



AIA® Document A141® – 2014

Standard Form of Agreement Between Owner and Design-Builder

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

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

Board of Regents of the University of Wisconsin System
c/o UW System Administration – CPB
780 Regent Street
Madison, WI 53715

and the Design-Builder:
(Name, legal status, address and other information)

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

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner’s Criteria

This Agreement, also referred to as "Contract", is based on the Owner’s Criteria set forth in this Section 1.1. In the event of an inconsistency or conflict between or among the provisions of this Agreement, the inconsistency shall be resolved by the higher quality and lower risk provision for the Owner.

§ 1.1.1 The Owner’s program for the Project:

(Paragraph deleted)

See attached documents in Article 16.

§ 1.1.2 The Owner’s design requirements for the Project and related documentation:

(Paragraph deleted)

See attached documents in Article 16.

§ 1.1.3 The Project’s physical characteristics:

See attached documents in Article 16.

§ 1.1.4

(Paragraphs deleted)

Intentionally deleted.

§ 1.1.5

(Paragraphs deleted)

Intentionally deleted.

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

XXXXXX

§ 1.1.7 The Owner's design and construction milestone dates:

- .1 Design phase milestone dates:
- .2 Submission of Design-Builder Proposal:
- .3 Phased completion dates:
- .4 Substantial Completion date:
- .5 Other milestone dates:

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

(List name, legal status, address and other information.)

- .1 Architect
See attached documents in Article 16.
- .2 Consultants
See attached documents in Article 16.
- .3 Contractors
See attached documents in Article 16.

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

See attached documents in Article 16.

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Design-Builder and Contractor intend to transmit Instruments of Service or any other information or documentation in digital form, or utilize building information modeling, they shall endeavor to establish written protocols governing the development, use, transmission, reliance, and exchange of digital data, including building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following Owner's Representative in accordance with Section 7.1.1:

(List name, address and other information.)

§ 1.2.2 The persons or entities, in addition to the Owner's Representative, who are required to review the Design-Builder's Submittals are as follows:

(List name, address and other information.)

N/A

§ 1.2.3 The Owner will retain the following consultants and Separate Contractors:

(List discipline, scope of work, and, if known, identify by name and address.)

See attached documents in Article 16.

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:

(List name, address and other information.)

§ 1.2.5 The Design-Builder's representative shall not be changed without ten days' prior written notice to the Owner. Owner reserves the right to change its designated Owner's Representative at any time for any reason. If the Owner's Representative is changed, written notice shall be provided within a reasonable time period.

§ 1.3 Binding Dispute Resolution

For any Claim, the method of binding dispute resolution shall be

(Paragraphs deleted)

in accordance with Section 14.3:

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by Separate Contractors.

§ 1.4.5 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 Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the Board of Regents of the University of Wisconsin System. The Board of Regents of the University of Wisconsin System exercises the powers and duties prescribed by Wis. Stat. § 16.855. The terms "Board", "Board of Regents", or "The Board of Regents" as used in this document also refer to the Owner. The Owner is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement that has contracted with the Owner to perform the Work as required by the Design-Build Documents and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made in proportion to services performed. For the Design-Builder’s performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

XXXXXX

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

If applicable, see attached documents in Section 16.

Individual or Position	Rate
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§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project. All Reimbursable Expenses must be authorized in advance by the Owner. Examples of Reimbursable Expenses that could be incurred by the Design-Builder and the Design-Builder’s Architect, Consultants, and Contractors are, as follows:

- .1 Authorized out-of-town travel and subsistence, for meetings, tours and presentations not included in the current Design-Builder’s contract;
- .2 Specialized project web sites, and project based software specifically needed for the Project and previously authorized by the Owner;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project, including reproduction and delivery costs required for such approval;
- .4 Intentionally deleted;
- .5 Intentionally deleted;
- .6 Intentionally deleted;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses;
- .9 Geotechnical Engineering Services; and
- .10 Topographical surveys.
- .11 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors incurred, plus an administrative fee of zero percent (0 %) of the expenses incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder’s invoice. Amounts unpaid thirty (30) 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 Design-Builder.
(Insert rate of monthly or annual interest agreed upon.)

twelve percent (12%) annum or as dictated by State Statute

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder’s performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.1.1 Any Work necessary to be performed after regular working hours, on Sundays, or legal holidays, and for which the Design-Builder is responsible, shall be performed without additional expense to the Owner.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project Schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, within 1 week of execution of this Agreement, shall prepare and submit for the Owner's information a Project Schedule for the Work. The Project Schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised to reflect the progress of the Work at least monthly prior to Mobilization and twice per month during construction, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The Work shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Any delays in Design-Builder's performance of the Work relative to the Project Schedule shall be governed by Section 8.2 hereof.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's Project Schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it 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 Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 **Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of

the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Design-Builder's warranty under this Section is not exclusive, and any other warranties, express or implied, may also be exercised by the Owner at its option.

§ 3.1.12.1 All material, equipment, or other special warranties required by the Design-Build Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.5.

§ 3.1.12.2 The Design-Builder warrants to the Owner that all materials and supplies used in the Work are free from all liens, claims, or encumbrances, and good title to materials and supplies is retained by the Design-Builder and shall be conveyed prior to approval of final payment.

§ 3.1.12.3 The Design-Builder shall remedy, at the Design-Builder's expense, any defect in the Work. In addition, the Design-Builder shall remedy, at the Design-Builder's expense, any damage to the Owner's property, whether controlled or owned, including but not limited to damage to structures, utilities, landscaping, and existing conditions when such damage results from:

- .1 the Design-Builder's failure to conform to Design-Build Document requirements, including any failure to comply with applicable codes, standards, or specifications;
- .2 any defect in equipment, material, workmanship, or design furnished by the Design-Builder, Contractors, or subcontractors, regardless of tier, or any failure of such work to meet the quality and performance standards set forth in the contract documents;
- .3 Negligence, misconduct, or failure to exercise due care by the Design-Builder or its subcontractors, employees, or agents during the execution of the work;
- .4 Accidental or incidental damage to the Owner's property resulting from construction activities, including damage caused by equipment, machinery, or other construction-related processes; or
- .5 Any damage to the Owner's property that occurs as a result of any act, omission, or failure to act on the part of the Design-Builder or any of its Contractors or agents.

The Design-Builder shall promptly notify the Owner of any damage and shall take appropriate corrective measures to restore the property to its original condition or to a condition satisfactory to the Owner, at no additional cost.

§ 3.1.12.4 The Owner's Representative shall give notice to the Design-Builder within a reasonable time after discovery of any failure, defect, or damage.

§ 3.1.12.5 If, after the receipt of a notice of a claim under this warranty, the Design-Builder fails to remedy any failure, defect, or damage within a time judged reasonable by the Owner's Representative, the Owner's Representative shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage, at the Design-Builder's expense.

§ 3.1.12.6 All warranties under this Contract or in any way related to this Contract, express or implied, shall be obtained for and shall be subject to direct enforcement by the Owner. The Design-Builder shall provide in each subcontract, or other purchase agreement, for the assignment to the Owner of all such warranties and for the right of enforcement by the Owner. In addition, if necessary the Design-Builder shall:

- .1 obtain for the Owner's benefit all warranties that would be given in normal commercial practice;
- .2 require all warranties to be executed, in writing, for the benefit of the Owner, if so directed by the Owner's Representative;
- .3 enforce all warranties for the benefit of the Owner; and
- .4 obtain for the Owner's benefit all warranties given by any Contractor, at any tier, if such warranty is in excess of the one year warranty period set forth herein.

§ 3.1.12.7 Unless a defect is caused by the negligence of the Design-Builder or Contractors at any tier, the Design-Builder shall not be liable for the repair of any defects of material or design furnished by the Owner.

§ 3.1.12.8 The Design-Builder shall require any Contractor manufacturers or suppliers to execute their warranties, in writing, directly to the Owner.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its Separate Contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, 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, but only to the extent caused by the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. 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 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

(Paragraphs deleted)

§ 3.1.15 Intentionally deleted

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- 1 allocations of program functions, detailing each function and their square foot areas;
- 2 recommendations to adjust the Owner's Criteria to reduce the Owner's budget;
- 3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- 4 the following:

(List additional information, if any, to be included in the Design-Builder's written report.)

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder 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, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder 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 within the specified time, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work. No materials or supplies which are to become part of the Work shall be purchased by the Design-Builder or by any Contractor subject to any chattel mortgage, conditional sale contract, or other agreement by which a security interest is retained by the seller.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.2.1 It is not the intention of the Owner to limit or restrict competition by the use of any reference to a particular manufacturer, process, technique, catalog number or other identifying information. Such proprietary specifications are intended to establish a level of quality or the minimum essential requirements to which the Design-Builder must conform, unless more explicit restrictions are stated to apply.

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

§ 5.4 Taxes

The Design-Builder shall pay all sales, consumer, use and similar taxes required by law assessed to or arising out of the construction of the Project. Per 2017 Wis. Stat. § 77.54 (9m), building materials sold to a construction contractor that will become a component of a facility owned by the Board of Regents of the University of Wisconsin System are exempt from sales and use tax.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution and completion of the Work, and shall provide evidence of such permits, licenses, and approvals before commencement of the Work. Payment for use of such services and utilities before Substantial Completion shall be in accordance with provisions of the Contract.

§ 5.5.2 The Design-Builder 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 and/or relating to environmental quality and safety, the performance of the Work, the protection of adjacent property, and the maintenance of passageways, guard fences, or other protective facilities. The Owner shall be notified by the Design-Builder of any notices of noncompliance or violation associated with Work required by the Design-Build Documents.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build 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 Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the

Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection, except for projects over \$600,000 where Wis. Stat. §16.855 (14)(d) requires the project to be publicly bid and awarded to the lowest bidding Mechanical, Electrical, Plumbing, and Sprinkler subcontractors.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder'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 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable objection. The Design-Builder shall contract with the lowest bidding Mechanical, Electrical, Plumbing, and Sprinkler subcontractors as required by Wis. Stat. §16.855 (14)(d) for those projects that exceed \$600,000..

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, and met all other applicable criteria, 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 person or entity's

Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.7.3.2 Pursuant to Wis. Stat. §16.855 (14m)(a), any contract that the Design-Builder (referred to below as general prime contractor) enters into with a subcontractor as defined under Wis. Stat. §16.855 (14)(e) shall include the following mandatory provisions:

PROMPT PAYMENT (General prime contractor) shall pay (mechanical, electrical, or plumbing subcontractor) in accordance with Wis. Stat §16.855(19)(b), for work that has been satisfactorily completed and properly invoiced by (mechanical, electrical, or plumbing subcontractor). A payment is timely if it is mailed, delivered, or transferred to (mechanical, electrical, or plumbing subcontractor) by the deadline under Wis. Stat §16.855(19)(b).

If (mechanical, electrical, or plumbing subcontractor) is not paid by the deadline in this Contract, (general prime contractor) shall pay interest on the balance due from the eighth day after the (general prime contractor) receives payment from the Board of Regents for the work for which payment is due and owing to (mechanical, electrical, or plumbing subcontractor), at the rate specified in Wis. Stat §71.82, compounded monthly.

A (mechanical, electrical, or plumbing subcontractor) that receives payment as provided under this Contract and that subcontracts with another entity shall pay those subcontractors, and be liable for interest on late payments to those subcontractors, in the same manner as the (general prime contractor) is required to pay the (mechanical, electrical, or plumbing subcontractor) under this Contract.

INSURANCE AND BONDS (mechanical, electrical, or plumbing subcontractor) shall not commence work under this Contract until it has obtained all necessary insurance required of (mechanical, electrical, or plumbing subcontractor) in the contract between the (general prime contractor) and the Board of Regents.

(Mechanical, electrical, or plumbing subcontractor) shall provide a separate 100 percent performance bond and a separate 100 percent payment bond to the benefit of the (general prime contractor) as the sole named obligee. Original bonds shall be given to the (general prime contractor) and a copy shall be given to the Board of Regents no later than 10 days after execution of this Contract.

