

AIA Document A133™ – 2019

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

AGREEMENT made as of the Sixth day of February in the year Two Thousand Twenty-Three.
(In words, indicate day, month, and year.)

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

This is Iowa Ballpark, Inc.
340 1st Avenue E
Dyersville, IA 52040
Phone Number: 563-875-7724

Fiscal Agent:
City of Dyersville
340 1st Avenue E
Dyersville, IA 52040
Phone Number: 563-875-7724

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

Miron Construction Co., Inc.
335 French Court SW
Cedar Rapids, IA 52404
Phone Number: 319-298-5200
Fax Number: 319-366-5695

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

Field of Dreams Movie Site Professional Ballpark
Dyersville, Iowa

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

RDG Planning & Design, Inc.
301 Grand Avenue
Des Moines, IA 50309-1718
Phone Number: 515-288-3141
Fax Number: 515-288-8631

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, as described in Section 4.1.1:

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

This Project provides Basic Services for a 3,000-seat MiLB style Ballpark that will allow for temporary expansion of up to an additional 5,000 seats for MLB games. The total capacity of the Ballpark will be approximately 8,000 spectators. The Ballpark will be part of the larger existing Field of Dreams Movie Site and Homestead along with the currently under construction Go the Distance Baseball Recreation Complex. The site for the Project is located in Dyersville, Iowa.

- The Ballpark will be designed to accommodate future permanent seating additions.

The Ballpark is to become the premier community, regional, and statewide baseball destination. The Ballpark will afford a multitude of users for baseball games and special events as well as serve the tourism needs for visitors to the site.

Preliminary programmatic elements

- Seating – (3,000) permanent seats, a location for (5,000) temporary seats
- Spectator Amenities
 - Plaza, Food and Beverage, Restrooms, Hospitality
- Media / Broadcast
 - Press Box, Broadcast, Game Entertainment, Media, Photo pits
- Baseball Operations

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- Front Office, Entries, Security / Safety
- Locker rooms, Lounges, Batting Tunnels
- Dugouts, Grounds Crew, Maintenance
- Site
 - Plaza, Entries, Roadways / Parking / Paving, Plantings

§ 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.)

The Ballpark will be located on land located north of Lansing Road and East Dyersville Road the Field of Dreams Movie Site, located at 28995 Lansing Road in Dyersville, Iowa. 42.4991°, -91.0589°. The site currently consists of a major league baseball field, wood dugouts, concrete paving areas, gravel paving areas, site lighting, and utilities. The approximate area of the site is 43.6 acres.

See attached project limits - Exhibit F

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

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

<u>Total Construction Cost:</u>	<u>\$55,000,000</u>
<u>Basic Services Building Construction:</u>	<u>\$49,450,000</u>
<u>Basic Services Site Construction:</u>	<u>\$5,500,000</u>

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

.1 Design phase milestone dates, if any:

To be determined at a later date by mutual agreement

.2 Construction commencement date:

To be determined at a later date by mutual agreement

.3 Substantial Completion date or dates:

To be determined at a later date by mutual agreement

.4 Other milestone dates:

All expenses need to be obligated by December 31, 2024. All grant funds must be expended by June 30, 2026.

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

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

To Be Determined

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

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

N/A

§ 1.1.6.1 Reserved

§ 1.1.7 Other Project information:

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

N/A

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

Mike Stillman
Secretary
This is Iowa Ballpark, Inc.
340 1st Avenue E
Dyersville, IA 52040

Mick Michel
City Administrator
City of Dyersville
340 1st Avenue E
Dyersville, IA 52040
Phone Number: 563-875-7724

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

N/A

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

.1 Geotechnical Engineer:

Joel Schluensen
Terracon Consultants, Inc.
870 40th Avenue
Bettendorf, IA 52722-1607
Phone Number: 563-355-0702

.2 Civil Engineer:

N/A

.3 Other, if any:

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

Site Survey Services: Consultant to be determined at a later date, including, but not limited to, easement & right of ways, platting, property line surveys, boundary survey, and utilities surveys as required.

Legal Counsel Service:

Jonathan C. Landon
Shuttleworth & Ingersoll, P.L.C.
115 Third Street SE, Suite 500
P. O. Box 2107
Cedar Rapids, Iowa 52406-2107
Phone: 319-365-9461
Fax: 319-365-8443

Food & Beverage Operations: Consultant/Contractor/Provider:

Luke Green
Rapids Foodservice Contract and Design
6201 South Gateway Drive
Marion, Iowa 52302
Phone Number: 319-447-3515

Facility Operations: Consultant/Contractor/Provider to be determined at a later date

Special Inspections: Consultant to be determined at a later date

Commissioning: Consultant to be determined at a later date

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

Tom Ohle, AIA
Project Manager
RDG Planning & Design
7415 Manchester Road
St. Louis, MO 63143
Phone Number: 314-405-8786
Email: tohle@rdgusa.com

Ryan Peterson
Senior Partner
RDG Planning & Design
PO Box 259006
Madison, WI 53725
Phone Number: 608-673-4970
Email: rpeterson@rdgusa.com

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

Jonathan Daniels
Senior Vice President
Miron Construction Co., Inc.
335 French Court SW
Cedar Rapids, IA 52404
Phone Number: 319-298-5294
Email: jonathan.daniels@miron-construction.com

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

Reference the Construction Manager's proposed team as represented in Exhibit E. Any changes to be provided team will require prior approval by the Owner.

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

The Owner seeks to procure subcontractors under federal and state laws. Owner reserves the right to review all subcontractors' proposals as outlined in AIA A201-2017. Trade packages to be bid as defined in Article 9.

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

The professional services for the Project design, production, and construction, as defined in Article 3, shall include consideration of possible Project phasing of construction. The phasing will represent the available Owner's Project funding timeline.

The Project shall be designed to include the complete scope of work as represented by Section 1.1.13 and confirmed by the opinion[s] of construction cost, however, that work and cost may be portioned to provide construction phases to occur over multiple consecutive or non-consecutive periods of time. Following the work included in Section 3.3 Schematic Design Phase Services, the Owner shall advise the Architect of the funding available and provide phasing direction.

The phasing of the construction will be determined at that later date. If the phasing modifies the project scope or periods of time for the respective scope the Owner and Architect will mutually adjust the respective compensation.

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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

§ 3.1.3 Consultation

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

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

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

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

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

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

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

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

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

§ 3.1.10 Intentionally Deleted

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§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

Reference Exhibit E

§ 3.2 Guaranteed Maximum Price Proposal

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

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

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

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

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

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

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

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

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

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

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

§ 3.3.2 Administration

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

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

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

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

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

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

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

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

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

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

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

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

Preconstruction Phase services to be provided for a lump sum of Fifty-Five Thousand dollars and No cents (\$55,000.00) as referenced in Exhibit E. (See item 6.1.2 below for memorialization of the GC cost proposal.)

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

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

NA

Individual or Position	Rate
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§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within eight (8) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid forty-five (45) 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.)

1% per month.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

The Construction Management Fee shall be 2.75% of the Cost of the Work. Reference Exhibit E. The Construction Manager will be compensated for the General Conditions/Staffing as identified in Exhibit E for a lump sum value of Seventy Thousand Forty-Nine dollars and No cents (\$70,049.00) per month.

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

All additive changes to the Project shall be equal to 2.75% of the Cost of Work.

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

10% of the Cost of the Work. Reference Exhibit AIA A201-2017 Article 7.2.2.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed the standard rental rate paid at the place of the Project or as listed in the attached exhibit.

Reference Exhibit E.

§ 6.1.6 Liquidated damages, if any:

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

NA, unless mutually amended by Exhibit A.

§ 6.1.7 Other:

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

NA

§ 6.2 Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

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

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

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

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

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

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

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. All trade contracts will be bid and based upon a lump sum value. Only allowances, General Requirements, or other activities performed on a time and material basis will be tracked on a reimbursable basis.

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

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

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. Labor, as identified throughout Article 7.1, will be billed as set forth in the attached Exhibit E – Labor Rate Schedule, which in addition to wages paid and attendant burden includes charges for overhead and/or profit in addition to the fee for any work that is not performed on a lump sum basis.

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

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

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

NA

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

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

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

§ 7.3 Subcontract Costs

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

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

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

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

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

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

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

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

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

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

§ 7.6 Miscellaneous Costs

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

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

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

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

§ 7.7 Other Costs and Emergencies

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

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

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

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

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

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 ~~Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. The Construction Manager shall obtain bids to be opened at a designated time and location as identified in the bidding documents from Subcontractors and from Suppliers of materials or equipment fabricated to a special design of the work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Construction Manager will be allowed to submit bids for portions of the Work that are customarily performed by the Construction Manager's own personnel. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager or Owner has reasonable objection.~~

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

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

NA

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the second Monday day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 45 days after the Architect receives the Application for Payment.

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

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

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

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

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

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

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

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;

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

§ 11.1.8 Retainage

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

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

5%

§ 11.1.8.1.1 The following items are not subject to retainage:

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

NA

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

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

In accordance with the laws of State of Iowa.

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

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

In accordance with the laws of State of Iowa.

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

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

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

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

§ 11.2 Final Payment

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

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

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

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

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

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

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

NA

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

§ 11.3 Interest

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

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

1% per month.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

NA

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

☐ ~~Arbitration pursuant to Article 15 of AIA Document A201–2017~~

☒ Litigation in a court of competent jurisdiction

☐ ~~Other: *(Specify)*~~

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a

condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

No fee.

§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with policy limits of not less than Two Million Dollars (\$2,000,000) for each occurrence and Four Million Dollars (\$4,000,000) in the aggregate for bodily injury and property damage.

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

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than Five Hundred Thousand Dollars (\$500,000) each accident, Five Hundred Thousand Dollars (\$500,000) each employee, and Five Hundred Thousand Dollars (\$500,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Three Million Dollars (\$3,000,000) per claim and Five Million Dollars (\$5,000,000) in the aggregate.

§ 14.3.1.6 Other Insurance

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

NA

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

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

§ 14.3.2 Construction Phase

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

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§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents. If required, the bonds will billed at cost.

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

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

§ 14.5 Other provisions:

NA

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by RDG Planning & Design, Inc. and Owner attached hereto and incorporated herein by this reference as Exhibit B to this AIA A133–2019
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

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

AIA Document E203 dated the Twentieth day of October in the year Two Thousand Twenty-Two as modified by RDG Planning & Design, Inc. and Owner attached hereto and incorporated herein by this reference as Exhibit C to this AIA A133

- .6 Other Exhibits:

(Check all boxes that apply.)

☐ ~~AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:~~

~~*(Insert the date of the E234–2019 incorporated into this Agreement.)*~~

☐ ~~Supplementary and other Conditions of the Contract:~~

Document	Title	Date	Pages
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- .7 Other documents, if any, listed below:

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

Fee Proposal dated January 16, 2023 attached hereto and incorporated herein by this reference as Exhibit E.

Project Limits diagram attached hereto and incorporated herein by this reference as Exhibit F.

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

OWNER – This is Iowa Ballpark, Inc.

CONSTRUCTION MANAGER

(Signature)

Dan Evans

President

(Printed name and title)

(Signature)

Tim Kippenhan

Vice President & COO

(Printed name and title)

OWNER – City of Dyersville

(Signature)

Mick Michel

Fiscal Agent

(Printed name and title)

AIA Document A133™ – 2019

Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the ??? day of ??? in the year ???, is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the ??? day of ??? in the year ??? (the “Agreement”)

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

For the following PROJECT:

(Name and address or location)

Field of Dreams Movie Site Professional Ballpark
Dyersville, Iowa

The Owner:

(Name, legal status and address)

This is Iowa Ballpark, Inc.
340 1st Avenue E
Dyersville, IA 52040
Phone Number: 563-875-7724

The Construction Manager:

(Name, legal status and address)

Miron Construction Co., Inc.
335 French Court SW
Cedar Rapids, IA 52404
Phone Number: 319-298-5200
Fax Number: 319-366-5695

TABLE OF ARTICLES

A.1 GUARANTEED MAXIMUM PRICE

A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

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

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

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

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed ??? (\$???), subject to additions and deductions by Change Order as provided in the Contract Documents.

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

(Provide itemized statement below or reference an attachment.)

???

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

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

§ A.1.1.5 Alternates

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

Item	Price
???	???

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

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

Item	Price	Conditions for Acceptance
???	???	???

§ A.1.1.6 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.)

Item	Units and Limitations	Price per Unit (\$0.00)
???	???	???

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

(Check one of the following boxes.)

[???] The date of execution of this Amendment.

[???] Established as follows:

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

???

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

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

§ A.2.3 Substantial Completion

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

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

[???] Not later than ??? (???) calendar days from the date of commencement of the Work.

[???] By the following date: ???

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

Portion of Work	Substantial Completion Date
???	???

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

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

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

Document	Title	Date	Pages
???	???	???	???

§ A.3.1.2 The following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

???

Section	Title	Date	Pages
???	???	???	???

§ A.3.1.3 The following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

???

Number	Title	Date
???	???	???

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
???	???	???

Other identifying information:

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

Item	Price
???	???

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

???

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

???

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

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

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

???

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

OWNER – This is Iowa Ballpark, Inc.

CONSTRUCTION MANAGER

(Signature)

Dan Evans

President

(Printed name and title)

(Signature)

Jonathan Daniels

Senior Vice President

(Printed name and title)

OWNER – City of Dyersville

(Signature)

Mick Michel

Fiscal Agent

(Printed name and title)

AIA Document A133™ – 2019

Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the Eighteenth day of January in the year Two Thousand Twenty-Three.
(In words, indicate day, month, and year.)

For the following PROJECT:

(Name and location or address)

Field of Dreams Movie Site Professional Ballpark
Dyersville, Iowa

The Owner:

(Name, legal status, and address)

This is Iowa Ballpark, Inc.

340 1st Avenue E

Dyersville, IA 52040

Phone Number: 563-875-7724

The Construction Manager:

(Name, legal status, and address)

Miron Construction Co., Inc.

335 French Court SW

Cedar Rapids, IA 52404

Phone Number: 319-298-5200

Fax Number: 319-366-5695

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B.1 GENERAL

B.2 OWNER'S INSURANCE

B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

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

ARTICLE B.2 OWNER'S INSURANCE

§ B.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 B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ B.2.2 Liability Insurance

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

§ B.2.3 Required Property Insurance

§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.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 B.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, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

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

Cause of Loss

Sub-Limit

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

Coverage

Sub-Limit

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.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.

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

§ B.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner'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 B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 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 B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ B.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.)

