4 bodily injury or property damage arising out of completed operations; and

.5 the Contractor’s indemnity obligations under Section 3.18 of the General Conditions.
§ A.3.2.2 The Contractor’s Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

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

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, 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.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers’ Compensation at statutory limits.

§ A.3.2.6 Employers’ Liability with policy limits not less than « » ($ « » ) each accident, « » ($ « » ) each employee, and « » ($ « » ) policy limit.

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

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than « » ($ « » ) per claim and « » ($ « » ) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than « » ($ « » ) per claim and « » ($ « » ) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than « » ($ « » ) per claim and « » ($ « » ) in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than « » ($ « » ) per claim and « » ($ « » ) in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than « » ($ « » ) per claim and « » ($ « » ) in the aggregate.
§ A.3.3 Contractor's Other Insurance Coverage

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

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

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

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

[ ] § A.3.3.2.1 If there is only one Contractor performing the Work on the Project, property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Contractor’s obligation to provide property insurance differs from the Owner’s obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

[ ] § A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (S $ ) per claim and (S $ ) in the aggregate, for Work within fifty (50) feet of railroad property.

[ ] § A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than (S $ ) per claim and (S $ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ ] § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risks” completed value form.

[ ] § A.3.3.2.5 Property insurance on an “all-risks” completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[ ] § A.3.3.2.6 Other Insurance

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

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<tr>
<th>Coverage</th>
<th>Limits</th>
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§ A.3.4 Performance Bond and Payment Bond

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

(Specify type and penal sum of bonds.)
Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

« »
DRAFT  AIA® Document A132® – 2019

Exhibit B

Determination of the Cost of the Work

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

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

THE CONTRACTOR:
(Name, legal status, address, and other information)

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

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

ARTICLE B.1  CONTROL ESTIMATE

§ B.1.1 Where the Contract Sum is based on the Cost of the Work, plus the Contractor’s Fee without a Guaranteed Maximum Price pursuant to Section 4.1 of the Agreement, the Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate, for the Owner’s review and acceptance. The Control Estimate shall include the estimated Cost of the Work plus the Contractor’s Fee. The Control Estimate shall be used to monitor actual costs and the timely performance of the Work. The Contractor shall update the Control Estimate with each Application for Payment as needed to reflect Changes in the Work.
§ B.1.2 The Control Estimate shall include
   .1  the documents enumerated in Article 1 of the Agreement, including all Modifications thereto;
   .2  a list of the assumptions made by the Contractor in the preparation of the Control Estimate, including
       assumptions under B.1.4, to supplement the information provided by the Owner and contained in the
       Contract Documents;
   .3  a statement of the estimated Cost of the Work organized by trade categories or systems and the
       Contractor’s Fee;
   .4  schedules, upon which the Control Estimate is based, indicating proposed Subcontractors, activity
       sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of
       shop drawings and samples, procurement and delivery of materials or equipment, and the Owner’s
       occupancy requirements; and
   .5  contingencies for further development of design and construction as required by Section B.1.4.

§ B.1.3 The Contractor shall meet with the Owner and Construction Manager to review the Control Estimate. In the
   event that the Owner or Construction Manager discovers any inconsistencies or inaccuracies in the information
   presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Control Estimate.
   When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing. The Owner’s
   acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ B.1.4 To the extent that the Contract Documents are anticipated to require further development, the Contractor shall
   provide in the Control Estimate for 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 in a revised Control Estimate by
   mutual agreement of the parties.

§ B.1.5 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and
   Construction Manager with timely information as to the anticipated total Cost of the Work. The cost control system
   shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks
   and proposed changes. This information shall be reported to the Owner in writing, through the Construction Manager,
   no later than the Contractor’s first Application for Payment and shall be revised and submitted with each Application
   for Payment.

§ B.1.6 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon
   assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the
   Contractor. The Contractor shall notify the Owner, Architect, and Construction Manager of any inconsistencies between the
   Control Estimate and the revised Contract Documents.

ARTICLE B.2  COSTS TO BE REIMBURSED

§ B.2.1 Cost of the Work
§ B.2.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance
   of the Work. The Cost of the Work shall include only the items set forth in this Article B.2.

§ B.2.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Contractor
   shall obtain such approval in writing prior to incurring the cost.

§ B.2.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval
   of the Owner.

§ B.2.2 Labor Costs
§ B.2.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction
   of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

§ B.2.2.2 Wages or salaries of the Contractor’s supervisory and administrative personnel when stationed at the site and
   performing Work, with the Owner’s prior approval.

§ B.2.2.1 Wages or salaries of the Contractor’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:
§ B.2.2.3 Wages or salaries of the Contractor’s supervisory or administrative personnel engaged at factories or 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.

§ B.2.2.4 Costs paid or incurred by the Contractor, 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 B.2.2.1 through B.2.2.3.

§ B.2.2.5 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.

§ B.2.3 Subcontract Costs
Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ B.2.4 Costs of Materials and Equipment Incorporated in the Completed Construction
§ B.2.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ B.2.4.2 Costs of materials described in the preceding Section B.2.4.1 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 Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ B.2.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
§ B.2.5.1 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 Contractor 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 Contractor shall mean fair market value.

§ B.2.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor 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 Contractor, or a related party as defined in Section B.2.8, 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.

§ B.2.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ B.2.5.4 Costs of the Contractor’s site office, including general office equipment and supplies.

§ B.2.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner’s prior approval.

§ B.2.6 Miscellaneous Costs
§ B.2.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.
§ B.2.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner’s prior approval.

§ B.2.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Contractor, with the Owner’s prior approval.