INDEMNIFICATION To the fullest extent permitted by law, (mechanical, electrical, or plumbing subcontractor) shall defend, indemnify, and hold harmless (general prime contractor) and its officers, directors, agents, and any others whom (general prime contractor) is required to indemnify under its contract with the Board of Regents, and the employees of any of them, from and against claims, damages, fines, penalties, losses, and expenses, including but not limited to attorney fees, arising in any way out of or resulting from the performance of the work under this Contract, but only to the extent such claim, damage, fine, penalty, loss, or expense: (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property, including but not limited to loss of use resulting therefrom and is caused by the negligence, or acts or omissions, of (mechanical, electrical, or plumbing subcontractor), its subcontractors, any of their employees, and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, or (2) as related to such claims, damages, fines, penalties, losses, and expense of or against (general prime contractor), results from or arises out of the negligence of the (general prime contractor) or other fault in providing general supervision or oversight of the work of (mechanical, electrical, or plumbing subcontractor) or (3) as related to claims, damages, fines, penalties, losses, and expense against the Board of Regents arises out of the Board's status as owner of the project or project site.

In addition (mechanical, electrical, or plumbing subcontractor) shall defend, indemnify, and hold harmless (general prime contractor) and its officers, directors, agents, and any others (general prime contractor) is required to indemnify under its contract with the Board, and the employees of any of them, from any liability, including liability resulting from a violation of any applicable safe place act, that (general prime contractor) or the Owner incurs to any employee of (mechanical, electrical, or plumbing subcontractor) or any third party where the liability arises from a derivative claim from said employee, when the liability arises out of the failure of the (general prime contractor) or the Owner to properly supervise, inspect, or approve the work or work area of (mechanical, electrical, or plumbing subcontractor), but only to the extent that the liability arises out of the acts or omissions of (mechanical, electrical, or plumbing subcontractor), its employees, or anyone for whom (mechanical, electrical, or plumbing subcontractor) may be liable, or from (mechanical, electrical, or plumbing subcontractor's) breach of its contractual responsibilities or arises out of (general prime contractor's) negligence or other fault in providing general supervision or oversight of (mechanical, electrical, or plumbing subcontractor's) work or arises out of The Board of Regents' status as owner of the project or project site. In claims against (general prime contractor) or the Owner by an employee of (mechanical, electrical, or plumbing

subcontractor) or its subcontractors or anyone for whose acts (mechanical, electrical, or plumbing subcontractor) may be liable, the indemnification obligation of this paragraph is not limited by a limitation on amount or type of damage, compensation, or other benefits payable by or for the (mechanical, electrical, or plumbing subcontractor) subcontractors under workers compensation act.

Except as identified above, the obligations of (mechanical, electrical, or plumbing subcontractor) under this indemnification do not extend to the liability of (general prime contractor) and its agents or employees arising out of (1) preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; (2) the giving of or failure to give directions or instructions by the (general prime contractor) or the Board of Regents or their agents or employees provided the giving or failure to give is the cause of the injury or damage; or (3) the acts or omissions of other subcontractors.

RETAINAGE Retainage shall occur and be in amounts and on a schedule equal to that in the contract between (general prime contractor) and the Owner. Pursuant to Wis. Stat. §16.855(19)(b), Retainage between general prime contractor and mechanical, electrical and plumbing subcontractors is governed as follows:

As the work progresses under any subcontract as defined under Wis. Stat. § (14)(e) for construction of a project, the general prime contractor shall, upon request of a subcontractor, pay to the subcontractor an amount equal to the proportionate value of the subcontractor's work properly completed, less retainage. The retainage shall be an amount equal to not more than 5 percent of the subcontractor's work completed until 50 percent of the subcontractor's work has been completed. At 50 percent completion, no additional amounts may be retained, and partial payments shall be made in full to the subcontractor unless the Board certifies that the subcontractor's work is not proceeding satisfactorily. At 50 percent completion or any time thereafter when the progress of the subcontractor's work is not satisfactory, additional amounts may be retained but the total retainage may not be more than 10 percent of the value of the work completed. Upon substantial completion of the subcontractor's work, any amount retained shall be paid to the subcontractor, less the value of any required corrective work or uncompleted work. All payments the general prime contractor makes under this paragraph shall be within 7 calendar days after the date on which the general prime contractor receives payment from the Board.

Pursuant to Wis. Stat. §16.855(14m)(b), subcontracts under sub (14)(e) must include a scope of work clause that is identical to the scope of work clause on which the subcontractor bid. The following Scope of Work language shall be included in the contracts between the Design-Builder and subcontractors:

SCOPE OF WORK The mechanical, electrical and plumbing subcontractor scope of work is identical to the general prime contractor scope of work included in these bidding and contract documents. By submitting and signing a bid, all bidders have examined all the Bidding Documents listed in the Table of Contents of the project Specifications. The successful bidders will be required to do all work which is shown on the drawings, mentioned in the Specifications, or reasonably implied as necessary to complete the division of work bid for this project.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder 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 Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment. The Design-Builder shall make reasonable efforts to avoid interruptions to the Owner's operations.

§ 5.10 Cutting and Patching

§ 5.10.1 The Design-Builder 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 Design-Build Documents.

§ 5.10.2 The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a Separate Contractor except with written consent of the Owner and of such Separate Contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a Separate Contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder 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 Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its Separate Contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

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

§ 5.13.1.1 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 to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 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 Design-Builder, who shall cooperate with them. The Design-Builder shall participate with any Separate Contractor and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, Separate Contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or Separate Contractors, the Owner or its Separate Contractors shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder 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 Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying 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 Design-Builder's Work. Failure of the Design-Builder to report discrepancies or defects in the construction or operations shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

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

for costs the Design-Builder incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or Separate Contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, 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 will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.1.4 Except in cases of emergency, no changes shall be made to the Work by the Design-Builder without having prior approval of Owner through a Change Directive or Change Order. In addition, the Design-Builder shall not be entitled to any increase in the Contract Sum or Contract Time without first receiving prior written authorization from the Owner for the same. If the parties disagree whether the work to be performed constitutes a change in Work or disagree as to any adjustments in the Contract Sum or Contract Time, Design-Builder shall nonetheless diligently proceed with the Work if directed by the Owner while the parties resolve their dispute. In any case, the parties reserve their rights as to the disputed amount.

§ 6.2 Change Orders

§ 6.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ 6.2.2 The inclusion of terms and conditions in the supporting documentation of a Change Order shall have no bearing on the contract between the Owner and Design-Builder, and shall not change any of the terms and conditions between the Owner and Design-Builder. Such supporting documentation shall not be construed as creating any expressed or implied contractual obligation of those terms and conditions between Owner and the Design-Builder's, or any of Design-Builder's Architect, Consultants, Contractors, suppliers or vendors.

§ 6.2.3 A Change Order may be proposed by the Owner or the Design-Builder. When a Change Order is proposed, the following procedures shall apply:

- .1 if requested by Owner's Representative, the Design-Builder shall prepare and submit a detailed proposal, including all cost and time adjustments to which the Design-Builder believes it will be entitled if the change proposed is incorporated into the Agreement. Owner's Representative shall be under no legal obligation to issue a Change Order for such proposal;
- .2 in some instances, it may be necessary for Owner to authorize Work or direct changes in Work for which no final and binding Change Order has been reached and for which unit prices are not applicable. In such cases the following shall apply:

- .1 upon written request by the Owner, through a Change Directive, the Design-Builder shall perform the proposed Work;
- .2 the cost of such changes shall not exceed the amount in the Change Directive, and be determined in accordance with Section 6.2.5;
- .3 in the event agreement cannot be accomplished as contemplated herein, the Owner may authorize the Work to be performed by Owner or to hire others to complete the Work. Such action on the part of the Owner shall not be the basis of a claim by the Design-Builder for failure to allow it to perform the changed Work.

§ 6.2.4 In the event Work is required due to an emergency as described in Section 6.1.4., the Design-Builder must request an equitable adjustment as soon as practicable, and in no case no later than ten working days of the commencement of such emergency.

§ 6.2.5 Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.2 shall be limited to the following:

- .1 actual labor rate includes the base rate, taxes, insurance and fringe benefits required by agreement or custom and no Design-Builder markup except as allowed in Section 6.2.5.6 below. Unit labor is the labor time anticipated to be expended to install the corresponding unit of actual materials. Labor cost is the labor hours approved by Owner's Representative multiplied by the Owner's Representative pre-approved composite hourly labor rates;
- .2 actual material cost is the amount paid or to be paid by the Design-Builder for materials, supplies and equipment entering permanently into the Work, including cost of transportation and applicable taxes. This cost shall be substantiated by the vendor or supplier's verified invoices/quotes. The cost shall not exceed the usual and customary cost for such items available in the geographical area of the Project;
- .3 large tools and major equipment are those with an initial cost greater than \$1,000, whether from the Design-Builder or other sources. The rental rate shall not exceed the usual and customary amount for such items available in the geographical area of the Project. Tool and equipment use time allowed is only for the extra Change Order work. Rental cost is the above tool and equipment time approved by Owner's Representative multiplied by the Owner's Representative pre-approved rental rates also described above;
- .4 the cost of performance and payment bonds are the actual rate paid by the Design-Builder for such bonds;
- .5 subcontractor costs are for those subcontracted specialties required to complete the Change Order work, with maximum markups as outlined hereinafter;
- .6 the maximum allowable markup for overhead and profit, by all parties of the Design-Builder, including Design-Builder's Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, on Change Order proposals shall not exceed fifteen percent (15%) total. The Design-Builder markup of change order work shall not exceed seven and one-half percent (7½%); and the total combined mark-up by Design-Builder, on work performed shall not exceed fifteen percent (15%). When the value of a Change Order proposal exceeds \$30,000, a declining scale will be used to negotiate the allowable combined overhead and profit margin. Where Change Order proposals involve a credit only, a reasonable allowance for overhead and profit are properly included as part of the downward adjustment for a deductive change exceeding \$15,000. The amount of such allowance is subject to negotiation.
- .7 all other Change Order expenses are part of the overhead and profit allowance which are not reimbursable as separate items and include the following:
 - .1 all costs associated with the processing of the Change Order are included in the overhead and profit allowance;
 - .2 all such efforts, unless specifically requested as additional Work to be documented as a Change Order proposal or portion thereof, is included in the overhead and profit allowance;
 - .3 the layout required for the installation of material and equipment, and installation design, is the responsibility of the Design-Builder and is included in the overhead and profit allowance;
 - .3 small tools and supplies. The cost of small hand tools with an initial cost of \$1,000 or less, along with consumable supplies and expendable items such as drill bits, saw blades, gasoline, lubricating or cutting oil, and similar items, is included in the overhead and profit allowance;
 - .4 general expenses (for example, and not limited to: parking fees) which include those items that are a specific job cost not associated with direct labor and material, is included in the overhead and profit allowance;

- .5 the preparation of record or as-built drawings required is included in the overhead and profit allowance;
- .6 other costs: a) All association dues, assessments, and similar items are included in the overhead and profit allowance. b) All education, training, and similar items are included in the overhead and profit allowance. c) All drafting and/or engineering, unless specifically requested as additional Work to be documented as a Change Order proposal or portion thereof, is included in the overhead and profit allowance. d) All other cost items such as, but not necessarily limited to, review, coordination, estimating, and expediting, relative to Change Order proposals, are associated with field and office supervision and are included in the overhead and profit allowance.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

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

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 time and material, Not To Exceed. This Not To Exceed amount shall be an amount of compensation sufficient for the Design-Builder to complete the needed change in the Work, and shall include all costs for the change in the Work including overhead and profit;
- .2 unit prices stated in the Design-Build Documents or subsequently agreed upon; or
- .3 cost method agreed upon by the parties.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7

(Paragraphs deleted)

Intentionally deleted.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. 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.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach

agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders shall be subsequently issued for all Change Directives when there is agreement on time and cost changes to the Work.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to Project matters requiring the Owner's approval or authorization. The Owner's Representative will not have authority to modify the cost, timing, or the scope of Work, unless the person is duly authorized by the Board of Regents of the University of Wisconsin System. Person(s) with signature authority will be furnished upon request.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder 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.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Intentionally deleted.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of 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; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner 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 Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

In the event that any of the Work in progress, or Work already completed by the Design-Builder is determined by the Owner to be of substandard quality, defective, or otherwise in violation of the requirements of the Design-Documents, or if the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails or refuses to carry out Work in accordance with the Design-Build Documents, the Owner may issue an order by written notice to the Design-Builder 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 Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.8.1 The Design-Builder shall have ten calendar days after the serving of such notice within which to take corrective action or to make arrangements judged satisfactory by the Owner's Representative for the corrections to be made. If corrective actions or other arrangements are not judged satisfactory by the Owner's Representative, the Owner may terminate the Contract in accordance with the provisions of the Contract.