- [] **§ B.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.
- ???
- [] **§ B.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.
- ???
- [] **§ B.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.
- ???
- [] **§ B.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.
- [] **§ B.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.
- [] **§ B.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.
- [] **§ B.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.

§ B.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.)

- [] **§ B.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.
- (Indicate applicable limits of coverage or other conditions in the fill point below.)*

[] **§ B.2.5.2 Other Insurance**

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

Coverage

Limits

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

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

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

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager'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 ~~07-04-04~~ 13, CG 20 37 ~~07-04-04~~ 13; and, with respect to the Architect and the Architect's consultants, CG 20 32 ~~07-04-04~~ 13.

§ B.3.2 Construction Manager's Required Insurance Coverage

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

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~??? (\$???) each occurrence, ??? (\$???) general aggregate, and one million dollars (\$ 1,000,000) each occurrence, two million (\$2,000,000) general aggregate, and two million (\$2,000,000) aggregate~~ for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property; and
- .4 bodily injury or property damage arising out of completed ~~operations; and operations.~~
- ~~.5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.~~

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

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

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

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than one million dollars (\$1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

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

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than five hundred thousand dollars (\$500,000) each accident, five hundred thousand dollars (\$500,000) each employee, and five hundred thousand dollars (\$500,000) policy limit.

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

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than one million dollars (\$ 1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.

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

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than one million dollars (\$ 1,000,000) per claim and two million dollars (\$ 2,000,000) in the aggregate.

§ B.3.2.11 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 one million dollars (\$ 1,000,000) per claim and one million dollars (\$ 1,000,000) in the aggregate.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ten million dollars (\$ 10,000,000) per claim and ten million dollars (\$ 10,000,000) in the aggregate.

§ B.3.3 Construction Manager's Other Insurance Coverage

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

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

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

- [] **§ B.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager 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 Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.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.)

???

- [] **§ B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ??? (\$???) per claim and ??? (\$???) in the aggregate, for Work within fifty (50) feet of railroad property.
- [] **§ B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ??? (\$???) per claim and ??? (\$???) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- [] **§ B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.
- [] **§ B.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.
- [X] **§ B.3.3.2.6 Other Insurance**
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Umbrella Liability Insurance

Limits

\$10,000,000 each occurrence, \$10,000,000 in the general aggregate

§ B.3.4 Performance Bond and Payment Bond

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

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	<u>Equal to Contract Value</u>
Performance Bond	<u>Equal to Contract Value</u>

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 B.4 SPECIAL TERMS AND CONDITIONS

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

AIA Document A201™ – 2017

General Conditions of the Contract for Construction

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

Field of Dreams Movie Site Professional Ballpark
Dyersville, Iowa

THE OWNER:
(Name, legal status and address)

This is Iowa Ballpark, Inc.
340 1st Avenue E
Dyersville, IA 52040
Phone Number: 563-875-7724

THE ARCHITECT:
(Name, legal status and address)

RDG Planning & Design, Inc.
301 Grand Avenue
Des Moines, IA 50309-1718
Phone Number: 515-288-3141

R3005.252.04

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

§ 1.2.4 The terms and conditions of the Contract Documents, including but not limited to the General Conditions and Division 01 Specification Sections, apply to all Sections of the Specifications.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

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

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

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

§ 1.7.1 Instruments of Service transmitted in digital form or any other information or documentation transmitted in digital form are not Contract Documents. Discrepancies may exist between digital data files and corresponding hard-copy Contract Documents including, but not limited to, subsequent modifications to the Contract Documents. In the event of a conflict between the Contract Documents and the digital data files, the Contract Documents shall govern. Users of digital data files shall be responsible for confirming the accuracy and completeness of the files relative to current Contract Documents.

§ 1.7.2 Data contained in Architect provided digital data files, at the time of transfer to third parties, are part of the Architect's Instruments of Service and shall not be used by anyone receiving this data for any purpose other than as a convenience in the preparation of shop drawings for the referenced project. Any other use or reuse by others is prohibited. Users of these digital data files shall agree to make no claim and hereby waive, to the fullest extent permitted by law, any claim or cause of action or any nature against the Architect, its officers, consultants, directors, agents, and sub-consultants, and any employees of them, that may arise out of or in connection with use of these digital data files. Furthermore, users shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the Architect, its officers, consultants, directors, agents, and sub-consultants, and any employees of them, from and against any and all claims, causes of action, damages, liabilities and costs, including, but not limited to, reasonable attorneys' fees and defense costs, arising out of or resulting from the use of these digital data files.

§ 1.8 Building Information Models Use and Reliance

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

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

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

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

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

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

§ 2.3 Information and Services Required of the Owner

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

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

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 2.4 Owner’s Right to Stop the Work

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

§ 2.5 Owner’s Right to Carry Out the Work

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

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

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

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

§ 3.3 Supervision and Construction Procedures

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

Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Work required by the Contract Documents to be performed after working hours or work the Contractor elects to perform after hours shall be completed at no additional cost to the Owner.

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

§ 3.4.2.1 After the Contract has been executed, the Owner and Architect will consider requests for the substitution of products in place of those specified only under the conditions set forth in the General Requirements (Division 01 of the Specifications). By making requests for substitutions, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor will provide the same warranty for the substitution as it would have provided for the product specified;
- .3 certifies that the cost data presented is complete and includes all related costs for the substituted product and for Work that must be changed as a result of the substitution, except for the Architect's redesign costs, and waives all claims for additional costs related to the substitution that subsequently become apparent; and
- .4 shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

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

§ 3.5 Warranty

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

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

§ 3.6 Taxes

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

§ 3.6.1 Bidders shall be responsible for informing themselves of tax laws, requirements, regulations, and interpretations as they apply to this project.

§ 3.6.2 This Project is Iowa sales tax exempt. Persons shall purchase such items of tangible personal property without liability for the tax if such property will be used in the performance of the construction contract and a purchasing agent authorization letter and an exemption certificate, issued by the designated exempt entity, are presented to the retailer. Said taxes shall not be included in the bid value for this Project.

§ 3.6.3 The Owner shall issue an authorization letter and an exemption certificate to the Contractor, subcontractor, builder, or manufacturer to be used as provided in Iowa Code. The authorization letter and the exemption certificate shall specify the construction project to which they apply and shall be valid only for that project. The Owner shall notify the Iowa Department of Revenue that such authorization letter and exemption certificate have been issued. The notification shall, to the extent practicable, describe the project and identify the Contractors, subcontractors, builders, and manufacturers which will be using the letter and certificate.

§ 3.6.4 The Contractor shall provide to the Owner a listing of Contractors, subcontractors, builders, and manufacturers which will be purchasing tangible personal property for this Project and request the owner provide an authorization letter and an exemption certificate relative to Article 3.6.2 above.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Owner shall pay fees for public or private water, gas, electrical, and other utility extensions at the Site. The Contractor shall secure and arrange for all necessary utility connections.

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

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

§ 3.7.4 Concealed or Unknown Conditions

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

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

§ 3.7.6 Plan reviews which may be required by the State of Iowa Building Code Commissioner for 661 Iowa Administrative Code Chapter 200 Fire Marshal Administration or 661 Iowa Administrative Code Chapter 300 State Building Code - Administration shall be secured by the Architect and paid for by the Owner. Exception: Fire Alarm and Automatic Sprinkler System plan reviews and fees shall be paid by the Contractor.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent

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

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

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

§ 3.9.4 The Contractor shall employ a superintendent or an assistant to the superintendent who will perform as a coordinator for structural, mechanical, and electrical Work. The coordinator shall be knowledgeable in structural, mechanical, and electrical systems and capable of reading, interpreting and coordinating Drawings, Specifications, and shop drawings pertaining to such systems. The coordinator shall assist the Subcontractors in arranging space conditions to eliminate interference between the structural, mechanical, and electrical systems and other Work and shall supervise the preparation of coordination drawings documenting the spatial arrangements for such systems within restricted spaces. The coordinator shall assist in planning and expediting the proper sequence of delivery of structural, mechanical, and electrical equipment to the site.

§ 3.10 Contractor's Construction and Submittal Schedules

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

§ 3.10.1.1 The Owner may authorize construction activities to commence prior to completion of the Drawings and Specifications. If the Drawings and Specifications require further development at the time the initial construction schedule is prepared, the Contractor shall 1) allow time in the schedule for further development of the Drawings and Specifications by the Architect, including time for review by the Owner and Contractor and for the Contractor's coordination of Subcontractor's Work, and 2) furnish to the Owner in a timely manner information regarding anticipated market conditions and construction cost; availability of labor, materials, and equipment; and proposed methods, sequences, and time schedules for construction of work.

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

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

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

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

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

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

§ 3.12.11 The Architect's and its consultant's review of Contractor's submittals will be limited to examination of an initial submittal and one or two (1-2) re-submittal(s). If additional reviews are requested, it is understood by all parties that any resubmittal issues will be discussed in a timely manner. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional re-submittals.

§ 3.12.12 The Architect's and its consultant's review of Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect shall entitle the Owner to deduct from the Contract Sum amounts paid to the Architect for review of such out of sequence submittals.

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

- .1 is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from, and
- .2 is caused in whole or in part by any fault, negligence, act, or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by them and/or anyone for whose acts any of them may be liable, and including any of their employee's injury or damages caused in whole or in part by the negligence of the same employee.

Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in Section 3.18.1.

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

§ 3.19 Iowa Code Chapter 573 Claims

§ 3.19.1 Contractor shall secure discharge by separate surety bond or otherwise of any 573 Claim that arises from Contractor's dealings with subcontractors or suppliers, or from any subcontractor's dealings with sub-subcontractors or suppliers. Contractor shall indemnify the Owner for any costs the Owner may sustain due to the filing of any Iowa Code Chapter 573 Claims arising from Contractor's dealings with subcontractors or suppliers, including the price of any bond to discharge said claims and reasonable attorney's fees incurred in defending said claims. The Owner shall retain all rights to make any claims or pursue any remedies it might have in contract or common law against the Contractor or surety. After Contractor's discharge by separate surety bond or otherwise of any 573 claim, Owner shall waive all rights to withhold double (or any part of) said 573 claim.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

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

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

§ 4.2.4 Communications

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

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

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate

Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

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

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

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

- 1** The change in the Work;
- 2** The amount of the adjustment, if any, in the Contract Sum; and
- 3** The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Contractor and/or Construction Manager shall comply with the following provisions in determining any change in contract cost.

- .1 For the Contractor, any changes or additions to the work which involve extra cost and for which the additional cost is determined by mutual agreement on a lump sum amount, shall be handled on the basis of net cost plus (2.75%); this percentage shall include overhead and profit. 'Cost' shall include all items of material and labor, including pro rata charge for foreman, use of power tools and equipment (for the time actually used), power, bond premium, liability, compensation, insurance, and automobile insurance. Social security insurance, old age, and unemployment insurance may be considered as cost, but these items will not carry the (2.75%) for overhead and profit. When requested, the Contractor shall furnish evidence of net cost by means of invoices and certified time records.
- .2 When the Contractor seeks the work of a change order through the quotation of a subcontractor(s), the cost submitted to the Owner will list a total maximum of (12.75%) overhead and profit for all Contractors. (10%) overhead and profit will be allowed for the subcontractor(s) actually performing the work. The remaining (2.75%) will be allowed for coordination of the work by the Prime Contractor.
- .3 Changes in the work involving credits for work not performed shall be made on the basis of total cost. Contractor mark-up for profit and overhead shall be included in the construction cost change.
- .4 The Contractor shall furnish to the Architect an itemized breakdown of quantities and prices on all changes. Degree and detail of breakdown shall be at the Architect's discretion, but, in general, shall be in such detail appropriate to the size and scope of the change so as to allow timely and meaningful evaluation.

§ 7.3 Construction Change Directives

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

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

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

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

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

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

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet.

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

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

§ 9.3.1.3 The Owner will retain five percent (5%) of each Application for Payment in accordance with Section 573.12 of the Code of Iowa:

- .1 Retainage will be held 30 days after completion and final acceptance of the Work, unless otherwise requested by the Contractor in accordance with Section 26.13 of the Code of Iowa.
- .1 At the end of the 30 day period, the Owner will continue to hold double the total amount of all claims on file and the estimated value of incomplete work.
- .2 A request for early release of retained funds will only be considered upon completion of the following:
 - .1 Substantial Completion of the Work substantiated by an executed Certificate of Substantial Completion.
 - .2 Notification to all known suppliers, subcontractors, and sub-subcontractors of the Contractors intent to request a release of retained funds in compliance with Section 26.13 of the Code of Iowa.
 - .3 Receipt of an itemized, tabulated list prepared by the Contractor of all incomplete or nonconforming work items, including valuation of each work item listed. Include separate columns for labor and material for each item listed. Upon approval, this list shall be incorporated into the Schedule of Values for subsequent payment applications. All values shall be listed as double the estimated value of work item.
 - .4 G706 - Contractor's Affidavit of Payment of Debts and Claims.
 - .5 G706A - Contractor's Affidavit of Release of Liens.
 - .6 G707 - Consent of Surety to Final Payment.
 - .7 Evidence of continuation of liability coverage, including coverage for completed operations in accordance Section 11.1 of AIA General Conditions.

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

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

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

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

- 1 defective Work not remedied;
- 2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- 3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- 4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- 5 damage to the Owner or a Separate Contractor;
- 6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- 7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

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

§ 9.6 Progress Payments

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

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

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

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

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

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

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

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

- .1 The Architect shall not be required to make inspections to determine Substantial Completion when the Work is not sufficiently complete or will result in extensive lists of items to be completed or corrected. When the Work is not sufficiently complete and such inspections are requested by the Contractor or are necessary to allow Owner occupancy by the required substantial completion date, the Owner shall have the right to deduct from the Contract Sum amounts paid to the Architect for additional services to conduct such inspections.
- .2 The Architect's inspection of any portion of the Work to determine whether such portion of the Work is substantially complete will be limited to an initial inspection and one (1) re-inspection. Additional re-inspections will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for such additional re-inspections.

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

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

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

§ 9.10.1.1 The Architect's inspection of the Work to determine whether the Work is acceptable for Final Completion and Final Payment will be limited to one (1) inspection. Additional re-inspections will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for such additional re-inspections.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect

(1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to

final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to the negligent acts, errors or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

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

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

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner

shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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

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

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

§ 11.2 Owner's Insurance

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

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of

the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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

§ 11.3 Waivers of Subrogation

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

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

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

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

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change

Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

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

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has

no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.1.2 Compliance with Law Provision: The Contractor agrees that he will comply with all applicable Federal, State, and local laws, statutes, codes, rules, and regulations having jurisdiction over the Project. Contractor shall take all necessary precautions to keep the site and work in compliance with the safety and health regulations for construction issued by the Bureau of Labor Standards of the U.S. Department of Labor as well as the Occupational Safety and Health Standards, parts 1910 and 1926 as amended and as enforced by the law of State in which the Project is located.