§ B.2.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Contractor is liable.

§ B.2.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Contractor is required by the Contract Documents to pay.

§ B.2.6.4 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 A232™–2019, or by other provisions of the Contract Documents, and which do not fall within the scope of Section B.2.7.3.

§ B.2.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ B.2.6.5.1 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 Contractor resulting from such suits or claims, and payments of settlements made with the Owner’s consent, unless the Contractor had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect, as required by Article 3 of AIA Document A232™–2019. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor’s Fee or subject to the Guaranteed Maximum Price.

§ B.2.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner’s prior approval.

§ B.2.6.7 Costs of document reproductions and delivery charges.

§ B.2.6.8 Deposits lost for causes other than the Contractor’s negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ B.2.6.9 Legal, mediation, and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor 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.

§ B.2.6.10 Expenses incurred in accordance with the Contractor’s standard written personnel policy for relocation and temporary living allowances of the Contractor’s personnel required for the Work, with the Owner’s prior approval.

§ B.2.6.11 That portion of the reasonable expenses of the Contractor’s supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ B.2.7 Other Costs and Emergencies

§ B.2.7.1 Other costs incurred in the performance of the Work, with the Owner’s prior approval.

§ B.2.7.2 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 A232-2019.

§ B.2.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.
§ B.2.8 Related Party Transactions

§ B.2.8.1 For purposes of this Section B.2.8, the term “related party” shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor 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 Contractor; 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 Contractor.

§ B.2.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner and the Construction Manager 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 Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article B.5. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article B.5.

ARTICLE B.3 COSTS NOT TO BE REIMBURSED

§ B.3.1 The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Contractor’s personnel stationed at the Contractor’s principal office or offices other than the site office, except as specifically provided in Section B.2.2.2;

.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;

.3 Expenses of the Contractor’s principal office and offices other than the site office;

.4 Overhead and general expenses, except as may be expressly included in Article B.2;

.5 The Contractor’s capital expenses, including interest on the Contractor’s capital employed for the Work;

.6 Except as provided in Section B.2.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, 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 Article B.2; and

.8 Where a Guaranteed Maximum Price is part of the Agreement, costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE B.4 DISCOUNTS, REBATES AND REFUNDS

§ B.4.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor 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 Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials, and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ B.4.2 Amounts that accrue to the Owner in accordance with Section B.4.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE B.5 SUBCONTRACTS AND OTHER AGREEMENTS

§ B.5.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor’s own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor 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 Contractor shall deliver such bids to the Construction Manager, Architect, and Owner, with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor’s list of proposed subcontractors and suppliers and, in consultation with the Construction Manager and Architect, object to any subcontractor or supplier. Any advice of the Construction Manager or Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract.
§ B.6.3.1 Conduct an audit. Owner shall conduct an audit of the Cost of the Work or notify the Construction Manager and Architect that it will not conduct the audit, submit a written report based upon the auditor’s findings to the Construction Manager and Architect.

§ B.6.3 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 Contractor 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 Contractor in Article B.6, below.

§ B.6.4 Where the Contract Sum is based upon the Cost of the Work Plus a Fee without a Guaranteed Maximum Price, the Contractor shall prepare, for the Construction Manager and Architect’s review and the Owner’s acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Contractor shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the Owner’s approval of the Control Estimate, the Owner shall procure the items on terms and conditions acceptable to the Contractor. Upon the Owner’s approval of the Control Estimate, the Owner shall assign all contracts for these items to the Contractor and the Contractor shall thereafter accept responsibility for them.

ARTICLE B.6 ACCOUNTING RECORDS

§ B.6.1 The Contractor 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 and the Construction Manager. 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 Contractor’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 Contractor shall preserve these records, for a period of three years after final payment, or for such longer period as may be required by law.

§ B.6.2 When the Contractor believes that all the Work required by the Agreement has been fully performed, the Contractor shall deliver to the Owner, through the Construction Manager, a final accounting of the Cost of the Work.

§ B.6.3 Within 30 days after the Owner’s receipt of the Contractor’s final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Construction Manager and Architect that it will not conduct an audit.

§ B.6.3.1 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 auditor’s findings to the Construction Manager and Architect.

§ B.6.3.2 Within seven days after receipt of the written report described in Section B.6.3.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 5.2 of the Agreement have been met, the Architect will either issue to the Owner, through the Construction Manager, a final Certificate for Payment, with a copy to the Contractor, or notify the Contractor, Construction Manager, and Owner, in writing, of the Architect’s reasons for withholding a certificate as provided in Article 9 of AIA Document A232-2019. The time periods stated in this Section B.6.3.2 supersede those stated in Article 9 of AIA Document A232-2019. Neither the Architect, nor the Construction Manager, is responsible for verifying the accuracy of the Contractor’s final accounting.

§ B.6.3.3 If the Owner’s auditors’ report concludes that the Cost of the Work, as substantiated by the Contractor’s final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed
amount without seeking an initial decision pursuant to Article 15 of AIA Document A232-2019. A request for mediation shall be made by the Contractor within 30 days after the Contractor’s receipt of a copy of the 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 Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the final Certificate for Payment.

§ B.6.4 If, subsequent to final payment, and at the Owner’s request, the Contractor incurs costs, described in Article B.2, and not excluded by Article B.3, to correct defective or nonconforming Work, the Owner shall reimburse the Contractor for such costs and the Contractor’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 any. If adjustments to the Contract Sum are provided for in Section 4.6 of the Agreement, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section B.6.4 in determining the net amount to be paid by the Owner to the Contractor.