§ 7.8.2 If, after suspension of the Work, it is determined by the Owner that the completed Work was not of substandard quality, defective, or otherwise in violation of the requirements of the Design-Build Documents, or if the Design-Builder's delay was excusable, the rights and obligations of the parties will be the same as if the suspension or termination had been issued for the convenience of the Owner under the Contract.

§ 7.8.3 The Owner may order the Design-Builder, in writing, to suspend or delay all or any part of the Work of the Design-Builder for the period of time that the Owner determines appropriate for the convenience of the Owner.

§ 7.8.4 If the Design-Builder determines that the cost of the Work is altered by such suspension, or the time for completion of such Work is altered or delayed, the Design-Builder shall provide notice to the Owner of any such costs or delay;

§ 7.8.5 Such notice shall be made within ten calendar days of the order to stop or suspend Work;

§ 7.8.6 Provision of such notice to the Owner's Representative shall be a condition precedent to any Owner liability for increased costs, delay, or time extension.

§ 7.8.7 The Owner may exercise any and all rights or remedies provided for herein, by law or in equity, either concurrently or singly in its sole discretion.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written 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 deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. Correction of such deficiencies shall not prevent the Owner from recovery of other damages or penalties sustained as a result of the Design-Builder's default or neglect.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or of a consultant or Separate Contractor employed by the Owner; (2) by changes ordered in the Work by the Owner; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties documented in accordance with Section 14.1.6.2, or other causes beyond the Design-Builder's control; or (4) by other causes that the Design-Builder asserts, and the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment and, including authorized adjustments, is the total amount payable by the Owner to the Design Builder for performance of the Work under the Design-Build Documents. Payments to the Design-Builder under the Design-Build Documents will be made as provided for in Wis. Stat. § 16.855(19)(a), as the Work progresses on the Project. Payment requests will be processed monthly, except for special circumstances approved by Owner. The Design-Builder must perform all of the conditions required for payment and must have met the obligations which are necessary to qualify for any partial payments.

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.1.1 Pursuant to Wis. Stat. § 16.855(19)(a), as the Work progresses under this Contract for Construction, the Owner, from time to time, shall grant to the Design-Builder an estimate of the amount and proportionate value of the work properly completed, which shall entitle the Design-Builder to receive the amount, less the retainage, from the proper fund. The retainage shall be an amount equal to not more than five (5) percent of the estimate until fifty percent (50%) of the work has been completed. At fifty percent (50%) completion, no additional amounts shall be retained, and partial payments shall be made in full to the Contractor unless the Owner certifies that the job is not proceeding satisfactorily. At fifty percent (50%) completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than ten percent (10%) of the value of the Work completed. Upon Substantial Completion of the Work, any amount retained shall be paid to the Design-Builder, less the value of any required corrective Work or uncompleted Work. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by the Design-Builder and delivered to the Work or properly stored and suitable for incorporation in the Work embraced in the contract.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as 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 properly 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 Design-Builder with the requirement that it holds clear title to all property of every description which serves as the basis for the Application for Payment. Design-Builder warrants that title to any such property is being transferred to the Owner free and clear of all liens. If requested by the Owner, the Design-Builder shall produce satisfactory evidence of transfer of title from suppliers and the Architect, Consultants and Contractors to the Design-Builder, without reservation, or with adequate waiver of lien. These payments may include any fabricated or manufactured materials and components specified, previously paid for by Design-Builder and delivered to the site, properly stored, and suitable for incorporation into the Work embraced in the Contract. The Design-Builder shall identify the method of storage for such materials. Proper evidence of insurance shall be presented to protect the interest of the Owner. If payment is intended to be requested for any off-site storage items, such items shall be listed as separate lines in the request and certification for payment, cost breakdown. Upon Owner's request, Owner shall be allowed to verify such materials and equipment no matter the location stored and located.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work. The Design-Builder shall have the sole responsibility for obtaining proper insurance on, as well as the responsibility for the care and protection of materials and Work upon which payments have been made. The Design-Builder shall be responsible for the restoration of any damaged Work. Nothing herein shall operate as a waiver of the rights of the Owner to require fulfillment of all of the terms of the Contract.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner 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 to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, 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 Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, 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 failure to carry out the Work in accordance with the Design-Build Documents.

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

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered. In paying any unpaid bills of the Design-Builder relating to the Work, the Owner shall be deemed the agent of the Design-Builder, and any payment so made by the Owner shall be considered as a payment made under the Contract by the Owner to the Design-Builder for its account and the Owner shall not be liable to the Design-Builder for any such payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment 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 Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, 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 Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.6.7.1 Pursuant to Wis. Stat. § 16.855(19)(b) and § 16.855(14m)(a) retainage on a subcontract shall occur and be in amounts and on a schedule equal to the retainage schedule in the contract between the Design-Builder and the Owner.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Design-Build Documents, the Design-Builder 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 Architect, Consultant, Contractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Design-Builder. If approved by the applicable court, when required, the Design-Builder 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 Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. In the event the Design-Builder elects to stop Work under this Section 9.7, upon recommencing the Work, the Design-Builder may seek a Change Order to assert a claim for adjustment of the Contract Time and the Contract Sum by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build 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 Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner 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 Design-Builder to complete all Work in accordance with the Design-Build Documents.

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

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build 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.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance 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 Design-Builder 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 Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder 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 Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder 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 Design-Build Documents. The Design-Builder will prepare a list of items of Work remaining to be performed or corrected on those portions of the Project that the Owner intends to take possession of or use.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder provides certification that all debts and claims against this Project have either been paid in full or otherwise satisfied and give final evidence of release of all liens against the Project, the Owner, and all proceeds payable hereunder. The Design-Builder shall certify upon such payment request that the data contained therein is current, accurate, and complete. Design-Builder shall permit, if requested by Owner's Representative, the final inspection to be jointly conducted by the Design-Builder and Owner's Representative. The Design-Builder shall give notice at least 72 hours in advance of the time set for final inspection. Upon completion of the Work and before receiving final payment for the Work, as required by law, the Design-Builder shall file with Owner's Representative an affidavit stating that the Design-Builder has complied fully with Wis. Stat. § 103.49(4r) and that the Design-Builder has received an affidavit from each of the Design-Builder's agents, and Contractors stating that they also have complied fully with Wis. Stat. § 103.49(4r).

§ 9.10.2.1 As a condition precedent to final payment, all corrective actions to remedy deficiencies in the Work required by Design-Build Documents and Work identified on the punch list must have been completed. In addition, where required by Design-Build Documents, all training of the Owner's staff in the proper operation and maintenance of the Work shall have been completed, Operating and Maintenance Manuals and Instructions as well as drawings marked up to reflect "as built" conditions must have been transmitted to Owner's Representative and all warranty certificates signed and presented for Owner's Representative acceptance.

§ 9.10.2.2 When to the satisfaction of Owner's Representative the Work has been completed, and is of the quality required by the Design-Build Documents, Owner's Representative may authorize payment of all sums then due the Design-Builder. Receipt of the final payment, as provided for herein shall constitute a waiver of any and all claims against the Owner arising out of, under, or incident to the Work performed under the Contract.

§ 9.10.2.3 If the Design-Builder fails to submit a request for final payment or make satisfactory arrangements with Owner's Representative within thirty calendar days of the final inspection or accepted punch list, no further payments will be made and the Contract will be closed. The last request for Certification for Payment will be considered the final payment under the terms and conditions of the Contract.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, and the Owner so confirms, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of 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 Design-Build Documents;
- .3 terms of special warranties required by the Design-Build Documents;
- .4 audits performed by the Owner after final payment;
- .5 any warranty or guarantee required by the Design-Build Documents;
- .6 any other right surviving the Owner as to which the Design-Builder was specifically given notice before or during the final inspection and final payment process; or
- .7 rights surviving to the Owner as a matter of law.

§ 9.10.5 Acceptance of final payment by the Design-Builder, shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Design-Builder, its Architect, Consultants, or Contractors, or other persons or entities providing services or work for the Design-Builder will perform all Work on the project in a safe and responsible manner. In particular, Design-Builder shall, at its own expense, conform to the safety policies and regulations established by the Design-Builder and shall comply with all specific safety requirements promulgated by any government authority, including without limitation the requirements of the Occupations Safety and Health Act of 1970 and the Construction Safety Act of 1969 and all standards and regulations which have been or shall be promulgated by the parties or agencies which administer the Acts. Design-Builder shall comply with said requirements, standards and regulations, and require and be directly responsible for compliance therewith on the part of its Architect, Consultants, or Contractors, or other persons or entities providing services or work for the Design-Builder; and shall directly receive, respond to, defend, and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its failure on the part of its Architect, Consultants, or Contractors, or other persons or entities providing services or work for the Design-Builder to so comply.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall strictly comply with, and bear full responsibility for, any safety procedure set forth in the Design-Build Documents. The Design-Builder shall further indemnify Owner for any cost and expense, including attorney fees and other legal expenses, resulting from any such failure to abide by any safety procedure set forth in the Design-Build Documents. At the sole discretion of Owner, the Design-Builder may also be subject to termination of the Contract for default. The Design-Builder shall be responsible for all precautions for the safety of, and protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby (including, but not limited to the public, and the Owner's personnel and agents);
- .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 Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder 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. Design-Builder shall have properly qualified and trained personnel on safety means and methods, and properly qualified supervision.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, all safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections. At a minimum, the Design-Builder shall:

- .1 provide appropriate safety barricades, signs, and signal lights;
- .2 comply with any safety requirement published by any governmental authority with jurisdiction over the site, including federal, state, or local jurisdictions;
- .3 ensure that any additional measures which are reasonably necessary for the purposes stated are taken.

§ 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 Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14. If the Owner becomes aware of any noncompliance by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, with the safety conditions of this Contract or of any condition caused by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, which poses a serious or imminent danger to the health or safety of the public or to Owner personnel, for which the Design-Builder has been previously notified of, and the Design-Builder has failed to correct, the Owner has the right stop all Work until satisfactory correction action has been taken. Satisfactory correction will be at the sole discretion of the Owner.

§ 10.2.5.2 In the event of temporary suspension of Work, or during inclement weather, or whenever Owner shall direct, the Design-Builder shall protect all Work and materials against damage or injury from the weather. If, in the opinion of Owner's Representative, any Work or materials have been damaged or injured by reason of failure on the part of the Design-Builder such materials shall be removed and replaced at the expense of the Design-Builder.

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

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

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. The Design-Builder shall use the least hazardous materials, equipment, and processes to execute the Work. The Design-Builder shall comply with all OSHA rules and regulations. If the Design-Builder encounters a condition that it suspects may contain a hazardous material or substance that is not addressed in the Design-Build 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 Design-Builder, the Design-Builder shall, upon recognizing the condition, take all reasonable steps necessary to prevent bodily injury or death, up to and including stopping the Work.