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and

where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

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

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- 1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- 2** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

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

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

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

§ 14.2.5 Provisions of law pursuant to the Code of Iowa, Act to Provide for Termination of Contracts for Construction of Public Improvements when construction work or work thereon is stopped because of a National Emergency, shall apply to and become a part of this contract and shall be binding upon all parties hereto, including Subcontractors and Sureties upon any Bond given or filed in connection herewith.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES**§ 15.1 Claims****§ 15.1.1 Definition**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

- .1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.
- .2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

- .1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.
- .2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker’s decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

- .1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor’s Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.
- .2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.
- .3 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work, and the number of days’ increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

- .4 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

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

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

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

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

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

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

§ 15.3 Mediation

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

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

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

§ 15.4 Arbitration

§ 15.4.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

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

§ 15.4.2 ~~The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

§ 15.4.4 Consolidation or Joinder

~~§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

AIA Document E203™ – 2013

Building Information Modeling and Digital Data Exhibit

This Exhibit dated the Twentieth day of October in the year Two Thousand Twenty-Two is incorporated into the agreement (the “Agreement”) between the Parties for the following Project:
(*Name and location or address of the Project*)

Field of Dreams Movie Site Professional Ballpark
Dyersville, Iowa

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA
- 3 DIGITAL DATA PROTOCOLS
- 4 BUILDING INFORMATION MODELING PROTOCOLS
- 5 OTHER TERMS AND CONDITIONS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

§ 1.2 The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project, and agreed to the most recent Project specific versions of AIA Document G201™–2013, Project Digital Data Protocol Form and RDG BIM Project Execution Plan-AIA Document G202™–2013, Project Building Information Modeling Protocol Form.

§ 1.2.1 The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

§ 1.3 Adjustments to the Agreement

§ 1.3.1 If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and memorialized in AIA Documents G201–2013 and RDG BIM Project Execution Plan-G202–2013, will result in a change in the Party’s scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party’s waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

§ 1.3.2 Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

§ 1.3.3 Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:

(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)

§ 1.3.3.1 Adjustments to the agreement via the RDG BIM Project Execution Plan (BIM PEP) when acknowledged by all Parties affected shall govern. The PEP as written at the time of this agreement is included as Attachment 1.

§ 1.4 Definitions

§ 1.4.1 Building Information Model. A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the “Model,” which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets identified in RDG BIM Project Execution Plan ~~AIA Document G202-2013, Project Building Information Modeling Protocol Form.~~

§ 1.4.2 Building Information Modeling. Building Information Modeling or Modeling means the process used to create the Model.

§ 1.4.3 Model Element. A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

§ 1.4.4 Level of Development. The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

§ 1.4.5 Authorized Uses. The term “Authorized Uses” refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

§ 1.4.6 Model Element Author. The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. Model Element Authors are to be identified in RDG BIM Project Execution Plan ~~Section 3.3, Model Element Table, of AIA Document G202-2013.~~

§ 1.4.7 Digital Data. Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

§ 1.4.8 Confidential Digital Data. Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as “confidential.”

§ 1.4.9 Written or In Writing. In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, “written” or “in writing” shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

§ 1.4.10 Written Notice. In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, “written notice” shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

§ 1.4.11 Party and Parties. The terms “Party” and “Parties” refer to the signing parties to the Agreement.

§ 1.4.12 Project Participant. A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

§ 2.1 The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital Data established pursuant to the terms of this Exhibit.

§ 2.2 If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the

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Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

§ 2.2.1 The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data 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 Confidential Digital Data as set forth in this Exhibit.

§ 2.3 By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

§ 2.4 Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

ARTICLE 3 DIGITAL DATA PROTOCOLS

§ 3.1 **Anticipated Types of Digital Data.** The anticipated types of Digital Data to be used on the Project are as follows: *(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

Anticipated Digital Data	Applicability to the Project <i>(Indicate Applicable or Not Applicable)</i>	Location of Detailed Description <i>(Section 3.1.1 below or in an attachment to this exhibit and identified below)</i>
Project Agreements and Modifications	Applicable	
Project communications	Applicable	
Architect's pre-construction submittals	Applicable	
Contract Documents	Applicable	
Contractor's submittals	Applicable	
Subcontractor's submittals	Applicable	
Modifications	Applicable	
Project payment documents	Not Applicable	
Notices and claims	Not Applicable	
Building Information Modeling	Applicable	

§ 3.1.1 Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.

See Exhibit B, BIM Project Execution Plan

§ 3.2 As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

§ 3.2.1 Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.

(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)

NA

§ 3.2.2 The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.

§ 3.2.3 The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

§ 3.3 The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants.

§ 3.4 Unauthorized Use

§ 3.4.1 Prior to Establishment of Digital Data Protocols

If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

§ 3.4.2 Following Establishment of Digital Data Protocols

Following agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

§ 3.5 Digital Data Management

§ 3.5.1 Centralized electronic document management system use on the Project shall be:

(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)

☒ The Parties intend to use a centralized electronic document management system on the Project.

☐ ~~The Parties do not intend to use a centralized electronic document management system on the Project.~~

§ 3.5.2 If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth in the latest version of G201–2013 approved by the Project Participants.

§ 3.5.3 Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.

(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)

Responsible Project Participant

NA

Project Milestone

NA

ARTICLE 4 BUILDING INFORMATION MODELING PROTOCOLS

§ 4.1 If the Parties indicate in Section 3.1 that Building Information Modeling will be used on the Project, specify below the extent to which the Parties intend to utilize Building Information Modeling and identify the provisions of this Article 4 governing such use:

☐ ~~The Parties shall utilize Building Information Modeling on the Project for the sole purpose of fulfilling the obligations set forth in the Agreement without an expectation that the Model will be relied upon by the other Project Participants. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk. The remaining sections of this Article 4 shall have no force or effect.~~

☒ The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

§ 4.2 Anticipated Building Information Modeling Scope. Indicate below the portions of the Project for which Modeling will be used and the anticipated Project Participant responsible for that Modeling.

Project Portion for Modeling	Responsible Project Participant
<u>Building Architecture</u>	<u>Architect</u>
<u>Structural Components</u>	<u>Structural Engineer</u>
<u>Mechanical Systems</u>	<u>Mechanical Engineer</u>
<u>Electrical Systems</u>	<u>Electrical Engineer</u>
<u>Plumbing System</u>	<u>Plumbing Engineer</u>
<u>Telecommunications</u>	<u>Electrical Engineer</u>
<u>Site / Earthwork</u>	<u>Civil Engineer</u>
<u>Landscaping</u>	<u>Landscape Architect</u>
<u>Lighting Systems</u>	<u>Lighting Designer / Electrical Engineer</u>
<u>Audio / Visual</u>	<u>A/V Engineer / Electrical Engineer</u>
<u>Acoustics</u>	<u>Acoustician / Architect</u>

§ 4.3 Anticipated Model Authorized Uses. Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants and further described for each LOD in RDG BIM Project Execution Plan-AIA Document G202-2013.

Design team coordination to facilitate two-dimensional Construction Documents
Three-dimensional Clash Detection
Schematic (LOD 100) Cost Estimating
See Attachment 1, BIM Project Execution Plan for additional information
Construction Phase reference

§ 4.4 Ancillary Modeling Activities. Indicate additional Modeling activities agreed upon by the Parties, but not to be included in RDG BIM Project Execution Plan-AIA Document G202-2013, if any.

(Describe any Modeling activities, such as renderings, animations, performance simulations, or other similar use, including the anticipated amount and scope of any such Modeling activities.)

Anticipated Digital Data	Applicability to the Project <i>(Indicate Applicable or Not Applicable)</i>
<u>Digital Renderings as Required by the Owner</u>	<u>Applicable from BIM – Additional Service for outside programs or vendors</u>
<u>Digital Animations as Required by the Owner</u>	<u>Not-Applicable – Additional Service for outside programs or vendors</u>
<u>Energy Simulations</u>	<u>Applicable from BIM – Additional Service for outside programs or vendors</u>
<u>Interior Lighting Photometry</u>	<u>Applicable</u>
<u>Exterior Daylighting Simulations</u>	<u>Applicable</u>
<u>LEED Documentation</u>	<u>Not Applicable</u>
<u>Virtual Reality Simulations</u>	<u>Applicable from BIM – Additional Service for outside programs or vendors</u>
<u>Augmented Reality Simulations</u>	<u>Not Applicable</u>

§ 4.5 Modeling Protocols. As soon as practical following execution of the Agreement, the Parties shall, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, further describe the Authorized Uses of the Model and establish necessary protocols governing the development of the Model utilizing RDG BIM Project Execution Plan-AIA Document G202-2013.

§ 4.5.1 The Modeling protocols shall address the following:

- .1 Identification of the Model Element Authors;
- .2 Definition of the various LOD for the Model Elements and the associated Authorized Uses for each defined LOD;
- .3 Identification of the required LOD of each Model Element at each identified Project milestone;

- .4 Identification of the construction classification systems to be used on the Project;
- .5 The process by which Project Participants will exchange and share the Model at intervals not reflected in RDG BIM Project Execution Plan-Section 3.3, Model Element Table, of AIA Document G202-2013;
- .6 The process by which the Project Participants will identify, coordinate and resolve changes to the Model;
- .7 Details regarding any anticipated as-designed or as-constructed Authorized Uses for the Model, if required on the Project;
- .8 Anticipated Authorized Uses for facilities management or otherwise, following completion of the Project; and
- .9 Other topics to be addressed by the Modeling protocols: (Identify additional topics to be addressed by the Modeling Protocols.)

N/A

§ 4.5.2 Unless responsibility is assigned to another Project Participant identified below, the Architect shall prepare and distribute Modeling protocols to the other Project Participants for review, revision and approval.

(If a Project Participant other than the Architect shall be responsible for preparing draft and final Modeling protocols, identify that Project Participant.)

NA

§ 4.5.3 The agreed upon Modeling protocols shall be set forth in RDG BIM Project Execution Plan-AIA Document G202-2013 and each Project Participant shall memorialize their agreement in writing to such Modeling protocols.

§ 4.5.4 The Parties, together with the other Project Participants, shall review, and if necessary, revise the Modeling protocols at appropriate intervals as required by the conditions of the Project.

§ 4.6 The Parties shall develop, use and rely on the Model in accordance with the Modeling protocols set forth in the latest version of RDG BIM Project Execution Plan-AIA Document G202-2013, which document shall be included in or attached to the Model in a manner clearly accessible to the Project Participants.

§ 4.7 Unauthorized Use

§ 4.7.1 Prior to Establishment of Modeling Protocols

If a Party receives any Model prior to the agreement to, and documentation of, the Modeling protocols in RDG BIM Project Execution Plan-AIA Document G202-2013, that Party is not authorized to use, transmit, or rely on the Model. Any use, transmission or reliance is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

§ 4.7.2 Following Establishment of Modeling Protocols

Following agreement to, and documentation of, the Modeling protocols in RDG BIM Project Execution Plan-AIA Document G202-2013, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

§ 4.8 Model Management

§ 4.8.1 The requirements for managing the Model include the duties set forth in this Section 4.8. Unless assigned to another Project Participant, the Architect shall manage the Model from the inception of the Project. If the responsibility for Model management will be assigned to another Project Participant, or change at an identified Project milestone, indicate below the identity of the Project Participant who will assume that responsibility, and the Project milestone.

Responsible Project Participant

NA

Project Milestone

NA

§ 4.8.2 **Model Management Protocol Establishment.** The Project Participant responsible for managing the Model, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, shall facilitate the establishment and revision of Model management protocols, including the following:

- .1 Model origin point, coordinate system, precision, file formats and units
- .2 Model file storage location(s)
- .3 Processes for transferring and accessing Model files
- .4 Naming conventions

- .5 Processes for aggregating Model files from varying software platforms
- .6 Model access rights
- .7 Identification of design coordination and clash detection procedures.
- .8 Model security requirements
- .9 Other: (Identify additional Model management protocols to be addressed.)

N/A

§ 4.8.3 Ongoing Responsibilities. The Project Participant responsible for managing the Model shall do so consistent with the Model management protocols, which shall also include the following ongoing responsibilities:

- .1 Collect incoming Models:
 - .1 Coordinate submission and exchange of Models
 - .2 Create and maintain a log of Models received
 - .3 Review Model files for consistency with Sections 4.8.2.1 through 4.8.2.5
 - .4 Maintain a record copy of each Model file received
- .2 Aggregate Model files and make them available for Authorized Uses
- .3 Maintain Model Archives and backups consistent with the requirements of Section 4.8.4 below
- .4 Manage Model access rights
- .5 Other: (Identify additional responsibilities.)

N/A

§ 4.8.4 Model Archives. The individual or entity responsible for Model management as set forth in this Section 4.8 shall compile a Model Archive at the end of each Project milestone and shall preserve it without alteration as a record of Model completion as of that Project milestone.

§ 4.8.4.1 Additional Model Archive requirements, if any, are as follows:

NA

§ 4.8.4.2 The procedures for storing and preserving the Model(s) upon final completion of the Project are as follows:

Model(s) shall be preserved and stored for a minimum of twelve (12) months from date of Substantial Completion.

§ 4.9 Post-Construction Model. ~~The services associated with providing a Model for post-construction use shall only be required if specifically designated in the table below as a Party's responsibility.~~

(Designate below any anticipated post-construction Model and related requirements, the Project Participant responsible for creating or adapting the Model to achieve such uses, and the location of a detailed description of the anticipated scope of services to create or adapt the Model as necessary to achieve such uses.)

Post-Construction Model	Applicability to Project <i>(Applicable or Not Applicable)</i>	Responsible Project Participant	Location of Detailed Description of Requirements and Services <i>(Section 4.10 below or in an attachment to this exhibit and identified below)</i>
§ 4.9.1 Remodeling	NA		
§ 4.9.2 Wayfinding and Mapping	NA		
§ 4.9.3 Asset/FF & E Management	NA		
§ 4.9.4 Energy Management	NA		
§ 4.9.5 Space Management	NA		
§ 4.9.6 Maintenance Management	NA		

§ 4.10 Insert a detailed description of the requirements for each Post-Construction Model identified in Section 4.9 and the anticipated services necessary to create each Post-Construction Model, if not further described in an attachment to this Exhibit.