§ 10.3.2 Design-Builder shall give notice to Owner of the condition that may contain the hazardous material or substance. Design-Builder shall have the right to engage a licensed laboratory/subcontractor to test the suspected hazardous material or substance. Owner will negotiate for reimbursement of reasonable testing costs if the test results do not verify the presence of a hazardous material or

substance by a Change Order. Owner, by Change Order, will reimburse Design-Builder for reasonable testing costs if the tests results verify the presence of a hazardous material or substance.

§ 10.3.3 When hazardous materials or substances, not addressed in the Design-Build Documents, are required to be removed or disturbed to complete the Work, Design-Builder and Owner will negotiate how to complete that new work. If Design-Builder agrees to perform this work, a Change Order will be negotiated potentially adjusting the Contract Sum and Contract Time. Such new work will be at the sole direction of the Owner.

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

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder 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.

(Paragraph deleted)

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, 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 an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder 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 the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

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

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

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

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build 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 12 OWNERSHIP OF DOCUMENTS

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. Any drawings, specifications, and other Instruments of Service for this Project shall become the property of the Owner on completion and/or acceptance of the Work, or upon any basis of termination of the Contract. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved ownership.

§ 12.1.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.2 All drawing and specifications, renderings, models, scale details, approved copies of shop drawings and other such documents prepared by the Design-Builder pursuant to this Agreement, shall become the property of Owner on completion or upon termination of the Agreement, and shall be delivered to Owner upon request.

§ 12.3 Owner will not unilaterally construct additional, identical building(s) based on the architectural/engineering work of this Agreement without written agreement by the Design-Builder. Documents prepared under this Agreement may be issued by Owner for information purposes without additional compensation to the Design Builder.

(Paragraph deleted)

§ 12.4 Specifications and isolated, detail drawings inherent to the architectural/engineering design of the Project, whether provided by Owner or generated by the Design-Builder pursuant to this Agreement, shall be available to any party and each such party shall have the

right to use this work product for other purposes. Each party agrees to be responsible for any liability incurred by their use of this work product for other purposes.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for reasonable delays or reasonable damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any agreed upon expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for reasonable expenses incurred in the interruption and resumption of the Design-Builder's Work that the Owner agrees to. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination of this Agreement that is not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination when agreed to by Owner. This includes the costs attributable to the Design-Builder's termination of agreements with the Architect, Consultants and Contractors already in place prior to the termination notice. All such costs are limited to accepted industry standards, and in no event may such costs include consequential damages. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, 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; or
- .3** because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 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.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner, as its sole remedy, payment for Work properly executed, including reasonable and mutually agreed upon costs incurred by reason of such termination.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

The Owner may exercise any and all rights or remedies provided for herein, by law or in equity, either concurrently or singly in its sole discretion.

§ 13.2.2.2 When any of the reasons described in Section 13.2.2.1 exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, three days' notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon secured for this Project by the Design-Builder; and
- .2 accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment for the Work the Design-Builder performed until the Work is finished by another contractor in consideration of 13.2.2.4.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

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

§ 13.2.3.2 The Contract Sum and Contract Time shall be reasonably adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include reasonable 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 Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time and at its sole discretion, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder 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 Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work properly executed, and reasonable costs incurred by reason of such termination, including reasonable costs attributable to termination of subcontracts. For avoidance of doubt, "reasonable costs incurred by reason of such termination" shall not include lost profits or payment due to the Architect, Consultants, or Contractors for any period of time subsequent to termination of the Contract.

§ 13.2.4.4 The Design-Builder shall be paid for all Work performed to the effective date of termination, and any "Reimbursable Expenses" outstanding as of the date of termination. The term "Reimbursable Expenses" shall include the cost of personal property or materials which meet requirements of the Design-Build Documents and have been purchased by the Design-Builder for incorporation into the Work but not yet incorporated therein; lease payments due to an unaffiliated third party lessor for equipment provided to the Project, where the lease term extends beyond the termination date of this Contract and the Design-Builder is unable to terminate said lease; and other costs approved by the Owner. Reimbursable Expenses do not include lost profits or payments due to the Architect, a Consultant or a Contractor for any period of time subsequent to termination of the Contract. Upon payment of the Reimbursable Expenses, the Design-Builder shall deliver to the Owner any materials or personal property for which said payment has been made.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by the Design-Builder seeking, as a matter of right, payment of money, 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 Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the Design-Builder.

§ 14.1.2 **Time Limits on Claims.** The Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Design-Builder waives all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by the Design-Builder must be initiated by written notice to the Owner within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Design-Builder first recognizes the condition giving rise to the Claim, whichever is later.

(Paragraph deleted)

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, and any subsequent judicial action or appeal, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents. The Owner and the Design-Builder shall act in good faith to efficiently and fairly resolve Claims and disputes arising under the Agreement in order to avoid, wherever possible, formal legal proceedings.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Design-Builder expressly waives any rights that it otherwise might have to include overhead costs for extended or unabsorbed overhead in a Claim for an increase in the Contract Sum.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder'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.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions in the locale in which the Work is being performed were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. A determination on a Claim in accordance with Section 14.1.6.2 shall only be made by the Owner upon written request by the Design-Builder. Not all extension(s) in the allowable time for completion, when granted by the Owner, will result in additional compensation to the Design-Builder.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder 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 Design-Builder 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 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 As a condition precedent to Design-Builder's ability to pursue any monetary claim under Wis. Stat. §§ 16.008 and 775.01 or any form of judicial action against Owner, all Claims initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered shall be referred to the Owner for initial decision in accordance with the procedures listed below.

§ 14.2.2 Procedure

§ 14.2.2.1 Intentionally Deleted.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

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

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

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the
(Paragraphs deleted)
parties.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the Design-Builder may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Litigation

§ 14.3.1

(Paragraphs deleted)

Any judicial action relating to the construction, interpretation, or enforcement of the Design-Build Documents including without limitation, the Design-Builder's claims, demands, and causes of action for additional construction costs, delay damages, and other amounts owed hereunder, shall be brought in the Dane County Circuit Court in Madison, Wisconsin. The Design-Builder hereby consents to personal jurisdiction in that venue, and waives any defenses that the Design-Builder otherwise might have relating thereto.

§ 14.3.2 The Design-Builder hereby waives its right to a jury trial in connection with any judicial action or proceeding that may arise by and between the Owner and the Design-Builder concerning the construction, interpretation, or enforcement of the Design-Build Documents including, without limitation, any claims, demands, or causes of action that the Design-Builder hereafter may assert against the Owner for additional construction costs, delay damages, and other amounts.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the laws of the State of Wisconsin.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. The Owner may withhold its consent in its sole discretion. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 Antitrust Agreement. The Design-Builder and the Owner recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Owner. Therefore, the Design-Builder hereby assigns to the Owner any and all claims for such overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from antitrust violations commencing after the price is established under this Contract and any Change Order thereto.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by mail, by courier, or by electronic transmission when there is reasonable evidence that the notice was read by the recipient.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build 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.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder 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 in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder 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 Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors who need to know the content of such information 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 Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract 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.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build 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.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ 15.8.3 Nondiscrimination/Affirmative Action -

§ 15.8.3.1 In connection with the performance of Work under this Contract, the Design-Builder agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. §51.01(5), sexual orientation, national origin, or any other basis prohibited by law. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Except with respect to sexual orientation, the Design-Builder further agrees to take affirmative action to ensure equal employment opportunities. This contract provision shall be incorporated into the contracts between the Design-Builder, the Architect, Consultants and Contractors.

§ 15.8.3.2 Contracts with a value of fifty thousand dollars (\$50,000) or more require the Design-Builder to submit a written affirmative action plan acceptable under Wisconsin Statutes. An exemption occurs from this requirement if the Design-Builder has a Work force of less than thirty (30) employees. The Contractor is responsible for obtaining affirmative action compliance from the Architect, Consultants and Contractors.

§ 15.8.3.3 The Design-Builder should establish and take appropriate initiatives to reach goals and timetables for minority and female utilization which shall be based on appropriate work force, demographic, or other relevant data which shall cover construction projects or construction contracts performed in specific geographical areas. The goals shall be applicable to the Design-Builder's, the Architect's, Consultant's and Contractor's entire work force which is working in the area covered by the goals. The goals are established and are as follows:

County	Women Goal	Minority Goal
Adams/Juneau/Monroe/Vernon	12%	2%
Ashland/Bayfield/Douglas/Price	9%	6%
Barron/Sawyer/Washburn	13%	4%
Brown	11%	9%
Buffalo/Jackson/Pepin/Trempealeau	12%	5%
Burnett/Polk	11%	2%
Calumet/Winnebago	11%	3%
Chippewa/Rusk	12%	2%
Clark/Taylor	16%	2%
Columbia	12%	2%
Crawford/Grant/Richland	14%	2%
Dane	9%	9%
Dodge	12%	3%
Door/Kewaunee/Manitowoc	13%	3%
Dunn/Eau Claire	11%	3%
Florence/Forest/Marinette/Oconto	13%	2%
Fond du Lac	11%	4%
Green/Iowa/LaFayette	13%	1%
Green Lake/Marquette/Waushara	10%	4%
Iron/Oneida/Vilas	9%	3%
Jefferson	12%	4%
Kenosha	7%	10%
La Crosse	10%	4%
Langlade/Lincoln/Menominee/Shawano	11%	7%
Marathon	12%	4%
Milwaukee	10%	29%
Outagamie	10%	5%
Ozaukee	8%	3%
Pierce/St Croix	12%	2%
Portage	13%	3%
Rock	11%	7%
Sauk	10%	2%
Sheboygan	14%	5%
Walworth	10%	8%
Washington	9%	3%
Waukesha	7%	4%
Waupaca	11%	2%
Wood	12%	2%
Source: Combined Occupation Distribution: 2000 Census		

§ 15.8.3.4 Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom Design-Builder has a collective bargaining agreement, to refer to either minorities or women shall excuse the Design-Builder's required initiatives under these specifications.

§ 15.8.3.5 The Design-Builder agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the Owner that sets forth the provisions of this Section 15.5.7.

§ 15.8.3.6 Failure to comply with the conditions of this Section 15.5.7 may result in the Design-Builder becoming declared an "ineligible" Design-Builder, termination of the Contract, or withholding of payment.

§ 15.9 Minimum Wages

§ 15.9.1 The Design-Builder shall post, at an appropriate conspicuous point on the site of the Project, a schedule showing all

determined minimum wage rates for the various classes of laborers and mechanics to be engaged in Work on the Project under this Contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

§ 15.10 Electronic signatures are acceptable for all agreement and related documents.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™–2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™–2014, Exhibit B, Insurance and Bonds, or the following:
- .4 Intentionally deleted.
- .5 Intentionally deleted.

- .6 Other:
 - .1 Request For Qualifications dated XX/XX/XXXX
 - .2 Statement of Qualifications submitted by Design-Builder dated YY/YY/YYYY

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

OWNER (Signature)

(Printed name and title)

DESIGN-BUILDER (Signature)

(Printed name and title)

Additions and Deletions Report for AIA® Document A141® – 2014

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:28:33 CT on 03/28/2025.

PAGE 1

Board of Regents of the University of Wisconsin System
c/o UW System Administration – CPB
780 Regent Street
Madison, WI 53715

PAGE 2

12 ~~COPYRIGHTS AND LICENSES~~ OWNERSHIP OF DOCUMENTS

...

This ~~Agreement~~ Agreement, also referred to as "Contract", is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.) In the event of an inconsistency or conflict between or among the provisions of this Agreement, the inconsistency shall be resolved by the higher quality and lower risk provision for the Owner.

...

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

See attached documents in Article 16.

...

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

See attached documents in Article 16.

...

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

See attached documents in Article 16.

§ 1.1.4 ~~The Owner's anticipated Sustainable Objective for the Project, if any:~~

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™ 2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)
Intentionally deleted.

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

Intentionally deleted.

PAGE 3

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

XXXXX

...

See attached documents in Article 16.

...

See attached documents in Article 16.

...

See attached documents in Article 16.

...

See attached documents in Article 16.

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§ 1.2.1 The Owner identifies the following ~~representative~~ Owner's Representative in accordance with Section 7.1.1:

...

§ 1.2.2 The persons or entities, in addition to the Owner's ~~representative~~, Representative, who are required to review the Design-Builder's Submittals are as follows:

...

N/A

§ 1.2.3 The Owner will retain the following consultants and ~~separate contractors~~; Separate Contractors:

...

See attached documents in Article 16.

...

§ 1.2.5 ~~Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party. The Design-Builder's representative shall not be changed without ten days' prior written notice to the Owner. Owner reserves the right to change its designated Owner's Representative at any time for any reason. If the Owner's Representative is changed, written notice shall be provided within a reasonable time period.~~

...

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, Claim, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ — Arbitration pursuant to Section 14.4

☐ — Litigation in a court of competent jurisdiction

☐ — Other: *(Specify)*

in accordance with Section 14.3:

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§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by ~~separate contractors.~~ Separate Contractors.

...

§ 1.4.7 Owner. The Owner is the ~~person or entity identified as such in the Agreement and~~ Board of Regents of the University of Wisconsin System. The Board of Regents of the University of Wisconsin System exercises the powers and duties prescribed by Wis. Stat. § 16.855. The terms "Board", "Board of Regents", or "The Board of Regents" as used in this document also refer to the Owner. The Owner is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement that has contracted with the Owner to perform the Work as required by the Design-Build Documents and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

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§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made ~~monthly, in proportion to services performed.~~ For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows: *(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)*

XXXXXX

...

If applicable, see attached documents in Section 16.

...

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the ~~Project,~~ Project. All Reimbursable Expenses must be authorized in advance by the Owner. Examples of Reimbursable Expenses that could be incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and ~~Contractors,~~ Contractors are, as follows:

- ~~.1 Transportation and authorized out-of-town travel and subsistence; Authorized out-of-town travel and subsistence, for meetings, tours and presentations not included in the current Design-Builder's contract;~~
- ~~.2 Dedicated data and communication services, teleconferences, Project web sites, and extranets; Specialized project web sites, and project based software specifically needed for the Project and previously authorized by the Owner;~~
- ~~.3 Fees paid for securing approval of authorities having jurisdiction over the Project; Project, including reproduction and delivery costs required for such approval;~~
- ~~.4 Printing, reproductions, plots, standard form documents; Intentionally deleted;~~
- ~~.5 Postage, handling and delivery; Intentionally deleted;~~
- ~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner; Intentionally deleted;~~

...

- ~~.8 All taxes levied on professional services and on reimbursable expenses;~~
- ~~.9 Geotechnical Engineering Services; and~~
- ~~.9—10 Topographical surveys.~~
- ~~.11 Other Project-related expenditures, if authorized in advance by the Owner.~~

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of zero percent (0 %) of the expenses incurred.

...

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid thirty (30) 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 Design-Builder.

...

~~%—twelve percent (12%) annum or as dictated by State Statute~~

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§ 3.1.3.1.1 Any Work necessary to be performed after regular working hours, on Sundays, or legal holidays, and for which the Design-Builder is responsible, shall be performed without additional expense to the Owner.

...

- ~~.2 Project schedule~~ Schedule status;

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§ 3.1.9.1 The Design-Builder, ~~promptly after within 1 week~~ of execution of this Agreement, shall prepare and submit for the Owner's information a ~~schedule~~ Project Schedule for the Work. The ~~schedule~~ Project Schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised ~~at appropriate intervals as required by the conditions of the Work and Project, to reflect the progress of the Work~~ at least monthly prior to Mobilization and twice per month during construction, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The Work shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Any delays in Design-Builder's performance of the Work relative to the Project Schedule shall be governed by Section 8.2 hereof.

...

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's ~~schedule~~ Project Schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be ~~periodically~~ updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

...

§ 3.1.12 **Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Design-Builder's warranty under this Section is not exclusive, and any other warranties, express or implied, may also be exercised by the Owner at its option.

§ 3.1.12.1 All material, equipment, or other special warranties required by the Design-Build Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.5.

§ 3.1.12.2 The Design-Builder warrants to the Owner that all materials and supplies used in the Work are free from all liens, claims, or encumbrances, and good title to materials and supplies is retained by the Design-Builder and shall be conveyed prior to approval of final payment. § 3.1.12.3 The Design-Builder shall remedy, at the Design-Builder's expense, any defect in the Work. In addition, the Design-Builder shall remedy, at the Design-Builder's expense, any damage to the Owner's property, whether controlled or owned, including but not limited to damage to structures, utilities, landscaping, and existing conditions when such damage results from:

- .1 the Design-Builder's failure to conform to Design-Build Document requirements, including any failure to comply with applicable codes, standards, or specifications;
- .2 any defect in equipment, material, workmanship, or design furnished by the Design-Builder, Contractors, or subcontractors, regardless of tier, or any failure of such work to meet the quality and performance standards set forth in the contract documents;
- .3 Negligence, misconduct, or failure to exercise due care by the Design-Builder or its subcontractors, employees, or agents during the execution of the work;
- .4 Accidental or incidental damage to the Owner's property resulting from construction activities, including damage caused by equipment, machinery, or other construction-related processes; or
- .5 Any damage to the Owner's property that occurs as a result of any act, omission, or failure to act on the part of the Design-Builder or any of its Contractors or agents.

The Design-Builder shall promptly notify the Owner of any damage and shall take appropriate corrective measures to restore the property to its original condition or to a condition satisfactory to the Owner, at no additional cost.

§ 3.1.12.4 The Owner's Representative shall give notice to the Design-Builder within a reasonable time after discovery of any failure, defect, or damage.

§ 3.1.12.5 If, after the receipt of a notice of a claim under this warranty, the Design-Builder fails to remedy any failure, defect, or damage within a time judged reasonable by the Owner's Representative, the Owner's Representative shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage, at the Design-Builder's expense.

§ 3.1.12.6 All warranties under this Contract or in any way related to this Contract, express or implied, shall be obtained for and shall be subject to direct enforcement by the Owner. The Design-Builder shall provide in each subcontract, or other purchase agreement, for the assignment to the Owner of all such warranties and for the right of enforcement by the Owner. In addition, if necessary the Design-Builder shall:

- .1 obtain for the Owner's benefit all warranties that would be given in normal commercial practice;

- .2 require all warranties to be executed, in writing, for the benefit of the Owner, if so directed by the Owner's Representative;
- .3 enforce all warranties for the benefit of the Owner; and
- .4 obtain for the Owner's benefit all warranties given by any Contractor, at any tier, if such warranty is in excess of the one year warranty period set forth herein.

§ 3.1.12.7 Unless a defect is caused by the negligence of the Design-Builder or Contractors at any tier, the Design-Builder shall not be liable for the repair of any defects of material or design furnished by the Owner.

§ 3.1.12.8 The Design-Builder shall require any Contractor manufacturers or suppliers to execute their warranties, in writing, directly to the Owner.

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§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its ~~separate contractors~~ Separate Contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

...

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, 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, but only to the extent caused by the ~~negligent acts or omissions of the~~ Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. 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 3.1.14.

...

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; 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 an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.15 Intentionally deleted

...

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in ~~Section 1.1. The~~ Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

- ...
- .2 ~~a preliminary estimate of the Cost of the Work, and, if necessary,~~ recommendations to adjust the Owner's Criteria to ~~conform to~~ reduce the Owner's budget;

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§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder 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.~~ Work within the specified time, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work. No materials or supplies which are to become part of the Work shall be purchased by the Design-Builder or by any Contractor subject to any chattel mortgage, conditional sale contract, or other agreement by which a security interest is retained by the seller.

...

§ 5.3.2.1 It is not the intention of the Owner to limit or restrict competition by the use of any reference to a particular manufacturer, process, technique, catalog number or other identifying information. Such proprietary specifications are intended to establish a level of quality or the minimum essential requirements to which the Design-Builder must conform, unless more explicit restrictions are stated to apply.

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~~The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.~~ all sales, consumer, use and similar taxes required by law assessed to or arising out of the construction of the Project. Per 2017 Wis. Stat. § 77.54 (9m), building materials sold to a construction contractor that will become a component of a facility owned by the Board of Regents of the University of Wisconsin System are exempt from sales and use tax.

...

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution ~~of the Work and Substantial Completion of the Project, and completion of the Work,~~ and shall provide evidence of such permits, licenses, and approvals before commencement of the Work . Payment for use of such services and utilities before Substantial Completion shall be in accordance with provisions of the Contract.

§ 5.5.2 The Design-Builder 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.~~ Work and/or relating to environmental quality and safety, the performance of the Work, the protection of adjacent property, and the maintenance of passageways, guard fences, or other protective facilities. The Owner shall be notified by the Design-Builder of any notices of noncompliance or violation associated with Work required by the Design-Build Documents.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build 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 Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than ~~24~~ 14 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the ~~Design-Builder in writing.~~ Design-Builder, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

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§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable ~~objection.~~ objection, except for projects over \$600,000 where Wis. Stat. §16.855 (14)(d) requires the project to be publicly bid and awarded to the lowest bidding Mechanical, Electrical, Plumbing, and Sprinkler subcontractors.

...

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable ~~and timely objection.~~ The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection. The Design-Builder shall contract with the lowest bidding Mechanical, Electrical, Plumbing, and Sprinkler subcontractors as required by Wis. Stat. §16.855 (14)(d) for those projects that exceed \$600,000..

...

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, and met all other applicable criteria, 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 person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.7.3.2 Pursuant to Wis. Stat. §16.855 (14m)(a), any contract that the Design-Builder (referred to below as general prime contractor) enters into with a subcontractor as defined under Wis. Stat. §16.855 (14)(e) shall include the following mandatory provisions:

PROMPT PAYMENT (General prime contractor) shall pay (mechanical, electrical, or plumbing subcontractor) in accordance with Wis. Stat §16.855(19)(b), for work that has been satisfactorily completed and properly invoiced by (mechanical, electrical, or plumbing subcontractor). A payment is timely if it is mailed, delivered, or transferred to (mechanical, electrical, or plumbing subcontractor) by the deadline under Wis. Stat §16.855(19)(b).

If (mechanical, electrical, or plumbing subcontractor) is not paid by the deadline in this Contract, (general prime contractor) shall pay interest on the balance due from the eighth day after the (general prime contractor) receives payment from the Board of Regents for the work for which payment is due and owing to (mechanical, electrical, or plumbing subcontractor), at the rate specified in Wis. Stat §71.82, compounded monthly.

A (mechanical, electrical, or plumbing subcontractor) that receives payment as provided under this Contract and that subcontracts with another entity shall pay those subcontractors, and be liable for interest on late payments to

those subcontractors, in the same manner as the (general prime contractor) is required to pay the (mechanical, electrical, or plumbing subcontractor) under this Contract.

INSURANCE AND BONDS (mechanical, electrical, or plumbing subcontractor) shall not commence work under this Contract until it has obtained all necessary insurance required of (mechanical, electrical, or plumbing subcontractor) in the contract between the (general prime contractor) and the Board of Regents.

(Mechanical, electrical, or plumbing subcontractor) shall provide a separate 100 percent performance bond and a separate 100 percent payment bond to the benefit of the (general prime contractor) as the sole named obligee. Original bonds shall be given to the (general prime contractor) and a copy shall be given to the Board of Regents no later than 10 days after execution of this Contract.