N/A

ARTICLE 5 OTHER TERMS AND CONDITIONS

Other terms and conditions related to the transmission and use of Digital Data are as follows:

N/A

ARTICLE 6 SCOPE OF EXHIBIT

§ 6.1 This Exhibit is comprised of the following documents:

- .1** AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit as modified by RDG Planning & Design, Inc. and Consultant
- .2** AIA Document G201™-2013, Project Digital Data Protocol Form as modified by RDG Planning & Design, Inc. and Consultant attached hereto and incorporated herein by this reference as Exhibit A to this E203
- .3** RDG BIM Project Execution Plan as modified by RDG Planning & Design, Inc. and Consultant attached hereto and incorporated herein by this reference as Exhibit B to this AIA E203

AIA Document G201™ – 2013

Project Digital Data Protocol Form

PROJECT: *(Name and address)*

Field of Dreams Movie Site Professional Ballpark
Dyersville, Iowa

PROTOCOL VERSION NUMBER: TBD

DATE: TBD

PREPARED BY: TBD

DISTRIBUTION TO: *(List each individual to whom this protocol is distributed. Include individuals listed in Section 1.2, or reference Section 1.2, along with any additional recipients.)*

See Section 1.2

TABLE OF ARTICLES

1 GENERAL PROVISIONS REGARDING USE OF DIGITAL DATA

2 DIGITAL DATA MANAGEMENT PROTOCOLS

3 TRANSMISSION AND USE OF DIGITAL DATA

ARTICLE 1 GENERAL PROVISIONS REGARDING USE OF DIGITAL DATA

§ 1.1 List each Project Participant that has incorporated AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated the Twentieth day of October in the year Two Thousand Twenty-Two, into its agreement for the Project:

Project Participant

Discipline

TBD

TBD

§ 1.2 **Project Participants.** For each Project Participant listed in Section 1.1, identify and provide contact information for the individuals responsible for implementation of the Digital Data protocols.

Project Participant

Individual Responsible

Contact Information

TBD

TBD

TBD

§ 1.3 Terms in this document shall have the same meaning as those in AIA Document E203–2013.

ARTICLE 2 DIGITAL DATA MANAGEMENT PROTOCOLS

§ 2.1.1 **Electronic Document Management System.** If, pursuant to Section 3.5.1 of the Project specific version of AIA Document E203–2013, the Project Participants indicated an intent to use a centralized electronic document management system on the Project, the requirements for the centralized electronic document management system are as follows:
(The requirements for the system shall address, among other things, access to and security of Digital Data.)

Newforma Info Exchange (Project Document Management)

Autodesk BIM360 or Autodesk Construction Cloud ACC (Cloud Model Management)

§ 2.1.2 **System Startup Requirements.** Initial training and other startup requirements to be implemented with respect to the use or management of Digital Data, if any, are as follows:

(Describe in detail any initial training or other startup requirements.)

Newforma Contact / User Creation (RDG)

BIM360 or ACC License Purchase (Consultant)

Autodesk Revit 2022 Software or Current compatible discipline appropriate modeling software.

§ 2.1.3 Ongoing System Requirements. Ongoing training or support programs to be implemented with respect to the use or management of Digital Data, if any, are as follows:

(Describe in detail any ongoing training or support programs to be implemented.)

BIM 360 or ACC License Renewal as Required (Consultant)

Autodesk Revit Upgrade/Update as required based on project duration and phase (Consultant)

§ 2.2 Digital Data Storage Requirements. The procedures and requirements for storing Digital Data during the course of the Project, if any, are as follows:

(Describe in detail the procedures and requirements for storing Digital Data during the course of the Project.)

Data shall be stored in such a way as to minimize impact to the project due to system failure, corruption, or attack.

§ 2.3 Digital Data Archiving Requirements. The procedures and requirements for archiving and preserving Digital Data during the course of the Project and following final completion of the Project, if any, are as follows:

(Describe in detail the procedures and requirements for archiving and preserving Digital Data during the course of the Project and following final completion.)

Data shall be archived such that no more than seven (7) days shall pass following a system failure, corruption or attack before data shall be recovered in a working state. Data loss shall be no more than the same forty-eight (48) hours of input.

ARTICLE 3 TRANSMISSION AND USE OF DIGITAL DATA

§ 3.1 Digital Data Protocol Table. The Project Participants shall comply with the data formats, transmission methods and Authorized Uses set forth in the Digital Data Protocol Table below when transmitting or using Digital Data on the Project.

(Complete the Digital Data Protocol Table by entering information in the spaces below. Adapt the table to the needs of the Project by adding, deleting or modifying the listed Digital Data as necessary. Use Section 3.2 Digital Data Protocol Table Definitions and Notes to define abbreviations placed, and to record notes indicated, in the Digital Data Protocol Table.)

Digital Data	Digital Data Format	Transmission Method	Authorized Uses	Note Number (see Sec. 3.2)
§ 3.1.1 Project Agreements and Modifications	PDF	EM	S	
§ 3.1.2 Project communications	EM	EM	I	
General communications	EM	EM	I	
Meeting notices	PDF	EM	R/I	
Agendas	PDF	EM/NF	R/I	
Minutes	PDF	EM/NF	R/I	
Requests for information	PDF	NF	I	
Architect's Supplemental Instructions	PDF	NF	R/I	
§ 3.1.3 Architect's pre-construction submittals	PDF	NF		
Schematic Design Documents	PDF	NF	I	
Design Development Documents	PDF	NF	I	
Construction Documents	PDF	NF	I	
§ 3.1.4 Contract Documents				
Architect's Drawings	PDF	NF/PCR	I	
Architect's Specifications	PDF	NF/PCR	I	
§ 3.1.5 Contractor's submittals				
Product data				
Submitted by Contractor	PDF	NF/PCR	M	
Returned by Architect	PDF	NF/PCR	I	
Shop drawings				
Submitted by Contractor	PDF	NF/PCR	M	
Returned by Architect	PDF	NF/PCR	I	
§ 3.1.6 Subcontractor's submittals				
Product data				
Submitted by Subcontractor	PDF	NF/PCR	I	

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Returned by Contractor	<u>PDF</u>	<u>NF/PCR</u>	<u>R</u>	
Shop drawings				
Submitted by Subcontractor	<u>PDF</u>	<u>NF/PCR</u>	<u>I</u>	
Returned by Contractor	<u>PDF</u>	<u>NF/PCR</u>	<u>R</u>	
§ 3.1.7 Modifications				
Requests for proposal	<u>PDF/EM</u>	<u>NF/PCR</u>	<u>I</u>	
Architect's order for a minor change in the Work	<u>PDF/EM</u>	<u>NF/PCR</u>	<u>I</u>	
Proposals	<u>PDF</u>	<u>NF/PCR</u>	<u>I</u>	
Construction Change Directives	<u>PDF</u>	<u>NF/PCR</u>	<u>I</u>	
Change Orders	<u>PDF</u>	<u>NF/PCR</u>	<u>I</u>	
§ 3.1.8 Project payment documents	<u>PDF</u>	<u>NF/PCR</u>	<u>M</u>	
§ 3.1.9 Notices and Claims	<u>PDF/EM</u>	<u>NF/PCR</u>	<u>I</u>	
§ 3.1.10 Closeout documents	<u>PDF</u>	<u>NF/PCR</u>	<u>I/R</u>	
Record documents	<u>PDF</u>	<u>NF/PCR</u>	<u>R</u>	
Operations and Maintenance Manual	<u>PDF</u>	<u>NF/PCR</u>	<u>R</u>	
§ 3.1.11 VDC Construction Model				
Design Team Models	<u>RVT</u>	<u>NF/B360</u>	<u>I</u>	
Contractor Models	<u>NVS</u>	<u>NF/B360</u>	<u>M</u>	
Subcontractor Models	<u>NVS</u>	<u>NF/B360</u>	<u>M</u>	

§ 3.2 Digital Data Protocol Table Definitions and Notes

Digital Data Format:

(Provide required data format, including software version, if applicable.)

Digital Data Format	Definition
<u>PDF</u>	<u>Adobe Acrobat Portable Document Format, Bluebeam Portable Document Format</u>
<u>RVT</u>	<u>Autodesk Revit Model</u>
<u>XLSX</u>	<u>Microsoft Excel Document</u>
<u>DOCX</u>	<u>Microsoft Word Document</u>
<u>EM</u>	<u>Electronic Mail</u>
<u>NVS</u>	<u>Autodesk Navisworks</u>

Transmission Method:

(Below are suggested abbreviations and definitions. Delete, modify, or supplement, as necessary.)

Abbreviation	Definition
<u>EM</u>	<u>Via e-mail</u>
<u>NF</u>	<u>Newforma Info Exchange</u>
<u>PCR</u>	<u>Procore or equivalent construction document management program</u>
<u>B360</u>	<u>Autodesk BIM 360 or ACC</u>
<u>BOX</u>	<u>Box content storage solutions or equivalent document storage program</u>

Authorized Uses of Digital Data:

(Below are suggested abbreviations and definitions. Delete, modify, or supplement, as necessary.)

Abbreviation	Definition
<u>I</u>	<u>Integrate (incorporate additional digital data without modifying data received)</u>
<u>M</u>	<u>Modify as required to fulfill obligations for the Project</u>
<u>R</u>	<u>Reproduce and distribute</u>
<u>S</u>	<u>Store and view only</u>

RDG BIM Project Execution Plan

Field of Dreams Movie Site Professional Ballpark

Dyersville, Iowa

This is Iowa Ballpark, Inc.
340 1st Avenue East
Dyersville, Iowa 52040

Project Phase:

Date:

RDG Project Number.:

Schematic Design

January 19, 2023

3005.252.04

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1. INTRODUCTION

A. Overview

This BIM Project Execution Plan (BIM PEP) is intended to provide the Project Team with an understanding of agreed upon expectations with regards to the BIM process, including opportunities for clarity and effective collaboration among participants. This document establishes an agreement by the project participants to the BIM process, as well document project specific workflows if any for specific team members. The BIM PEP shall be reviewed at every major milestone submission to determine if adjustments need to be made based on changes in project scope or schedule.

B. Disclaimers and Clarifications

TBD [Client can insert disclaimer or Owner BIM PEP document references here.]

2. PROJECT OVERVIEW

A. Project Information

PROJECT NAME	Field of Dreams Movie Site Professional Ballpark
PROJECT OWNER	This is Iowa Ballpark, Inc.
OWNER REPRESENTATIVE	Mick Michel, Treasurer
ADDRESS	340 1st Avenue E., Dyersville, IA 52040
CONTRACT TYPE	A133-2019 & B133-2017
DELIVERY METHOD	CMAR
PROJECT DESCRIPTION	This Project provides Basic Services for a 3,000-seat MiLB style Ballpark that will allow for temporary expansion of up to an additional 5,000 seats for MLB games. The total capacity of the Ballpark will be approximately 8,000 spectators. The Ballpark will be part of the larger existing Field of Dreams Movie Site and Homestead along with the currently under construction Go the Distance Baseball Recreation Complex. The site for the Project is located in Dyersville, Iowa.

B. Contact Information

1) Main Contacts

The following table identifies the primary point of contact, within each organization, responsible for BIM process during the project. Members may fill multiple project roles. Please refer to next section for detailed contact information.

DESIGN PHASE BIM ROLE	ORGANIZATION	LOCATION(S)	CONTACT	TIME ZONE
ARCHITECT	RDG Planning & Design	Des Moines, IA	Tom Ohle	
STRUCTURAL	Walter P. Moore	Kansas City, MO		
MECHANICAL	Henderson Engineers, Inc.	Kansas City, MO		
ELECTRICAL	Henderson Engineers, Inc.	Kansas City, MO		
LANDSCAPE	RDG Planning & Design	Des Moines, IA	Ryan Peterson	
CIVIL	Origin Design	Dubuque, IA		
CONSTRUCTION MANAGER	Miron Construction Co., Inc.	Cedar Rapids, IA	Jonathan Daniels	
COST ESTIMATOR	RLB	Kansas City, MO		
ACOUSTICS	Henderson Engineers, Inc.	Kansas City, MO		
LIGHTING DESIGN	RDG Planning & Design	Des Moines, IA	David Raver	

2) Team Information

Roles are defined as follows

PROJECT MANAGER (PM)	TBD – Individuals overseeing the project.
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BIM MANAGER (BM)		TBD – Individuals responsible for agreed model standard enforcement and performing information exchanges as defined in this document.		
JOB CAPTAIN (JC)		TBD – Individuals intimately familiar with model production. Contacted if information regarding specific modeling practices or workflows is required.		
DISCIPLINE LEAD (DL)		TBD – Project's design Architect or Engineer.		
DISCIPLINE	ROLE	NAME	EMAIL	PHONE
ARCHITECTURE	PM	TBD		###-###-####
ARCHITECTURE	DL	TBD		
ARCHITECTURE	BM	TBD		
ARCHITECTURE	JC	TBD		
INTERIOR	DL	TBD		
INTERIOR	JC	TBD		
STRUCTURAL	DL	TBD		
STRUCTURAL	JC	TBD		
STRUCTURAL	BM	TBD		
MECHANICAL	DL	TBD		
MECHANICAL	BM	TBD		
MECHANICAL	JC	TBD		
ELECTRICAL	DL	TBD		
ELECTRICAL	BM	TBD		
ELECTRICAL	JC	TBD		

C. Project Details

1) File Naming Conventions

DISCIPLINE	FILE NAME
ARCHITECTURAL	TBD - File Name_R20_ARCH
INTERIORS	TBD - File Name_R##_INT
STRUCTURAL	TBD - File Name_R##_STRUCT
MECHANICAL	TBD - File Name_R##_MECH
ELECTRICAL	TBD - File Name_R##_ELEC
PLUMBING	TBD - File Name_R##_PLMB
CIVIL	TBD - File Name_R##_CIVIL

2) Project Specific Goals and Requirements

GOAL / REQUIREMENT	MEANS OF ACHIEVING	RESPONSIBILITY	SOFTWARE
CLASH DETECTION	Resolve 3D clashes for major scopes.	Design Team	TBD
2D DRAWINGS	Incorporate Civil 3D and Revit 2022	Design Team	
CIVIL / TOPO	Provide 3D surfaces for use in coordination.	Civil / LA	TBD

3) Software Use and Versions

DESIGN			
BIM USE	USER	SOFTWARE	VERSION (BUILD)
DESIGN AUTHORIZING	ARCHITECTURAL	REVIT	2022
DESIGN AUTHORIZING	INTERIOR	REVIT	2022
DESIGN AUTHORIZING	STRUCTURAL	REVIT	2022
DESIGN AUTHORIZING	MECHANICAL	REVIT	2022
DESIGN AUTHORIZING	ELECTRICAL	REVIT	2022
DESIGN AUTHORIZING	CIVIL	CIVIL 3D	2022
DESIGN AUTHORIZING	LANDSCAPE	CIVIL 3D / REVIT	2022



COST ESTIMATION	CONSTRUCTION MANAGER	REVIT / EXCEL	2022
CONTRACTOR	CONSTRUCTION MANAGER	REVIT, NAVISWORKS	2022

During the project, new versions of application software may become available. Upgrading of models or Digital Data to newer versions should be reviewed with all team members to ensure compatibility. When an upgrade is beneficial to the project, a protocol will be developed, tested, and outlined in this document and performed by all team members.