INDEMNIFICATION To the fullest extent permitted by law, (mechanical, electrical, or plumbing subcontractor) shall defend, indemnify, and hold harmless (general prime contractor) and its officers, directors, agents, and any others whom (general prime contractor) is required to indemnify under its contract with the Board of Regents, and the employees of any of them, from and against claims, damages, fines, penalties, losses, and expenses, including but not limited to attorney fees, arising in any way out of or resulting from the performance of the work under this Contract, but only to the extent such claim, damage, fine, penalty, loss, or expense: (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property, including but not limited to loss of use resulting therefrom and is caused by the negligence, or acts or omissions, of (mechanical, electrical, or plumbing subcontractor), its subcontractors, any of their employees, and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, or (2) as related to such claims, damages, fines, penalties, losses, and expense of or against (general prime contractor), results from or arises out of the negligence of the (general prime contractor) or other fault in providing general supervision or oversight of the work of (mechanical, electrical, or plumbing subcontractor) or (3) as related to claims, damages, fines, penalties, losses, and expense against the Board of Regents arises out of the Board's status as owner of the project or project site.

In addition (mechanical, electrical, or plumbing subcontractor) shall defend, indemnify, and hold harmless (general prime contractor) and its officers, directors, agents, and any others (general prime contractor) is required to indemnify under its contract with the Board, and the employees of any of them, from any liability, including liability resulting from a violation of any applicable safe place act, that (general prime contractor) or the Owner incurs to any employee of (mechanical, electrical, or plumbing subcontractor) or any third party where the liability arises from a derivative claim from said employee, when the liability arises out of the failure of the (general prime contractor) or the Owner to properly supervise, inspect, or approve the work or work area of (mechanical, electrical, or plumbing subcontractor), but only to the extent that the liability arises out of the acts or omissions of (mechanical, electrical, or plumbing subcontractor), its employees, or anyone for whom (mechanical, electrical, or plumbing subcontractor) may be liable, or from (mechanical, electrical, or plumbing subcontractor's) breach of its contractual responsibilities or arises out of (general prime contractor's) negligence or other fault in providing general supervision or oversight of (mechanical, electrical, or plumbing subcontractor's) work or arises out of The Board of Regents' status as owner of the project or project site. In claims against (general prime contractor) or the Owner by an employee of (mechanical, electrical, or plumbing subcontractor) or its subcontractors or anyone for whose acts (mechanical, electrical, or plumbing subcontractor) may be liable, the indemnification obligation of this paragraph is not limited by a limitation on amount or type of damage, compensation, or other benefits payable by or for the (mechanical, electrical, or plumbing subcontractor) subcontractors under workers compensation act.

Except as identified above, the obligations of (mechanical, electrical, or plumbing subcontractor) under this indemnification do not extend to the liability of (general prime contractor) and its agents or employees arising out of (1) preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; (2) the giving of or failure to give directions or instructions by the (general prime contractor) or the Board of Regents or their agents or employees provided the giving or failure to give is the cause of the injury or damage; or (3) the acts or omissions of other subcontractors.

RETAINAGE Retainage shall occur and be in amounts and on a schedule equal to that in the contract between

(general prime contractor) and the Owner. Pursuant to Wis. Stat. §16.855(19)(b), Retainage between general prime contractor and mechanical, electrical and plumbing subcontractors is governed as follows:

As the work progresses under any subcontract as defined under Wis. Stat. § (14)(e) for construction of a project, the general prime contractor shall, upon request of a subcontractor, pay to the subcontractor an amount equal to the proportionate value of the subcontractor's work properly completed, less retainage. The retainage shall be an amount equal to not more than 5 percent of the subcontractor's work completed until 50 percent of the subcontractor's work has been completed. At 50 percent completion, no additional amounts may be retained, and partial payments shall be made in full to the subcontractor unless the Board certifies that the subcontractor's work is not proceeding satisfactorily. At 50 percent completion or any time thereafter when the progress of the subcontractor's work is not satisfactory, additional amounts may be retained but the total retainage may not be more than 10 percent of the value of the work completed. Upon substantial completion of the subcontractor's work, any amount retained shall be paid to the subcontractor, less the value of any required corrective work or uncompleted work. All payments the general prime contractor makes under this paragraph shall be within 7 calendar days after the date on which the general prime contractor receives payment from the Board.

Pursuant to Wis. Stat. §16.855(14m)(b), subcontracts under sub (14)(e) must include a scope of work clause that is identical to the scope of work clause on which the subcontractor bid. The following Scope of Work language shall be included in the contracts between the Design-Builder and subcontractors:

SCOPE OF WORK The mechanical, electrical and plumbing subcontractor scope of work is identical to the general prime contractor scope of work included in these bidding and contract documents. By submitting and signing a bid, all bidders have examined all the Bidding Documents listed in the Table of Contents of the project Specifications. The successful bidders will be required to do all work which is shown on the drawings, mentioned in the Specifications, or reasonably implied as necessary to complete the division of work bid for this project.

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The Design-Builder 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 Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment. The Design-Builder shall make reasonable efforts to avoid interruptions to the Owner's operations.

...

~~The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.~~ **§ 5.10.1** The Design-Builder 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 Design-Build Documents.

§ 5.10.2 The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a Separate Contractor except with written consent of the Owner and of such Separate Contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a Separate Contractor the Design-Builder's consent to cutting or otherwise altering the Work.

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

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The Design-Builder shall provide the Owner and its ~~separate contractors~~ Separate Contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

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§ 5.13.1.1 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 to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

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

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or ~~separate contractors~~ the Owner Separate Contractors, ~~the Owner or its Separate Contractors~~ shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

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§ 5.14.1 The Design-Builder shall afford the Owner and ~~separate contractors~~ Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends for proper execution or results upon construction or operations by the Owner or a ~~separate contractor~~ Separate Contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or ~~separate contractor~~ Separate Contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report discrepancies or defects in the construction or operations shall constitute an acknowledgment that the Owner's or ~~separate contractor's~~ Separate Contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

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

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or ~~separate contractors~~ Separate Contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each ~~separate contractor~~ Separate Contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or ~~separate contractors~~ Separate Contractors in Section 5.10.

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If a dispute arises among the Design-Builder, ~~separate contractors~~ 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 will allocate the cost among those responsible.

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§ 6.1.4 Except in cases of emergency, no changes shall be made to the Work by the Design-Builder without having prior approval of Owner through a Change Directive or Change Order. In addition, the Design-Builder shall not be entitled to any increase in the Contract Sum or Contract Time without first receiving prior written authorization from the Owner for the same. If the parties disagree whether the work to be performed constitutes a change in Work or disagree as to any adjustments in the Contract Sum or Contract Time, Design-Builder shall nonetheless diligently proceed with the Work if directed by the Owner while the parties resolve their dispute. In any case, the parties reserve their rights as to the disputed amount.

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following: **§ 6.2.1** A Change Order is a written instrument signed by the Owner and Design-Builder 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.2.2 The inclusion of terms and conditions in the supporting documentation of a Change Order shall have no bearing on the contract between the Owner and Design-Builder, and shall not change any of the terms and conditions between the Owner and Design-Builder. Such supporting documentation shall not be construed as creating any expressed or implied contractual obligation of those terms and conditions between Owner and the Design-Builder's, or any of Design-Builder's Architect, Consultants, Contractors, suppliers or vendors.

§ 6.2.3 A Change Order may be proposed by the Owner or the Design-Builder. When a Change Order is proposed, the following procedures shall apply:

- .1 if requested by Owner's Representative, the Design-Builder shall prepare and submit a detailed proposal, including all cost and time adjustments to which the Design-Builder believes it will be entitled if the change proposed is incorporated into the Agreement. Owner's Representative shall be under no legal obligation to issue a Change Order for such proposal;
- .2 in some instances, it may be necessary for Owner to authorize Work or direct changes in Work for which no final and binding Change Order has been reached and for which unit prices are not applicable. In such cases the following shall apply:
 - .1 upon written request by the Owner, through a Change Directive, the Design-Builder shall perform the proposed Work;
 - .2 the cost of such changes shall not exceed the amount in the Change Directive, and be determined in accordance with Section 6.2.5;
 - .3 in the event agreement cannot be accomplished as contemplated herein, the Owner may authorize the Work to be performed by Owner or to hire others to complete the Work. Such action on the part of the Owner shall not be the basis of a claim by the Design-Builder for failure to allow it to perform the changed Work.

§ 6.2.4 In the event Work is required due to an emergency as described in Section 6.1.4., the Design-Builder must

request an equitable adjustment as soon as practicable, and in no case no later than ten working days of the commencement of such emergency.

§ 6.2.5 Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.2 shall be limited to the following:

- .1 actual labor rate includes the base rate, taxes, insurance and fringe benefits required by agreement or custom and no Design-Builder markup except as allowed in Section 6.2.5.6 below. Unit labor is the labor time anticipated to be expended to install the corresponding unit of actual materials. Labor cost is the labor hours approved by Owner's Representative multiplied by the Owner's Representative pre-approved composite hourly labor rates;
- .2 actual material cost is the amount paid or to be paid by the Design-Builder for materials, supplies and equipment entering permanently into the Work, including cost of transportation and applicable taxes. This cost shall be substantiated by the vendor or supplier's verified invoices/quotes. The cost shall not exceed the usual and customary cost for such items available in the geographical area of the Project;
- .3 large tools and major equipment are those with an initial cost greater than \$1,000, whether from the Design-Builder or other sources. The rental rate shall not exceed the usual and customary amount for such items available in the geographical area of the Project. Tool and equipment use time allowed is only for the extra Change Order work. Rental cost is the above tool and equipment time approved by Owner's Representative multiplied by the Owner's Representative pre-approved rental rates also described above;
- .4 the cost of performance and payment bonds are the actual rate paid by the Design-Builder for such bonds;
- .5 subcontractor costs are for those subcontracted specialties required to complete the Change Order work, with maximum markups as outlined hereinafter;
- .6 the maximum allowable markup for overhead and profit, by all parties of the Design-Builder, including Design-Builder's Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, on Change Order proposals shall not exceed fifteen percent (15%) total. The Design-Builder markup of change order work shall not exceed seven and one-half percent (7½%); and the total combined mark-up by Design-Builder, on work performed shall not exceed fifteen percent (15%). When the value of a Change Order proposal exceeds \$30,000, a declining scale will be used to negotiate the allowable combined overhead and profit margin. Where Change Order proposals involve a credit only, a reasonable allowance for overhead and profit are properly included as part of the downward adjustment for a deductive change exceeding \$15,000. The amount of such allowance is subject to negotiation.
- .7 all other Change Order expenses are part of the overhead and profit allowance which are not reimbursable as separate items and include the following:
 - .1 all costs associated with the processing of the Change Order are included in the overhead and profit allowance;
 - .2 all such efforts, unless specifically requested as additional Work to be documented as a Change Order proposal or portion thereof, is included in the overhead and profit allowance;
 - .3 the layout required for the installation of material and equipment, and installation design, is the responsibility of the Design-Builder and is included in the overhead and profit allowance;
 - .3 small tools and supplies. The cost of small hand tools with an initial cost of \$1,000 or less, along with consumable supplies and expendable items such as drill bits, saw blades, gasoline, lubricating or cutting oil, and similar items, is included in the overhead and profit allowance;
 - .4 general expenses (for example, and not limited to: parking fees) which include those items that are a specific job cost not associated with direct labor and material, is included in the overhead and profit allowance;
 - .5 the preparation of record or as-built drawings required is included in the overhead and profit allowance;

- .6 other costs: a) All association dues, assessments, and similar items are included in the overhead and profit allowance. b) All education, training, and similar items are included in the overhead and profit allowance. c) All drafting and/or engineering, unless specifically requested as additional Work to be documented as a Change Order proposal or portion thereof, is included in the overhead and profit allowance. d) All other cost items such as, but not necessarily limited to, review, coordination, estimating, and expediting, relative to Change Order proposals, are associated with field and office supervision and are included in the overhead and profit allowance.

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- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; time and material, Not To Exceed. This Not To Exceed amount shall be an amount of compensation sufficient for the Design-Builder to complete the needed change in the Work, and shall include all costs for the change in the Work including overhead and profit;
- .2 Unit-unit prices stated in the Design-Build Documents or subsequently agreed upon; or
- .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 6.3.7, cost method agreed upon by the parties.

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§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and 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, 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 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change. Intentionally deleted.

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§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive shall be subsequently issued for all Change Directives when there is agreement on time and cost changes to the Work.

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§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner's Representative will not have authority to modify the cost, timing, or the scope of Work, unless the person is duly authorized by the Board of Regents of the University of Wisconsin System. Person(s) with signature authority will be furnished upon request.

...

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder 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 Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.~~Intentionally deleted.~~

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~~If~~In the event that any of the Work in progress, or Work already completed by the Design-Builder is determined by the Owner to be of substandard quality, defective, or otherwise in violation of the requirements of the Design-Documents, or if the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails or refuses to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order an order by written notice to the Design-Builder 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 Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.8.1 The Design-Builder shall have ten calendar days after the serving of such notice within which to take corrective action or to make arrangements judged satisfactory by the Owner's Representative for the corrections to be made. If corrective actions or other arrangements are not judged satisfactory by the Owner's Representative, the Owner may terminate the Contract in accordance with the provisions of the Contract.

§ 7.8.2 If, after suspension of the Work, it is determined by the Owner that the completed Work was not of substandard quality, defective, or otherwise in violation of the requirements of the Design-Build Documents, or if the Design-Builder's delay was excusable, the rights and obligations of the parties will be the same as if the suspension or termination had been issued for the convenience of the Owner under the Contract.

§ 7.8.3 The Owner may order the Design-Builder, in writing, to suspend or delay all or any part of the Work of the Design-Builder for the period of time that the Owner determines appropriate for the convenience of the Owner.

§ 7.8.4 If the Design-Builder determines that the cost of the Work is altered by such suspension, or the time for completion of such Work is altered or delayed, the Design-Builder shall provide notice to the Owner of any such costs or delay;

§ 7.8.5 Such notice shall be made within ten calendar days of the order to stop or suspend Work;

§ 7.8.6 Provision of such notice to the Owner's Representative shall be a condition precedent to any Owner liability for increased costs, delay, or time extension.

§ 7.8.7 The Owner may exercise any and all rights or remedies provided for herein, by law or in equity, either concurrently or singly in its sole discretion.

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If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written 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 deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. Correction of such deficiencies shall not prevent the Owner from recovery of other damages or penalties sustained as a result of the Design-Builder's default or neglect.

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§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or of a consultant or ~~separate contractor~~ Separate Contractor employed by the Owner; or (2) by changes ordered in the Work by the Owner; or (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties documented in accordance with Section 14.1.6.2, or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that (4) by other causes that the Design-Builder asserts, and the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

...

The Contract Sum is stated in the Design-Build ~~Amendment~~ Amendment and, including authorized adjustments, is the total amount payable by the Owner to the Design Builder for performance of the Work under the Design-Build Documents. Payments to the Design-Builder under the Design-Build Documents will be made as provided for in Wis. Stat. § 16.855(19)(a), as the Work progresses on the Project. Payment requests will be processed monthly, except for special circumstances approved by Owner. The Design-Builder must perform all of the conditions required for payment and must have met the obligations which are necessary to qualify for any partial payments.

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§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

...

§ 9.3.1.1.1 Pursuant to Wis. Stat. § 16.855(19)(a), as the Work progresses under this Contract for Construction, the Owner, from time to time, shall grant to the Design-Builder an estimate of the amount and proportionate value of the work properly completed, which shall entitle the Design-Builder to receive the amount, less the retainage, from the proper fund. The retainage shall be an amount equal to not more than five (5) percent of the estimate until fifty percent (50%) of the work has been completed. At fifty percent (50%) completion, no additional amounts shall be retained, and partial payments shall be made in full to the Contractor unless the Owner certifies that the job is not proceeding satisfactorily. At fifty percent (50%) completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than ten percent (10%) of the value of the Work completed. Upon Substantial Completion of the Work, any amount retained shall be paid to the Design-Builder, less the value of any required corrective Work or uncompleted Work. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by the Design-Builder and delivered to the Work or properly stored and suitable for incorporation in the Work embraced in the contract.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as 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 properly~~ 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 Design-Builder 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~~ the requirement that it holds clear title to all property of every description which serves as the basis for the Application for Payment. Design-Builder warrants that title to any such property is being transferred to the Owner free and clear of all liens. If requested by the Owner, the Design-Builder shall produce satisfactory evidence of transfer of title from suppliers and the Architect, Consultants and Contractors to the Design-Builder, without reservation, or with adequate waiver of lien. These payments may include any fabricated or manufactured materials and components specified, previously paid for by Design-Builder and delivered to the site, properly stored, and suitable for incorporation into the Work embraced in the Contract. The Design-Builder shall identify the method of storage for such materials. Proper evidence of insurance shall be presented to protect the interest of the Owner. If payment is intended to be requested for

any off-site storage items, such items shall be listed as separate lines in the request and certification for payment, cost breakdown. Upon Owner's request, Owner shall be allowed to verify such materials and equipment no matter the location stored and located.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work. The Design-Builder shall have the sole responsibility for obtaining proper insurance on, as well as the responsibility for the care and protection of materials and Work upon which payments have been made. The Design-Builder shall be responsible for the restoration of any damaged Work. Nothing herein shall operate as a waiver of the rights of the Owner to require fulfillment of all of the terms of the Contract.

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.5 damage to the Owner or a ~~separate contractor~~; Separate Contractor;

...

.7 ~~repeated~~ failure to carry out the Work in accordance with the Design-Build Documents.

...

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered. In paying any unpaid bills of the Design-Builder relating to the Work, the Owner shall be deemed the agent of the Design-Builder, and any payment so made by the Owner shall be considered as a payment made under the Contract by the Owner to the Design-Builder for its account and the Owner shall not be liable to the Design-Builder for any such payment.

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§ 9.6.7.1 Pursuant to Wis. Stat. § 16.855(19)(b) and § 16.855(14m)(a) retainage on a subcontract shall occur and be in amounts and on a schedule equal to the retainage schedule in the contract between the Design-Builder and the Owner.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Design-Build Documents, the Design-Builder 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 Architect, Consultant, Contractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Design-Builder. If approved by the applicable court, when required, the Design-Builder may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, 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.~~ In the event the Design-Builder elects to stop Work under this Section 9.7, upon recommencing the Work, the Design-Builder may seek a Change Order to assert a claim for adjustment of the Contract Time and the Contract Sum by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

...

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

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§ 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 Design-Build Documents. The Design-Builder will prepare a list of items of Work remaining to be performed or corrected on those portions of the Project that the Owner intends to take possession of or use.

...

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) ~~an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or 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 an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees. provides certification that all debts and claims against this Project have either been paid in full or otherwise satisfied and give final evidence of release of all liens against the Project, the Owner, and all proceeds payable hereunder. The Design-Builder shall certify upon such payment request that the data contained therein is current, accurate, and complete. Design-Builder shall permit, if requested by Owner's Representative, the final inspection to be jointly conducted by the Design-Builder and Owner's Representative. The Design-Builder shall give notice at least 72 hours in advance of the time set for final inspection. Upon completion of the Work and before receiving final payment for the Work, as required by law, the Design-Builder shall file with Owner's Representative an affidavit stating that the Design-Builder has complied fully with Wis. Stat. § 103.49(4r) and that the Design-Builder has received an affidavit from each of the Design-Builder's agents, and Contractors stating that they also have complied fully with Wis. Stat. § 103.49(4r).~~

§ 9.10.2.1 As a condition precedent to final payment, all corrective actions to remedy deficiencies in the Work required by Design-Build Documents and Work identified on the punch list must have been completed. In addition, where required by Design-Build Documents, all training of the Owner's staff in the proper operation and maintenance of the Work shall have been completed, Operating and Maintenance Manuals and Instructions as well as drawings marked up to reflect "as built" conditions must have been transmitted to Owner's Representative and all warranty certificates signed and presented for Owner's Representative acceptance.

§ 9.10.2.2 When to the satisfaction of Owner's Representative the Work has been completed, and is of the quality required by the Design-Build Documents, Owner's Representative may authorize payment of all sums then due the Design-Builder. Receipt of the final payment, as provided for herein shall constitute a waiver of any and all claims against the Owner arising out of, under, or incident to the Work performed under the Contract.

§ 9.10.2.3 If the Design-Builder fails to submit a request for final payment or make satisfactory arrangements with Owner's Representative within thirty calendar days of the final inspection or accepted punch list, no further payments will be made and the Contract will be closed. The last request for Certification for Payment will be considered the final payment under the terms and conditions of the Contract.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, and the Owner so confirms, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of 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~~from:
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- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents; required by the Design-Build Documents;
- .4 audits performed by the Owner after final payment;
- .5 any warranty or guarantee required by the Design-Build Documents;
- .6 any other right surviving the Owner as to which the Design-Builder was specifically given notice before or during the final inspection and final payment process; or
- .7 rights surviving to the Owner as a matter of law.

§ 9.10.5 Acceptance of final payment by the ~~Design-Builder~~ Design-Builder, shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

...

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Design-Builder, its Architect, Consultants, or Contractors, or other persons or entities providing services or work for the Design-Builder will perform all Work on the project in a safe and responsible manner. In particular, Design-Builder shall, at its own expense, conform to the safety policies and regulations established by the Design-Builder and shall comply with all specific safety requirements promulgated by any government authority, including without limitation the requirements of the Occupations Safety and Health Act of 1970 and the Construction Safety Act of 1969 and all standards and regulations which have been or shall be promulgated by the parties or agencies which administer the Acts. Design-Builder shall comply with said requirements, standards and regulations, and require and be directly responsible for compliance therewith on the part of its Architect, Consultants, or Contractors, or other persons or entities providing services or work for the Design-Builder; and shall directly receive, respond to, defend, and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its failure on the part of its Architect, Consultants, or Contractors, or other persons or entities providing services or work for the Design-Builder to so comply.

...

§ 10.2.1 The Design-Builder shall strictly comply with, and bear full responsibility for, any safety procedure set forth in the Design-Build Documents. The Design-Builder shall further indemnify Owner for any cost and expense, including attorney fees and other legal expenses, resulting from any such failure to abide by any safety procedure set forth in the Design-Build Documents. At the sole discretion of Owner, the Design-Builder may also be subject to termination of the Contract for default. The Design-Builder shall be responsible for all precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby; thereby (including, but not limited to the public, and the Owner's personnel and agents);

...

§ 10.2.2 The Design-Builder 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. Design-Builder shall have properly qualified and trained personnel on safety means and methods, and properly qualified supervision.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, ~~reasonable~~ all safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections. At a minimum, the Design-Builder shall:

- .1 provide appropriate safety barricades, signs, and signal lights;
- .2 comply with any safety requirement published by any governmental authority with jurisdiction over the site, including federal, state, or local jurisdictions;
- .3 ensure that any additional measures which are reasonably necessary for the purposes stated are taken.

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§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14. If the Owner becomes aware of any noncompliance by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, with the safety conditions of this Contract or of any condition caused by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, which poses a serious or imminent danger to the health or safety of the public or to Owner personnel, for which the Design-Builder has been previously notified of, and the Design-Builder has failed to correct, the Owner has the right stop all Work until satisfactory correction action has been taken. Satisfactory correction will be at the sole discretion of the Owner.

§ 10.2.5.2 In the event of temporary suspension of Work, or during inclement weather, or whenever Owner shall direct, the Design-Builder shall protect all Work and materials against damage or injury from the weather. If, in the opinion of Owner's Representative, any Work or materials have been damaged or injured by reason of failure on the part of the Design-Builder such materials shall be removed and replaced at the expense of the Design-Builder.