D. Information Exchange & Scheduling

1) Exchange / Collaboration Environment

EXCHANGE	DELIVERABLE	MEANS	FREQUENCY
COLLABORATION Design Team	REVIT	BIM 360	PERPETUAL
PROGRESS REVIEW Design Team to Owner	PDF	NEWFORMA	REFER TO PHASE / MILESTONE SCHEDULE
VIRTUAL COORDINATION Consultants to Architect	REVIT	BIM 360	PERPETUAL
MILESTONE SUBMISSIONS Design Team to Owner	PDF	NEWFORMA	REFER TO PHASE / MILESTONE SCHEDULE
COST ESTIMATE To Design Team & Owner	REVIT / PDF	NEWFORMA	REFER TO PHASE / MILESTONE SCHEDULE

2) Project Phases / Milestones

PHASE / MILESTONE	ANTICIPATED DURATION	SUBMISSION	COST ESTIMATE
PROGRAMMING	N/A		
SCHEMATIC DESIGN	TBD	X	X
DESIGN DEVELOPMENT	TBD	X	X
50% CD	TBD	X	X
90% CD	TBD	X	
CONSTRUCTION DOCUMENTS	TBD	X	
CONFORMANCE SET	TBD	X	
CONSTRUCTION	TBD	X	
RECORD DOCUMENTS	TBD	X	

3. MODELING STRATEGY

A. Level of Development (LOD)

The BIMFORUM 2018 Level of Development (LOD) Specification (<https://bimforum.org/lof/>) is a reference that enables practitioners in the AEC Industry to specify and articulate with a high level of clarity the content and reliability of Building Information Models (BIMs) at various stages in the design and construction process. The LOD Specification utilizes the basic LOD definitions developed by the AIA for the AIA G202-2013 Building Information Modeling Protocol Form and is organized by CSI Unifomat 2010. It defines and illustrates characteristics of model elements of different building systems at different Levels of Development.

(C – Civil, L – Landscape, A – Architect, S – Structural, M – Mechanical, E – Electrical, P – Plumbing, GC – Contractor)

MODEL ELEMENTS	SCHEMATIC DESIGN		DESIGN DEVELOPMENT		CONSTRUCTION DOCUMENTS		CONSTRUCTION	
	LOD	MEA	LOD	MEA	LOD	MEA	LOD	MEA
SUBSTRUCTURE								
Foundations	100	S	200	S	300	S	400	
Slab on Grade	100	A	200	S	300	S	400	
Basement Excavation	100	A	200	S	300	S	400	



SHELL								
Floor Construction	100	A	200	S	300	S	300	
Roof Construction	100	A	200	S	300	S	300	
Exterior Walls	100	A	200	A	300	A/S	300	
Exterior Windows	100	A	200	A	300	A	400	
Exterior Doors	100	A	200	A	300	A	400	
Roof Covering	100	A	200	A	300	A	300	
Roof Openings	100	A	200	A/S	300	A/S	300	
INTERIORS								
Partitions	100	A	200	A	300	A	400	
Interior Doors	100	A	200	A	300	A	400	
Fittings / Hardware	100	A	100	A	100	A	400	
Stair Construction	100	A	200	A/S	200	A/S	400	
Stair Finishes	100	A	100	A	100	A	100	
Wall Finishes	100	A	100	A	100	A	100	
Floor Finishes	100	A	100	A	100	A	100	
Ceiling Finishes	100	A	100	A	100	A	100	
SERVICES								
Elevators	100	A	200	A/E	300	A/E	400	
Escalators	100	A	200	A/E	300	A/E	400	
Conveying Systems	100	A	200	A/E	300	A/E	400	
Plumbing Fixtures	100	A	200	P/A	300	P/A	400	
Domestic Water	100	P	200	P	300	P	400	
Sanitary Waste	100	P	200	P	300	P	400	
Rain Water Drainage	100	P	200	P	300	P	400	
Other Plumbing	100	P	200	P	300	P	400	
Energy Supply	100	M	200	M	300	M	400	
Heating	100	M	200	M	300	M	400	
Cooling	100	M	200	M	300	M	400	
Distribution	100	M	200	M	300	M	400	
Terminal Units	100	M	200	M	300	M	400	
Controls	100	M	100	M	100	M	100	
Tab	100	M	100	M	100	M	100	
Other HVAC	100	M	200	M	300	M	400	
Sprinklers	100	P	200	P	300	P	400	
Standpipes	100	P	200	P	300	P	400	
Fire Protection	100	P	200	P	300	P	400	
Other Fire Protection	100	P	200	P	300	P	400	
Electrical Service	100	P	200	P	300	P	400	
Lighting	100	E	200	E	300	E	400	
Branch Wiring	100	E	200	E	300	E	400	
Communications	100	E	100	E	100	E	100	
Security	100	E	100	E	100	E	100	
Other Electrical	100	E	100	E	100	E	100	
EQUIPMENT								
Commercial	100	A	200	A	300	A	400	
Institutional	100	A	200	A	300	A	400	
Vehicular	100	A	200	A	300	A	400	
Other Equip	100	A	200	A	300	A	400	
Fixed Furniture	100	A	200	A	300	A	400	



Movable Furniture	100	A	100	A	100	A	100	
SPECIAL CONSTRUCTION								
Special Structures	100	A	200	S/A	300	S/A	400	
Integrated Const	100	A	200	A	300	A	400	
Special Const Sys	100	A	200	A	300	A	400	
Special Facilities	100	A	200	A	300	A	400	
Special Controls	100	A	100	A/E	100	A/E	100	
Building Elem Demo	100	A	200	A	300	A	400	
Hazardous Abatement	100	A	100	A	100	A	100	
BUILDING SITEWORK								
Clearing	100	A/C	100	C	100	C	100	
Demolition	100	A/C	200	A/C	300	A/C	300	
Earthwork	100	C	200	C	300	C	300	
Haz Remediation	100	C	100	C	100	C	100	
Roadways	100	C	100	C	300	C	300	
Parking Lots	100	C	100	C	300	C	300	
Pedestrian Paving	100	L/C	100	L	300	L	300	
Site Development	100	L/C	100	L/C	300	L/C	300	
Landscaping	100	L	100	L	300	L	300	
Water Supply	100	C	100	C	300	C	400	
Sanitary Sewer	100	C	100	C	300	C	400	
Storm Sewer	100	C	100	C	300	C	400	
Heating Distribution	100	C/M	100	C/M	300	C/M	400	
Cooling Distribution	100	C/M	100	C/M	300	C/M	400	
Fuel Distribution	100	C/M	100	C/M	300	C/M	400	
Other Civil	100	C	100	C	300	C	400	
Elect Distribution	100	C/E	100	C/E	300	C/E	400	
Lighting	100	C/E	100	C/E	300	C/E	400	
Commination	100	C/E	100	C/E	300	C/E	400	
Security	100	C/E	100	C/E	300	C/E	400	
Other Electrical	100	C/E	100	C/E	300	C/E	400	
Service Tunnels	100	C/S	100	C/S	300	C/S	400	
Other Site	100	C	100	C	300	C	400	

B. Revit Worksets

DISCIPLINE	WORKSET	CONTENT
ARCHITECTURAL	-LINK-ARCHITECTURAL	ARCHITECTURAL REVIT LINK
ARCHITECTURAL	-LINK-REF-DWG	AUTOCAD (2D) CONTENT
ARCHITECTURAL	-LINK-REF-LIGHTING	LIGHTING REVIT LINK
ARCHITECTURAL	-LINK-REF-MEP	MECHANICAL / ELECTRICAL REVIT LINKS
ARCHITECTURAL	-LINK-REF-STRUCTURAL	STRUCTURAL REVIT LINK
ARCHITECTURAL	A-EQUIPMENT	CONTRACTOR FURNISHED EQUIPMENT
ARCHITECTURAL	A-EXTERIOR	EXTERIOR ELEMENTS (ROOF, FACADE)
ARCHITECTURAL	A-FINISHES	FINISH ELEMENTS
ARCHITECTURAL	A-FLOOR FINISHES	MODELED FLOOR FINISHES
ARCHITECTURAL	A-FURNITURE	FURNITURE / EQUIPMENT
ARCHITECTURAL	A-INTERIOR	INTERIOR ELEMENTS (WALLS, DOORS)
ARCHITECTURAL	A-NOT IN CONTRACT	OWNER FURNISHED FF&E / EQUIPMENT
ARCHITECTURAL	A-ROOMS	ROOM ELEMENTS
ARCHITECTURAL	A-SHARED LEVELS AND GRIDS	LEVELS AND GRIDS



STRUCTURAL	S-FLOORS	STRUCTURAL SLABS / FLOORS
STRUCTURAL	S-FOUNDATIONS	STRUCTURAL FOOTING / FOUNDATIONS
STRUCTURAL	S-FRAMING	STRUCTURAL FRAMING (BEAM / COLUMN)
STRUCTURAL	S-WALLS	STRUCTURAL WALLS
STRUCTURAL	S-SHARED LEVELS AND GRIDS	STRUCTURAL GRIDS / LEVELS
MECHANICAL	M-DUCTWORK	MECHANICAL DUCTWORK / GRILLE / REG
MECHANICAL	M-EQUIPMENT	MECHANICAL EQUIPMENT / UNITS
MECHANICAL	M-PIPING	MECHANICAL PIPING (HW / CW)
ELECTRICAL	E-EQUIPMENT	ELECTRICAL DEVICES / PANELS
ELECTRICAL	E-FIXTURES	ELECTRICAL FIXTURES
LIGHTING	E-LIGHTING	LIGHTING FIXTURES / CONTROLS
PLUMBING	P-EQUIPMENT	PLUMBING EQUIPMENT
PLUMBING	P-FIXTURES	PLUMBING FIXTURES
PLUMBING	P-PIPING	PLUMBING PIPING
FIRE PROTECTION	F-DEVICES	FIRE PROTECTION DEVICES
FIRE PROTECTION	F-PIPING	FIRE PROTECTION PIPING
TELECOM	T-TELECOM	TELECOM DEVICES / EQUIPMENT
AUDIO / VISUAL	V-AUDIO VISUAL	AV DEVICES / SCREENS / CONTROLS

C. Design Options

These are the design options that will be present in all models, with the same naming and the same phase.

OPTION NAME	DESCRIPTION	PHASE
TBD		
TBD		

D. Levels

These are levels that will be present in all models, with the same naming and at the same elevation.

LEVEL NAME (REVIT)	DESCRIPTION	ELEVATION (PROJECT)	ELEVATION (SITE)
LEVEL 0	FLOOR PLAN LEVEL 0	TBD	TBD
LEVEL 1	FLOOR PLAN LEVEL 1	0'-0"	TBD
LEVEL 2	FLOOR PLAN LEVEL 2	TBD	TBD
ROOF	ROOF PLAN	TBD	TBD

E. Project Units

All project files are to use Imperial units rounded to 1/256" by default.

F. Project Origin and Coordinate System

The Architectural consultant will define insertion point to be followed by the rest of the Design team. Linking of projects will use the Architectural model as a base by linking Origin to Origin or by Shared Coordinates.

DESIGN
<p>TBD</p> <p>[INSERT IMAGE AND DESCRIPTION OF KNOWN REFERENCE POINT LOCATION (GRID A-1) TRUE NORTH & PROJECT NORTH</p>

When building a Federated Model, it is required that all component models utilize the same geo referencing as the Design Revit Models.

G. Phasing

TBD [Design Consultants should use this space to document the phases used in the various Revit project files. Delete if not applicable to the project.]



H. Modeling Deviations

Design phase modeling tolerances are understood to be reflective of design intent. Deviations should be noted below.

ITEMS	NOT ACCURATE FOR	REASON / EXPLANATION
CATEGORY OR DESCRIPTION [STRUCTURAL REINFORCEMENT AND CONNECTIONS, BASE PLATES]	CLASH DETECTION, COUNT, ESTIMATING	NOT MODELED, DETAILED, LOD
MOTORS	3D CLASH	2D FAMILY BEING USED
METRIC ELEMENTS	3D CLASH	
WALL EXTENTS	3D CLASH, ESTIMATING	LOD
EXISTING CONSTRUCTION	ESTIMATING	LACK OF INFORMATION

I. Workflow Issue Strategy

In the table below, establish agreed work flows to avoid commonly encountered issues during Design and Build phases.

ISSUE	PROPOSED SOLUTION
ARCHITECTURAL AND PLUMBING FIXTURES (DUPLICATION / COORDINATION)	TBD
ARCHITECTURAL AND LIGHT FIXTURES (DUPLICATION / COORDINATION)	TBD
HOUSEKEEPING PADS (STRUCTURAL / MECHANICAL)	TBD
EXISTING CONDITIONS MODELING	TBD
MECHANICAL AND ELECTRICAL SYSTEM INFORMATION (SEPARATE MODELS)	TBD
MECHANICAL AND STRUCTURAL FLOOR / WALL PENETRATIONS	TBD
ELECTRICAL CONDUIT COORDINATION WITH STRUCTURAL (EMBEDDED / PENETRATION)	TBD
ARCHITECTURAL AND STRUCTURAL WALLS	TBD
CARD READERS AND DOORS	TBD
WALL FINISH MODELING STRATEGY	TBD
ARCHITECTURAL CEILING GRID	TBD
MECHANICAL AND ELECTRICAL EQUIPMENT SERVICE / OPERATIONAL CLEARANCES	TBD
AREAS OF PARTICULAR INTEREST IN THIS PROJECT? MODELING ISSUES	TBD

4. QUALITY CONTROL PROTOCOLS

A. Virtual Coordination

1) Digital Building Review

Early in design, a virtual visual walk through the 3D environment of the virtual building can help to resolve potential constructability or design issues not highlighted by either a soft or hard clash. Potential issues will be flagged with comments for resolution by the appropriate party. A log tracking issues and responsibility will be developed by the Architect.

2) Clash Review

Hard clashes are clashes that occur due to the physical conflict of two objects not being able to occupy the same space. Emphasis will be placed in areas of high congestion of ductwork, piping, or equipment.



Soft clashes are additional clashes set up to account for known clearance requirements that could limit or inhibit the adequate construction, maintenance, servicing, or operation of equipment. Mechanical, Electrical, and Specialty Equipment will be modeled to include expected serviceable clearance envelopes.

During design, virtual coordination sessions will be run TBD **[by the Architect]** to minimize clashes between the different models provided by the Design Consultants. Design Consultants will list typical hard clash runs and strategy below.

HARD CLASH ELEMENTS	100% DD	50% CD	90% CD	RESOLUTION DISCIPLINE
ARCHITECTURAL v STRUCTURAL STEEL				TBD
ARCHITECTURAL v PLUMBING				TBD
ARCHITECTURAL v MECHANICAL				TBD
ARCHITECTURAL v FIRE PROTECTION				TBD
ARCHITECTURAL v ELECTRICAL				TBD
ARCHITECTURAL v PIPING				TBD
STRUCTURAL STEEL v PLUMBING				TBD
STRUCTURAL STEEL v MECHANICAL				TBD
STRUCTURAL STEEL v FIRE PROTECTION				TBD
STRUCTURAL STEEL v ELECTRICAL				TBD
STRUCTURAL STEEL v PIPING				TBD
MECHANICAL v PLUMBING				TBD
MECHANICAL v MECHANICAL				TBD
MECHANICAL v FIRE PROTECTION				TBD
MECHANICAL v ELECTRICAL				TBD
MECHANICAL v PIPING				TBD

SOFT CLASH ELEMENTS	100% DD	50% CD	90% CD	CLEARANCE REQUIREMENTS
MECHANICAL				2" INSULATION MINIMUM
PLUMBING				
PIPING				2" INSULATION MINIMUM
STRUCTURAL STEEL FIRE PROOFING				2" FIRE PROOFING
DOOR ACCESSIBILITY CLEARANCES				60" FRONT, 18" LATCH SIDE
SERVICE CLEARANCES				48" FRONT, 30" SIDE
MECHANICAL EQUIPMENT				48"
ELECTRICAL PANELS				48" FRONT, 30" SIDE

3) Virtual Coordination Report Management

Prior to each virtual coordination meeting, all consultants will make their models available to the entire team, including the Architect to develop the virtual coordination report.

During design, the Architect will generate the necessary files from the provided models to generate an aggregated model report to facilitate design building review and clash resolution sessions. The report will be shared with the entire team. The responsibility for resolving issues resides with the Discipline indicated above.

During the Build phase, the Contractor shall carry on virtual coordination sessions using trade fabrication models. A report will be generated by the Contractor and distributed with the entire team at specified intervals.

Virtual coordination results shall be distributed a minimum of three business days before any coordination meetings. Within that time, consultants and trades are to comment on any issues that have already been resolved prior to the meeting.



4) Virtual Coordination Schedule

REVIEW #	COORDINATION ACTIVITY	DATE	RESPONSIBILITY
1	REVIT FILES PROVIDED FOR COORDINATION		DESIGNERS
	COORDINATION REPORT GENERATION AND DISTRIBUTION		[CONSULTANT]
	COORDINATION RESOLUTION MEETING		DESIGNERS
2	UPDATED REVIT FILES PROVIDED FOR COORDINATION		DESIGNERS
	COORDINATION REPORT GENERATION AND DISTRIBUTION		[CONSULTANT]
	COORDINATION RESOLUTION MEETING		DESIGNERS
3	UPDATED REVIT FILES PROVIDED FOR COORDINATION		DESIGNERS
	COORDINATION REPORT GENERATION AND DISTRIBUTION		[CONSULTANT]
	COORDINATION RESOLUTION MEETING		DESIGNERS
4	UPDATED REVIT FILES PROVIDED FOR COORDINATION		DESIGNERS
	COORDINATION REPORT GENERATION AND DISTRIBUTION		[CONSULTANT]
	COORDINATION RESOLUTION MEETING		DESIGNERS
5	UPDATED REVIT FILES PROVIDED FOR COORDINATION		DESIGNERS
	COORDINATION REPORT GENERATION AND DISTRIBUTION		[CONSULTANT]
	COORDINATION RESOLUTION MEETING		DESIGNERS
6	UPDATED REVIT FILES PROVIDED FOR COORDINATION		DESIGNERS
	COORDINATION REPORT GENERATION AND DISTRIBUTION		[CONSULTANT]
	COORDINATION RESOLUTION MEETING		DESIGNERS
7	UPDATED REVIT FILES PROVIDED FOR COORDINATION		DESIGNERS
	COORDINATION REPORT GENERATION AND DISTRIBUTION		[CONSULTANT]
	COORDINATION RESOLUTION MEETING		DESIGNERS



5. GLOSSARY OF TERMS

TERM	DEFINITION
AUTHORIZED USES	The term “Authorized Uses” refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols.
BIM	BIM (Building Information Model) is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the “Model,” which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets identified in AIA Document G202–2013.
BUILDING INFORMATION MODELING	Building Information Modeling or Modeling means the process used to create the Model.
CONFIDENTIAL DIGITAL DATA	Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as “confidential.”
CONSTRUCTION MODEL	An aggregated model (Revit), managed by the Contractor, comprised of multiple design, contractor and trade fabrication models as required to enable the generation of a virtual coordination environment during construction.
DESIGN MODEL	Individual models (Revit) that are created and maintained exclusively by members of the design team. These models are kept current throughout construction incorporating all construction changes issued through the Owner’s standard format for documenting changes to the work.
DIGITAL DATA	Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.
FABRICATION MODEL	Highly detailed model generated by a trade (non-Revit) to enable prefabrication and detailed virtual coordination prior to construction. For example, while a “Design Model” for HVAC ductwork will include duct sizes at various elevations, the “Fabrication Model” will additionally include necessary weld gaps, hangers and design tolerances for its fabrication.
FEDERATED MODEL	A single model (non-Revit) that is comprised of multiple models from various sources whose identity or integrity cannot be modified through changes made to other models. Normally, a federated model is used to bring together “Design Model,” “Site Model” and “Fabrication Models” into a single environment for virtual coordination during Design and Build phases.
LOD	LOD (Level of Development) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.
MEA	MEA (Model Element Author) is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element.
MODEL ELEMENT	A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.
PROJECT PARTICIPANT	A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.
RECORD MODEL	Final updated “Design Models” (Revit), including changes required by the project “Accuracy Table” to reflect the agreed as constructed condition. Models contain views, rooms, sheets and schedules used to generate 2D construction documents.
VIRTUAL COORDINATION	Refers to both the Digital Building Review Process (manual) and the Clash Review Process (semi-automated) to ensure design is properly resolved.





4. FEE PROPOSAL

Summarize your firm's total CMAR fee proposal using the provided Fee Matrix as well any supporting information or text. Fees shall be all inclusive, covering the direct and indirect expenses including but not limited to the following: travel, sustenance, lodging, copying and other out of pocket expenses.

a. Provide your firm's CMAR pre-construction services lump sum fee including expenses. Include description/list of services and related expenses.

| PRECONSTRUCTION FEE

Our preconstruction fee is **\$55,000**.

LIST OF SERVICES

- Initial Program Budget Verification
- Preliminary Analysis of Schedule
- Review of Preliminary Design
- Meetings as Required with the Project Team
- Coordination of Design, Procurement, and Construction Schedules
- Updates of the Cost Estimate
- Constructability Reviews
- Review of Cost Alternates

Site Logistics Planning

Development of Front-End Specifications

Packaging and Bidding the Scopes of Work

Review and Awards of Subcontracts

Preparation and Execution of a GMP Proposal

Monthly Report Updates

b. Provide your firm's CMAR fee percentage. Include description of how fee is calculated and applied.

| CONSTRUCTION MANAGEMENT FEE

Our construction management fee is **2.75%**.

The construction management fee is calculated as a percentage of the total construction costs for a project as specified in AIA Document A133 Article 6.

c. Provide your firm's CMAR general conditions lump sum expenses. Include description/list of general expenses, hourly rates, equipment rates, related expenses, etc. Include contractual change order fee percentages for profit and overhead for CMAR and subconsultants.

Exhibit E

| MODIFICATIONS

Our total general conditions cost is **\$910,637 (\$70,049 / MONTH)**.

| CHANGE ORDER FEE

Our fee for change orders is **2.75%**.

Fee Proposal GC Detail - Field of Dreams January 16th, 2023



Monthly Construction Manager's Supervisory and Administrative Personnel Cost Breakdown:

Role	Cost	Description
Senior Project Manager	\$19,608	This cost includes vehicle, fuel, phone, computer, and software. Our project manager will serve as the main contact for you and the design team throughout the duration of the project.
Project Superintendent	\$18,920	This cost includes vehicle, fuel, phone, computer, and software. Our project superintendent will be responsible for all onsite supervision, risk control, and quality management for the project.
Onsite Project Manager	\$14,620	This cost includes vehicle, fuel, phone, computer, and software. Our project manager will support the superintendent onsite throughout the duration of the project.
Travel & Subsistence	\$9,935	This includes travel, temp housing, and subsistence.
Project Accountant	\$2,365	Our project accountant will assist the project management team in the processing of payments and logging all cost items.
Document Controls Administrator	\$2,365	Our DCA will facilitate all of the document controls including submittals, RFIs, O&Ms, warranties, and insurances.
Office Trailer & Supplies	\$2,236	This cost includes a office trailer, furnishings, and misc. office supplies.
Total General Conditions Cost (per month):	\$70,049	

General Conditions Matrix

Field of Dreams Movie Site Professional Ballpark

Due Date: January 16, 2023

Firm: Miron Construction Co., Inc.

Exhibit E

Base Scope				Scope Item
Estimated Construction Cost				\$55,000,000.00
Construction Duration (TBD – Initial Basis for General Conditions scope)				13 Months (Option A)
Cost Category				Fee
Preconstruction Phase Services Fee – Lump Sum				\$55,000.00
Construction Management Fee – Percentage (%) of Work				2.75%
Fixed General Conditions Fee – Lump Sum (Initial basis for 'Construction Duration' noted above)				\$910,637.00
Change Order Fee – Contractor (Firm) Overhead & Profit – Percentage (%) of Work				2.75%
Change Order Fee – Subcontractor Overhead & Profit – Percentage (%) of Work				2.75%
Scope Matrix (Indicate how scope is provided)	CM Fee or General Conditions	Reimbursable Expense w/ CM Fee Applied	Owner Provided	Notes
Management Staff				
Project Manager	GCs			
Project Superintendent	GCs			
Safety Management	Fee			
Human Resources	Fee			
Clerical	GCs			
Postage/Plan Distribution/Delivery	Fee			
Reproduction Expenses		X		
Employee Drive Time to & from Jobsite	GCs			
Corporate Legal Fees	Fee			
Employee Personal Hand Tools		X		In Trade Packages
Drive Time to Pick Up Materials		X		In Trade Packages
Labor Costs		X		In Trade Packages
Quality Control				
Performance Bond		X		
Builder's Risk Insurance		X		
Site/Building Layout		X		
Contractor Quality Control Measures	GCs			
Soils Report			X	
On-site Training & Safety	GCs/Fee			
Operations/Maintenance Manuals	GCs			
Construction Services & Procurement	GCs			
Security		X		
Barricades & Temporary Fencing		X		
Performance Bond		X		
Temporary Facilities				
Job Trailer	GCs			
On-site Storage		X		
Project Signage		X		
Vehicles/Equipment/Fuel/Mileage		X		In Trade Packages
Fuel		X		In Trade Packages
Phone/Fax	GCs			
Small Tools - Expendable Items (drills, bits, etc)		X		In Trade Packages
Small Tools - Rented		X		In Trade Packages
Small Tools - Company Owned		X		In Trade Packages
Temporary Toilets		X		
Utility Expenses			X	
Temporary Utility Connection Fees			X	
Clean Up		X		
Dumpsters/Haul Fees		X		
Temporary Enclosures		X		
Snow Removal/Water Pumping Expenses		X		
Winter Special Conditions		X		
Temporary Access Road (if required)		X		
Scope Matrix (Indicate how scope is provided)	CM Fee or General Conditions	Reimbursable Expense w/ CM Fee Applied	Owner Provided	Notes
Architectural & Engineering Fees				
A & E Design, Bidding & Const Admin Fees			X	
Independent Testing & Inspection Service		X		
Surveying Services		X		
Plan/Specs Drawings Duplication Expenses		X		
Building Permit Fees		X		
Miscellaneous				
Insurance (General Liability/Auto)		X		
Insurance (Sub-bonding)		X		Generally Not Required
Other				
Other				



| LABOR RATES

**Field of Dreams
Dyersville, Iowa
Construction Manager Services
Labor Rates
Effective June 1, 2022 through May 31, 2023**

POSITION	S.T.	O.T.	D.T.
Project Superintendent	\$ 110.00	\$ -	\$ -
Project Manager	\$ 114.00	\$ -	\$ -
On Site Project Manager	\$ 85.00	\$ -	\$ -
Project Accountant	\$ 55.00	\$ -	\$ -
Document Control Administrator	\$ 55.00	\$ -	\$ -

The attached rates are negotiated rates not subject to audit adjustment.

The attached rates for project management and supervision includes the cost of leased vehicles, fuel and maintenance.

| EQUIPMENT RENTAL RATES

Please see our equipment rental rates under separate cover.

EQUIPMENT RENTAL RATES Exhibit E

Vehicles

Auto
Pickup Truck
Stake Truck
Semi Tractor w/ Trailer
All-Terrain Vehicle

2-Seat 4wd
4-Seat 4wd

Hoisting Equipment

Mobile Cranes (mobilization/demobilization not included and will be priced per project)

70 Ton (4-Hour Minimum)
100 Ton (6-Hour Minimum)
165 Ton (8-Hour Minimum)
200 Ton (8-Hour Minimum)
300 Ton (8-Hour Minimum)
350 Ton (8-Hour Minimum)

Tower Cranes (does not include mobilization/demobilization, labor or electrical costs)

*Hourly and daily rates include operator and electrical costs, applying only to short-term rentals when crane is on site

Crawler Cranes (does not include mobilization/demobilization, labor or fuel)

100 Ton
165 Ton
200 Ton
220 Ton
275 Ton
380 Ton

*Hourly rates include operator and fuel, applying only to short-term rentals when crane is on site

Rough Terrain Cranes (does not include mobilization/demobilization, labor or fuel)

50 Ton
60 Ton
75 Ton
80 Ton
100 Ton
165 Ton

*Hourly rates include operator and fuel, applying only to short-term rentals when crane is on site

Deck Cranes (does not include mobilization/demobilization, labor or fuel)

6 Ton
8.5 Ton
10 Ton
15 Ton
20 Ton

*Hourly rates include operator and fuel, applying only to short-term rentals when crane is on site

Extendable Boom Forklifts

6,000 lbs
8,000 lbs
10,000 lbs
12,000 lbs

Tow Motors

3,500 - 5,000 lbs
5,000 - 6,500 lbs
8,000 - 9,000 lbs
10,000 - 12,000 lbs

Versa Lift

17,000 - 25,000 lbs
40,000 - 60,000 lbs
Boom Attachment

Material Duct Lift

20' - 24'

Personnel Lifts

Scissor Lift - Narrow

12' - 15'
19' - 20'
26' - 32'

Scissor Lift - Wide

26' - 39'

Scissor Lift - 4x4 Rough Terrain

26' - 32'
33' - 43'

Boom Lifts

30' - 45' Electric
45' Telescopic
65' Telescopic
85' Telescopic
125' Telescopic
135' Telescopic
60' Atrium Lift

Concrete

Concrete Pumps

85' - 105' Boom Pump
128' - 148' Boom Pump
Spider Placing Boom
Concrete Placer/Dragger
Concrete Trailer Pump

	Hourly	Daily	Weekly
Auto	\$ 10.50	\$ 52.50	\$ 157.50
Pickup Truck	\$ 27.00	\$ 135.00	\$ 405.00
Stake Truck	\$ 40.00	\$ 200.00	\$ 600.00
Semi Tractor w/ Trailer	\$ 65.00	\$ 325.00	\$ 975.00
All-Terrain Vehicle			
2-Seat 4wd	\$ 11.75	\$ 58.75	\$ 176.25
4-Seat 4wd	\$ 20.00	\$ 100.00	\$ 300.00
Mobile Cranes (mobilization/demobilization not included and will be priced per project)			
70 Ton (4-Hour Minimum)	\$ 240.00	Price on request	
100 Ton (6-Hour Minimum)	\$ 285.00	Price on request	
165 Ton (8-Hour Minimum)	\$ 325.00	Price on request	
200 Ton (8-Hour Minimum)	\$ 395.00	Price on request	
300 Ton (8-Hour Minimum)	\$ 445.00	Price on request	
350 Ton (8-Hour Minimum)	\$ 475.00	Price on request	
Tower Cranes (does not include mobilization/demobilization, labor or electrical costs)	\$ 233.00	\$ 1,167.00	\$ 3,500.00
*Hourly and daily rates include operator and electrical costs, applying only to short-term rentals when crane is on site			
Crawler Cranes (does not include mobilization/demobilization, labor or fuel)			
100 Ton	\$ 275.00	\$ 1,250.00	\$ 3,750.00
165 Ton	\$ 365.00	\$ 1,625.00	\$ 4,875.00
200 Ton	\$ 415.00	\$ 1,875.00	\$ 5,625.00
220 Ton	\$ 435.00	\$ 2,075.00	\$ 6,225.00
275 Ton	\$ 495.00	\$ 2,200.00	\$ 6,600.00
380 Ton	\$ 695.00	\$ 4,700.00	\$ 14,100.00
*Hourly rates include operator and fuel, applying only to short-term rentals when crane is on site			
Rough Terrain Cranes (does not include mobilization/demobilization, labor or fuel)			
50 Ton	\$ 155.00	\$ 625.00	\$ 1,875.00
60 Ton	\$ 175.00	\$ 790.00	\$ 2,370.00
75 Ton	\$ 230.00	\$ 915.00	\$ 2,745.00
80 Ton	\$ 240.00	\$ 1,225.00	\$ 3,675.00
100 Ton	\$ 275.00	\$ 1,325.00	\$ 3,975.00
165 Ton	\$ 380.00	\$ 2,450.00	\$ 7,350.00
*Hourly rates include operator and fuel, applying only to short-term rentals when crane is on site			
Deck Cranes (does not include mobilization/demobilization, labor or fuel)			
6 Ton	\$ 125.00	\$ 235.00	\$ 700.00
8.5 Ton	\$ 145.00	\$ 280.00	\$ 840.00
10 Ton	\$ 150.00	\$ 300.00	\$ 900.00
15 Ton	\$ 150.00	\$ 430.00	\$ 1,290.00
20 Ton	\$ 165.00	\$ 615.00	\$ 1,845.00
*Hourly rates include operator and fuel, applying only to short-term rentals when crane is on site			
Extendable Boom Forklifts			
6,000 lbs	\$ 40.00	\$ 200.00	\$ 600.00
8,000 lbs	\$ 54.00	\$ 270.00	\$ 810.00
10,000 lbs	\$ 68.00	\$ 340.00	\$ 1,020.00
12,000 lbs	\$ 80.00	\$ 400.00	\$ 1,200.00
Tow Motors			
3,500 - 5,000 lbs	\$ 28.00	\$ 140.00	\$ 420.00
5,000 - 6,500 lbs	\$ 30.00	\$ 150.00	\$ 450.00
8,000 - 9,000 lbs	\$ 41.00	\$ 205.00	\$ 615.00
10,000 - 12,000 lbs	\$ 43.00	\$ 215.00	\$ 645.00
Versa Lift			
17,000 - 25,000 lbs	\$ 185.00	\$ 925.00	\$ 2,775.00
40,000 - 60,000 lbs	\$ 220.00	\$ 1,100.00	\$ 3,300.00
Boom Attachment	\$ 30.00	\$ 150.00	\$ 450.00
Material Duct Lift			
20' - 24'	\$ 10.00	\$ 50.00	\$ 150.00
Personnel Lifts			
Scissor Lift - Narrow			
12' - 15'	\$ 9.50	\$ 47.50	\$ 142.50
19' - 20'	\$ 15.80	\$ 79.00	\$ 237.00
26' - 32'	\$ 25.25	\$ 126.25	\$ 378.75
Scissor Lift - Wide			
26' - 39'	\$ 25.25	\$ 126.25	\$ 378.75
Scissor Lift - 4x4 Rough Terrain			
26' - 32'	\$ 25.25	\$ 126.25	\$ 378.75
33' - 43'	\$ 46.40	\$ 232.00	\$ 696.00
Boom Lifts			
30' - 45' Electric	\$ 34.50	\$ 172.50	\$ 517.50
45' Telescopic	\$ 46.50	\$ 232.50	\$ 697.50
65' Telescopic	\$ 66.50	\$ 332.50	\$ 997.50
85' Telescopic	\$ 110.00	\$ 550.00	\$ 1,650.00
125' Telescopic	\$ 195.00	\$ 975.00	\$ 2,925.00
135' Telescopic	\$ 200.00	\$ 1,000.00	\$ 3,000.00
60' Atrium Lift	\$ 160.00	\$ 800.00	\$ 2,400.00
Concrete Pumps			
85' - 105' Boom Pump	N/A	\$ 1,125.00	\$ 3,375.00
128' - 148' Boom Pump	N/A	\$ 1,500.00	\$ 4,500.00
Spider Placing Boom	N/A	\$ 1,000.00	\$ 3,000.00
Concrete Placer/Dragger	N/A	\$ 375.00	\$ 1,125.00
Concrete Trailer Pump	N/A	\$ 300.00	\$ 900.00

EQUIPMENT RENTAL RATES

Exhibit E

		Hourly	Daily	Weekly
Walk-Behind Trowel	24" - 30" Edger	\$ 11.50	\$ 57.50	\$ 172.50
	36" Walk-Behind	\$ 12.50	\$ 62.50	\$ 187.50
	48" Walk-Behind	\$ 13.00	\$ 65.00	\$ 195.00
	36" Electric	\$ 12.50	\$ 62.50	\$ 187.50
Rider Trowel	30" Edger Double	\$ 35.60	\$ 178.00	\$ 534.00
	8' Double	\$ 60.00	\$ 300.00	\$ 900.00
	10' Double	\$ 105.00	\$ 525.00	\$ 1,575.00
Concrete Buckets	1/2 to 2 Yds	\$ 15.00	\$ 75.00	\$ 225.00
	3 yd+	\$ 18.00	\$ 90.00	\$ 270.00
Laser Screed	SOMERO S-15R - Ride-On	\$ 252.00	\$ 1,260.00	\$ 3,780.00
	SOMERO S-485 - Walk-Behind	\$ 120.40	\$ 602.00	\$ 1,806.00
	SOMERO - 3D Profiler System	\$ 63.00	\$ 315.00	\$ 945.00
Power Buggy	Small Gas/LP (16 cf)	\$ 15.50	\$ 77.50	\$ 232.50
	Large Gas/LP (21 cf)	\$ 24.00	\$ 120.00	\$ 360.00
	Electric Wheel Barrow	\$ 47.50	\$ 237.50	\$ 712.50
Screeds	Roller Screed System (up to 24')	\$ 24.00	\$ 120.00	\$ 360.00
	Vibra Strike 8' - 14'	\$ 21.00	\$ 105.00	\$ 315.00
	Vibra Strike 16' - 18'	\$ 41.00	\$ 205.00	\$ 615.00
Forming	Aluma Form Systems (\$/sq ft)	N/A	N/A	\$ 0.70
	EFCO Form Systems (\$/sq ft)	N/A	N/A	\$ 0.90
	MEVA Form Systems (\$/sq ft)	N/A	N/A	\$ 0.90
	PERI Form Systems (\$/sq ft)	N/A	N/A	\$ 0.95
	PERI Shoring Systems (\$/sq ft)		Price on request	
	Symons Form Systems (\$/sq ft)	N/A	N/A	\$ 0.45
Soft-Cut Floor Saws	6" - 7" Gas or Electric	\$ 21.00	\$ 105.00	\$ 315.00
	10" Gas Powered	\$ 47.00	\$ 235.00	\$ 705.00
	12" - 14" Gas Powered	\$ 60.00	\$ 300.00	\$ 900.00
Excavating Equipment				
Backhoe/Loader		\$ 95.00	\$ 475.00	\$ 1,425.00
Mini Excavator 4000 - 7000 lbs		\$ 47.00	\$ 235.00	\$ 705.00
Skid Steer 1200 - 2200 lbs		\$ 34.00	\$ 170.00	\$ 510.00
Skid Steer 2300 - 2900 lbs		\$ 52.00	\$ 260.00	\$ 780.00
Power Broom		\$ 19.00	\$ 95.00	\$ 285.00
Buster Power		\$ 37.00	\$ 185.00	\$ 555.00
Power Auger		\$ 16.00	\$ 80.00	\$ 240.00
Bulldozer		\$ 64.00	\$ 320.00	\$ 960.00
Compactor		\$ 14.00	\$ 70.00	\$ 210.00
Compactor Reversing		\$ 27.00	\$ 135.00	\$ 405.00
Demolition Equipment				
Brokk	Model 180	\$ 160.00	\$ 800.00	\$ 2,400.00
	Model 240	\$ 226.00	\$ 1,130.00	\$ 3,390.00
Concrete Wall Cutting System			Price on request	
Floor Saws (Electric)	16" - 18"	\$ 19.60	\$ 98.00	\$ 294.00
	30"	\$ 34.00	\$ 170.00	\$ 510.00
Floor Saws (Gas)	36"	\$ 49.50	\$ 247.50	\$ 742.50
	24" - 30"	\$ 36.50	\$ 182.50	\$ 547.50
Hammer - Air Chipping		\$ 5.00	\$ 25.00	\$ 75.00
Hammer - Demo (Electric)		\$ 9.00	\$ 45.00	\$ 135.00
Hammer - Air	15 - 30 lb	\$ 5.25	\$ 26.25	\$ 78.75
	60 - 90 lb	\$ 8.00	\$ 40.00	\$ 120.00
Hammer - Electric Breaker		\$ 16.00	\$ 80.00	\$ 240.00
Trash Chute		N/A	\$ 125.00	\$ 375.00
Trailers				
Project Office Trailers	10' x 36'	N/A	\$ 40.00	\$ 120.00
	12' x 56'	N/A	\$ 50.00	\$ 150.00
	24' x 56'	N/A	\$ 100.00	\$ 300.00
	36' x 56'	N/A	\$ 150.00	\$ 450.00
Guard Shack		N/A	\$ 50.00	\$ 150.00
Utility		N/A	\$ 50.00	\$ 150.00
Enclosed Trailers	12'	N/A	\$ 22.00	\$ 66.00
	16' - 20'	N/A	\$ 50.00	\$ 150.00
Restroom Trailer		N/A	\$ 175.00	\$ 525.00
Storage Containers	10' - 20'	\$ 6.50	\$ 32.50	\$ 97.50
	40'	\$ 10.00	\$ 50.00	\$ 150.00

EQUIPMENT RENTAL RATES

Exhibit E

Welding

Welder - Diesel Trailer Mounted
 Welder - Gas
 Welder - LP
 Welder - Electric
 Welder - Stud - Diesel
 Welder - Stud - Electric
 Welder - Wire Feed
 Fume Cleaner
 Plasma Cutter 110v cut up to 5/8"
 Plasma Cutter 480v cut up to 1 3/4"

Transit/Laser/Layout

Robotic Total Station
 X7 3-D Laser Scanner System
 FARO Laser System (includes vehicle)
 Geo Laser (horizontal & vertical precision laser)
 Slope Laser
 Level Lasers
 Transit - Optical
 Optical Boxes
 Optical Stands
 Transit - Theodolites

Alignment

Belt Hog
 Sheave Master
 Rotalign Equipment
 Cardan Shaft Bracket
 Optalign

Hydro Mobile Scaffold

Hydro Mobile Transport Platform
 Hydro Mobile 24' Motor Unit
 Hydro Mobile 14' Motor Unit
 Hydro Mobile 10' Insert
 Hydro Mobile 5' Insert
 Hydro Mobile 2' Insert
 Hydro Mobile 18' Bridge
 Hydro Mobile 6' Bridge

Masonry

Mortar Mixer - Gas/Electric

6 cu ft
 12 cu ft

Grout Hog

Masonry Saw

14" Dustless
 14" Electric
 20" Gas
 20" Electric
 Brick & Mortar
 Saw Dust Collector

Stone Cutter
 Material Unit Lift Enhancer (MULE)

Air Quality

Air Pressure Monitor
 Power Air Purifying Respirator (PAPR)
 Concrete Dust Vacuum

135 cfm
 285 cfm

Heaters

Natural Gas/LP

200k - 400k
 420k - 1.0m
 1.0m - 1.5m

Dehumidifier

HEPA System

500 - 750 cfm
 1400 - 2100 cfm

HEPA Cart (soft containment cart)

HEPA Cart (hard containment cart)

Environmental Partitions

Room pressure monitor

General Construction Equipment

Air Compressor

Diesel
 Gas
 Electric

Pressure Washer

Gas 2500 - 4000 psi
 Gas (Hot water) 3500 psi
 Electric 110v

Floor Sweeper

Floor Scrubber

Walk-Behind
 Riding
 Walk-Behind Self-Propelled

	Hourly	Daily	Weekly
	\$ 42.00	\$ 210.00	\$ 630.00
	\$ 11.00	\$ 55.00	\$ 165.00
	\$ 11.00	\$ 55.00	\$ 165.00
	\$ 7.00	\$ 35.00	\$ 105.00
	\$ 110.00	\$ 550.00	\$ 1,650.00
	\$ 58.00	\$ 290.00	\$ 870.00
	\$ 7.00	\$ 35.00	\$ 105.00
	\$ 9.00	\$ 45.00	\$ 135.00
	\$ 10.00	\$ 50.00	\$ 150.00
	\$ 21.00	\$ 105.00	\$ 315.00
	\$ 26.00	\$ 130.00	\$ 390.00
	N/A	\$ 600.00	\$ 1,800.00
	N/A	\$ 945.00	\$ 4,725.00
	\$ 16.00	\$ 80.00	\$ 240.00
	\$ 14.00	\$ 70.00	\$ 210.00
	\$ 10.50	\$ 52.50	\$ 157.50
	\$ 5.25	\$ 26.25	\$ 78.75
	\$ 50.00	\$ 250.00	\$ 750.00
	\$ 4.00	\$ 20.00	\$ 60.00
	\$ 13.50	\$ 67.50	\$ 202.50
	\$ 33.90	\$ 169.50	\$ 508.50
	\$ 15.00	\$ 75.00	\$ 225.00
	\$ 65.00	\$ 325.00	\$ 975.00
	\$ 19.00	\$ 95.00	\$ 285.00
	\$ 45.00	\$ 225.00	\$ 675.00
	\$ 42.20	\$ 211.00	\$ 633.00
	\$ 62.50	\$ 312.50	\$ 937.50
	\$ 54.00	\$ 270.00	\$ 810.00
	\$ 8.00	\$ 40.00	\$ 120.00
	\$ 5.00	\$ 25.00	\$ 75.00
	\$ 5.00	\$ 25.00	\$ 75.00
	\$ 15.00	\$ 75.00	\$ 225.00
	\$ 5.00	\$ 25.00	\$ 75.00
	\$ 11.00	\$ 55.00	\$ 165.00
	\$ 14.00	\$ 70.00	\$ 210.00
	\$ 20.00	\$ 100.00	\$ 300.00
	\$ 10.20	\$ 51.00	\$ 153.00
	\$ 10.20	\$ 51.00	\$ 153.00
	\$ 18.40	\$ 92.00	\$ 276.00
	\$ 12.20	\$ 61.00	\$ 183.00
	\$ 10.20	\$ 51.00	\$ 153.00
	\$ 35.00	\$ 175.00	\$ 525.00
	\$ 5.00	\$ 25.00	\$ 75.00
	\$ 90.00	\$ 450.00	\$ 1,350.00
	N/A	\$ 100.00	\$ 300.00
	\$ 21.00	\$ 105.00	\$ 315.00
	\$ 5.25	\$ 26.25	\$ 78.75
	\$ 16.00	\$ 80.00	\$ 240.00
	\$ 15.00	\$ 75.00	\$ 225.00
	\$ 20.00	\$ 100.00	\$ 300.00
	\$ 22.00	\$ 110.00	\$ 330.00
	\$ 15.00	\$ 75.00	\$ 225.00
	\$ 13.00	\$ 65.00	\$ 195.00
	\$ 16.25	\$ 81.25	\$ 243.75
	\$ 8.75	\$ 43.75	\$ 131.25
	\$ 32.00	\$ 160.00	\$ 480.00
	\$ 10.00	\$ 50.00	\$ 150.00
	\$ 18.00	\$ 90.00	\$ 270.00
	\$ 8.00	\$ 40.00	\$ 120.00
	\$ 5.00	\$ 25.00	\$ 75.00
	\$ 14.00	\$ 70.00	\$ 210.00
	\$ 23.50	\$ 117.50	\$ 352.50
	\$ 5.25	\$ 26.25	\$ 78.75
	\$ 12.50	\$ 62.50	\$ 187.50
	\$ 24.75	\$ 123.75	\$ 371.25
	\$ 44.00	\$ 220.00	\$ 660.00
	\$ 32.00	\$ 160.00	\$ 480.00

EQUIPMENT RENTAL RATES

Exhibit E

		Hourly	Daily	Weekly
Floor Stripper (Riding)		\$ 107.00	\$ 535.00	\$ 1,605.00
Floor Stripper (Walk-Behind Self-Propelled)		\$ 32.00	\$ 160.00	\$ 480.00
Carpet Puller		\$ 16.25	\$ 81.25	\$ 243.75
Generator				
Large Power - Diesel				
	8kw	\$ 42.00	\$ 210.00	\$ 630.00
	40-50kw	\$ 47.25	\$ 236.25	\$ 708.75
	70-80kw	\$ 53.40	\$ 267.00	\$ 801.00
	175kw	\$ 92.00	\$ 460.00	\$ 1,380.00
	230kw	\$ 115.00	\$ 575.00	\$ 1,725.00
Gas				
	2000w	\$ 7.50	\$ 37.50	\$ 112.50
	3000w	\$ 10.50	\$ 52.50	\$ 157.50
	4000 - 6000w	\$ 12.50	\$ 62.50	\$ 187.50
Fans				
	Cage Fan	\$ 7.25	\$ 36.25	\$ 108.75
	Drum Fan	\$ 3.60	\$ 18.00	\$ 54.00
	Tube Fan	\$ 3.00	\$ 15.00	\$ 45.00
Rebar Tier		\$ 19.00	\$ 95.00	\$ 285.00
Hytorc Pump		\$ 40.00	\$ 200.00	\$ 600.00
Hytorc Wrench				
	Hytorc Wrench XLCT2	\$ 13.30	\$ 66.50	\$ 199.50
	Hytorc Wrench 3/4" 1MXT	\$ 25.00	\$ 125.00	\$ 375.00
	Hytorc Wrench 1" 3MXT	\$ 30.00	\$ 150.00	\$ 450.00
	Hytorc Wrench 1-1/2" 5MXT	\$ 40.00	\$ 200.00	\$ 600.00
	Hytorc Wrench Stealth 2	\$ 17.80	\$ 89.00	\$ 267.00
	Hytorc Wrench Stealth 4	\$ 21.55	\$ 107.75	\$ 323.25
	Hytorc Wrench Stealth 8	\$ 25.40	\$ 127.00	\$ 381.00
	Hytorc Wrench Stealth 14	\$ 29.30	\$ 146.50	\$ 439.50
	Hytorc Ratchet Link XLCT3	\$ 12.50	\$ 62.50	\$ 187.50
	Hytorc Ratchet Link Stealth 2	\$ 15.90	\$ 79.50	\$ 238.50
	Hytorc Ratchet Link Stealth 4	\$ 21.00	\$ 105.00	\$ 315.00
	Hytorc Ratchet Link Stealth 8	\$ 25.40	\$ 127.00	\$ 381.00
	Hytorc Ratchet Link Stealth 14	\$ 27.60	\$ 138.00	\$ 414.00
Hydraulic Punch		\$ 11.00	\$ 55.00	\$ 165.00
Sediment Box		\$ 10.00	\$ 50.00	\$ 150.00
Air Skate Machine Dolly System				
	25,000 lb system	\$ 28.15	\$ 140.75	\$ 422.25
	75,000 lb system	\$ 63.00	\$ 315.00	\$ 945.00
Pallet Jack - Electric		\$ 14.25	\$ 71.25	\$ 213.75
Pallet Stacker - Electric		\$ 24.00	\$ 120.00	\$ 360.00
Heavy Hauler Machine Dolly				
	12K	\$ 3.50	\$ 17.50	\$ 52.50
	20K	\$ 4.00	\$ 20.00	\$ 60.00
	50K	\$ 5.00	\$ 25.00	\$ 75.00
Hillman Machine Dolly				
	15T	\$ 6.25	\$ 31.25	\$ 93.75
	25T	\$ 7.00	\$ 35.00	\$ 105.00
	65T	\$ 10.00	\$ 50.00	\$ 150.00
Hard Deck Machine Dolly		\$ 10.00	\$ 50.00	\$ 150.00
Machine Dolly - Nylon Wheels				
	36,000 lb Steerable	\$ 9.00	\$ 45.00	\$ 135.00
	50 Ton	\$ 50.00	\$ 250.00	\$ 750.00
Water Wagon		\$ 17.00	\$ 85.00	\$ 255.00
Street Sweeper		\$ 42.00	\$ 210.00	\$ 630.00
Rebar Locator		\$ 65.00	\$ 325.00	\$ 975.00
Epoxy Grout Mixer				
	Electric	\$ 12.20	\$ 61.00	\$ 183.00
	Hydraulic w/ Power Pack	\$ 96.00	\$ 480.00	\$ 1,440.00
Ground Heaters				
	Ground (6,000 sq ft)	\$ 111.20	\$ 556.00	\$ 1,668.00
	Ground (12,000 sq ft)	\$ 186.50	\$ 932.50	\$ 2,797.50
	Hose Reel	\$ 80.00	\$ 400.00	\$ 1,200.00
	Remote Manifold	\$ 20.00	\$ 100.00	\$ 300.00
	Bearing Heater	\$ 20.00	\$ 100.00	\$ 300.00
Chain Hoist				
Air				
	1 ton	\$ 8.00	\$ 40.00	\$ 120.00
	2 ton	\$ 9.50	\$ 47.50	\$ 142.50
Electric				
	1/2 - 1 ton	\$ 11.00	\$ 55.00	\$ 165.00
	2 ton	\$ 12.00	\$ 60.00	\$ 180.00
	3 ton	\$ 17.00	\$ 85.00	\$ 255.00
Gear Pullers				
	30 ton - set	\$ 11.00	\$ 55.00	\$ 165.00
	50 ton - set	\$ 14.00	\$ 70.00	\$ 210.00
	8 - 17 ton	\$ 5.00	\$ 25.00	\$ 75.00
	30 - 50 ton	\$ 14.00	\$ 70.00	\$ 210.00
	100 ton	\$ 28.00	\$ 140.00	\$ 420.00

EQUIPMENT RENTAL RATES

Exhibit E

		Hourly	Daily	Weekly
Air Tugger		\$ 21.00	\$ 105.00	\$ 315.00
400 Ton Hydraulic Jacking System		\$ 24.00	\$ 120.00	\$ 360.00
Jon Boat		\$ 8.00	\$ 40.00	\$ 120.00
Barge		\$ 31.00	\$ 155.00	\$ 465.00
Submersible Pumps - Electric				
	2" 110V	\$ 7.60	\$ 38.00	\$ 114.00
	3" 220V	\$ 8.50	\$ 42.50	\$ 127.50
	4" 220V	\$ 14.75	\$ 73.75	\$ 221.25
	3" & 4" 460V	\$ 19.00	\$ 95.00	\$ 285.00
Trash Pumps				
	2" & 3" Gas	\$ 14.70	\$ 73.50	\$ 220.50
	4" Gas	\$ 15.40	\$ 77.00	\$ 231.00
Gantry				
	Aluminum 2 Ton Capacity	\$ 15.70	\$ 78.50	\$ 235.50
Steel Setup				
	Small	\$ 5.25	\$ 26.25	\$ 78.75
	Medium	\$ 5.25	\$ 26.25	\$ 78.75
	Large	\$ 5.25	\$ 26.25	\$ 78.75
Roof Safety Cart		\$ 11.00	\$ 55.00	\$ 165.00
Multi Gas Air Monitor		\$ 20.00	\$ 100.00	\$ 300.00
Vessel Entry Tripod w/ Winch		\$ 14.00	\$ 70.00	\$ 210.00
Light Tower		\$ 25.00	\$ 125.00	\$ 375.00
Equipment Box		\$ 44.00	\$ 220.00	\$ 660.00
Equipment Box (compact)		\$ 22.00	\$ 110.00	\$ 330.00
Rigging Box		\$ 50.00	\$ 250.00	\$ 750.00
Hydraulic Puller Box		\$ 50.00	\$ 250.00	\$ 750.00
Saws				
Cutoff Saw				
	14" Gas	\$ 6.10	\$ 30.50	\$ 91.50
	14" Dustless Electric	\$ 7.00	\$ 35.00	\$ 105.00
Compound Miter Box		\$ 6.75	\$ 33.75	\$ 101.25
Large Cutoff Band Saw		\$ 10.50	\$ 52.50	\$ 157.50
Hydraulic Ring Saw		\$ 57.75	\$ 288.75	\$ 866.25
Hydraulic Power Unit		\$ 20.00	\$ 100.00	\$ 300.00
Diamond Chain Saw Hydraulic		\$ 63.00	\$ 315.00	\$ 945.00
Diamond Chain Gas		\$ 63.00	\$ 315.00	\$ 945.00
Cut & Break Saw		\$ 25.70	\$ 128.50	\$ 385.50
Table Saw - 10"		\$ 7.00	\$ 35.00	\$ 105.00
Drills				
Core Drills				
	Electric	\$ 17.00	\$ 85.00	\$ 255.00
	Electric Handheld	\$ 8.00	\$ 40.00	\$ 120.00
	Handheld Drill Stand	\$ 1.60	\$ 8.00	\$ 24.00
	Gas Powered	\$ 8.50	\$ 42.50	\$ 127.50
	Electric Core Drill Vacuum Pump	\$ 1.60	\$ 8.00	\$ 24.00
	Hydraulic	\$ 10.00	\$ 50.00	\$ 150.00
Air Drills				
	Small	\$ 6.00	\$ 30.00	\$ 90.00
	Large	\$ 7.00	\$ 35.00	\$ 105.00
Magnetic Hole Hawg		\$ 12.00	\$ 60.00	\$ 180.00
Guns				
Lejune Gun (TC Gun)				
	3/4"-1"	\$ 10.00	\$ 50.00	\$ 150.00
	1-1/8"	\$ 12.00	\$ 60.00	\$ 180.00
	Low-Profile	\$ 15.50	\$ 77.50	\$ 232.50
Rotation Gun		\$ 12.00	\$ 60.00	\$ 180.00
Powder Actuated Guns				
	Bar Joist	\$ 15.00	\$ 75.00	\$ 225.00
	Structural	\$ 15.00	\$ 75.00	\$ 225.00