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§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. The Design-Builder shall use the least hazardous materials, equipment, and processes to execute the Work. The Design-Builder shall comply with all OSHA rules and regulations. If the Design-Builder encounters a condition that it suspects may contain a hazardous material or substance that is not addressed in the Design-Build 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 Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing, take all reasonable steps necessary to prevent bodily injury or death, up to and including stopping the Work.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder 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 Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will

promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has 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 Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Design-Builder shall give notice to Owner of the condition that may contain the hazardous material or substance. Design-Builder shall have the right to engage a licensed laboratory/subcontractor to test the suspected hazardous material or substance. Owner will negotiate for reimbursement of reasonable testing costs if the test results do not verify the presence of a hazardous material or substance by a Change Order. Owner, by Change Order, will reimburse Design-Builder for reasonable testing costs if the tests results verify the presence of a hazardous material or substance.

§ 10.3.3 When hazardous materials or substances, not addressed in the Design-Build Documents, are required to be removed or disturbed to complete the Work, Design-Builder and Owner will negotiate how to complete that new work. If Design-Builder agrees to perform this work, a Change Order will be negotiated potentially adjusting the Contract Sum and Contract Time. Such new work will be at the sole direction of the Owner.

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§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder 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 Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

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§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or ~~separate contractors, Separate Contractors,~~ whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

...

ARTICLE 12 COPYRIGHTS AND LICENSES OWNERSHIP OF DOCUMENTS

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. ~~The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Any drawings, specifications, and other Instruments of Service for this Project shall become the property of the Owner on completion and/or acceptance of the Work, or upon any basis of termination of the Contract.~~ Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them. ownership.

§ 12.1.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. All drawing and specifications, renderings, models, scale details, approved copies of shop drawings and other such documents prepared by the Design-Builder pursuant to this Agreement, shall become the property of Owner on completion or upon termination of the Agreement, and shall be delivered to Owner upon request.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate. Owner will not unilaterally construct additional, identical building(s) based on the architectural/engineering work of this Agreement without written agreement by the Design-Builder. Documents prepared under this Agreement may be issued by Owner for information purposes without additional compensation to the Design-Builder.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.4 Specifications and isolated, detail drawings inherent to the architectural/engineering design of the Project, whether provided by Owner or generated by the Design-Builder pursuant to this Agreement, shall be available to any party and each such party shall have the right to use this work product for other purposes. Each party agrees to be responsible for any liability incurred by their use of this work product for other purposes.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

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§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for ~~delay or reasonable delays or reasonable~~ damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any agreed upon expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for reasonable expenses incurred in the interruption and resumption of the Design-Builder's ~~Work.~~ Work that the Owner agrees to. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

...

§ 13.1.6 In the event of termination of this Agreement that is not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly ~~attributable to termination for which the Design-Builder is not otherwise compensated.~~ attributable to termination when agreed to by Owner. This includes the costs attributable to the Design-Builder's termination of agreements with the Architect, Consultants and Contractors already in place prior to the termination notice. All such costs are limited to accepted industry standards, and in no event may such costs include consequential damages. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

...

- .1 ~~Issuance~~ issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 ~~An~~ an act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 ~~Because~~ because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or Documents.
- .4 ~~The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.~~

...

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the ~~Owner~~ Owner, as its sole remedy, payment for Work properly executed, including reasonable ~~overhead and profit,~~ and mutually agreed upon costs incurred by reason of such ~~termination, and damages.~~ termination.

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...

- .2 ~~repeatedly~~ repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;

...

- .4 ~~repeatedly~~ repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

...

The Owner may exercise any and all rights or remedies provided for herein, by law or in equity, either concurrently or singly in its sole discretion.

§ 13.2.2.2 When any of the ~~above reasons~~ reasons described in Section 13.2.2.1 exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, ~~seven days' written~~ three days' notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 ~~Exclude~~ exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon ~~owned~~ secured for this Project by the Design-Builder; and
- .2 ~~Accept~~ accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 ~~Finish~~ finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment ~~until the Work is finished~~ for the Work the Design-Builder performed until the Work is finished by another contractor in consideration of 13.2.2.4.

...

§ 13.2.3.2 The Contract Sum and Contract Time shall be reasonably adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent

...

§ 13.2.4.1 The Owner may, at any ~~time~~, time and at its sole discretion, terminate the Contract for the Owner's convenience and without cause.

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§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work properly executed, and reasonable costs incurred by reason of such termination, ~~along with reasonable overhead and profit on the Work not executed~~ including reasonable costs attributable to termination of subcontracts. For avoidance of doubt, "reasonable costs incurred by reason of such termination" shall not include lost profits or payment due to the Architect, Consultants, or Contractors for any period of time subsequent to termination of the Contract.

§ 13.2.4.4 The Design-Builder shall be paid for all Work performed to the effective date of termination, and any "Reimbursable Expenses" outstanding as of the date of termination. The term "Reimbursable Expenses" shall include the cost of personal property or materials which meet requirements of the Design-Build Documents and have been purchased by the Design-Builder for incorporation into the Work but not yet incorporated therein; lease payments due to an unaffiliated third party lessor for equipment provided to the Project, where the lease term extends beyond the termination date of this Contract and the Design-Builder is unable to terminate said lease; and other costs approved by the Owner. Reimbursable Expenses do not include lost profits or payments due to the Architect, a Consultant or a Contractor for any period of time subsequent to termination of the Contract. Upon payment of the Reimbursable Expenses, the Design-Builder shall deliver to the Owner any materials or personal property for which said payment has been made.

...

§ 14.1.1 **Definition.** A Claim is a demand or assertion by ~~one of the parties~~ the Design-Builder seeking, as a matter of right, payment of money, 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 Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the ~~party making the Claim~~ Design-Builder.

§ 14.1.2 Time Limits on Claims. The ~~Owner and~~ Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time 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 Design-Builder waive~~ Design-Builder waives all claims and causes of action not commenced in accordance with this Section 14.1.2.

...

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by ~~either the Owner or~~ Design-Builder must be initiated by written notice to the ~~other party~~ Owner within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the ~~claimant~~ Design-Builder first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by ~~either the Owner or~~ Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, ~~must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.~~

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, and any subsequent judicial action or appeal, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents. The Owner and the Design-Builder shall act in good faith to efficiently and fairly resolve Claims and disputes arising under the Agreement in order to avoid, wherever possible, formal legal proceedings.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Design-Builder expressly waives any rights that it otherwise might have to include overhead costs for extended or unabsorbed overhead in a Claim for an increase in the Contract Sum.

...

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions in the locale in which the Work is being performed were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. A determination on a Claim in accordance with Section 14.1.6.2 shall only be made by the Owner upon written request by the Design-Builder. Not all extension(s) in the allowable time for completion, when granted by the Owner, will result in additional compensation to the Design-Builder.

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§ 14.2.1 ~~An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder. As a condition precedent to Design-Builder's ability to pursue any monetary claim under Wis. Stat. §§ 16.008 and 775.01 or any form of judicial action against Owner, all Claims initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims. rendered shall be referred to the Owner for initial decision in accordance with the procedures listed below.~~

...

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise. Intentionally Deleted.

...

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify 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.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1. parties.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design Builder, 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 Design Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

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

§ 14.3 Mediation **§ 14.3 Litigation**

§ 14.3.1 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 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 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 proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, 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. 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.

§ 14.4.1.1 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 or statute of repose. For statute of limitations or statute of repose 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.

§ 14.4.2 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.

§ 14.4.3 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.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). Any judicial action relating to the construction, interpretation, or enforcement of the Design-Build Documents including without limitation, the Design-Builder's claims, demands, and causes of action for additional construction costs, delay damages, and other amounts owed hereunder, shall be brought in the Dane County Circuit Court in Madison, Wisconsin. The Design-Builder hereby consents to personal jurisdiction in that venue, and waives any defenses that the Design-Builder otherwise might have relating thereto.

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent. **§ 14.3.2** The Design-Builder hereby waives its right to a jury trial in connection with any judicial action or proceeding that may arise by and between the Owner and the Design-Builder concerning the construction, interpretation, or enforcement of the Design-Build Documents including, without limitation, any claims, demands, or causes of action that the Design-Builder hereafter may assert against the Owner for additional construction costs, delay damages, and other amounts.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

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The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4. laws of the State of Wisconsin.

...

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. ~~Except as provided in Section 15.2.2, neither~~ Neither party to the Contract shall assign the Contract as a whole without written consent of the other. The Owner may withhold its consent in its sole discretion. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 ~~The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.~~ Antitrust Agreement. The Design-Builder and the Owner recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Owner. Therefore, the Design-Builder hereby assigns to the Owner any and all claims for such overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from antitrust violations commencing after the price is established under this Contract and any Change Order thereto.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. ~~If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this~~

~~Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.~~

...

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent ~~by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice~~ by mail, by courier, or by electronic transmission when there is reasonable evidence that the notice was read by the recipient.

...

§ 15.5.2 ~~If the Owner determines~~ Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

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§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors who need to know the content of such information 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 Information as set forth in this Contract.

...

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ 15.8.3 Nondiscrimination/Affirmative Action -

§ 15.8.3.1 In connection with the performance of Work under this Contract, the Design-Builder agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. §51.01(5), sexual orientation, national origin, or any other basis prohibited by law. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Except with respect to sexual orientation, the Design-Builder further agrees to take affirmative action to ensure equal employment opportunities. This contract provision shall be incorporated into the contracts between the Design-Builder, the Architect, Consultants and Contractors.

§ 15.8.3.2 Contracts with a value of fifty thousand dollars (\$50,000) or more require the Design-Builder to submit a written affirmative action plan acceptable under Wisconsin Statutes. An exemption occurs from this requirement if the Design-Builder has a Work force of less than thirty (50) employees. The Contractor is responsible for obtaining affirmative action compliance from the Architect, Consultants and Contractors.

§ 15.8.3.3 The Design-Builder should establish and take appropriate initiatives to reach goals and timetables for minority and female utilization which shall be based on appropriate work force, demographic, or other relevant data which shall cover construction projects or construction contracts performed in specific geographical areas. The goals shall be applicable to the Design-Builder's, the Architect's, Consultant's and Contractor's entire work force which is working in the area covered by the goals. The goals are established and are as follows:

<u>County</u>	<u>Women Goal</u>	<u>Minority Goal</u>
---------------	-------------------	----------------------

<u>Adams/Juneau/Monroe/Vernon</u>	<u>12%</u>	<u>2%</u>
<u>Ashland/Bayfield/Douglas/Price</u>	<u>9%</u>	<u>6%</u>
<u>Barron/Sawyer/Washburn</u>	<u>13%</u>	<u>4%</u>
<u>Brown</u>	<u>11%</u>	<u>9%</u>
<u>Buffalo/Jackson/Pepin/Trempealeau</u>	<u>12%</u>	<u>5%</u>
<u>Burnett/Polk</u>	<u>11%</u>	<u>2%</u>
<u>Calumet/Winnebago</u>	<u>11%</u>	<u>3%</u>
<u>Chippewa/Rusk</u>	<u>12%</u>	<u>2%</u>
<u>Clark/Taylor</u>	<u>16%</u>	<u>2%</u>
<u>Columbia</u>	<u>12%</u>	<u>2%</u>
<u>Crawford/Grant/Richland</u>	<u>14%</u>	<u>2%</u>
<u>Dane</u>	<u>9%</u>	<u>9%</u>
<u>Dodge</u>	<u>12%</u>	<u>3%</u>
<u>Door/Kewaunee/Manitowoc</u>	<u>13%</u>	<u>3%</u>
<u>Dunn/Eau Claire</u>	<u>11%</u>	<u>3%</u>
<u>Florence/Forest/Marinette/Oconto</u>	<u>13%</u>	<u>2%</u>
<u>Fond du Lac</u>	<u>11%</u>	<u>4%</u>
<u>Green/Iowa/LaFayette</u>	<u>13%</u>	<u>1%</u>
<u>Green Lake/Marquette/Waushara</u>	<u>10%</u>	<u>4%</u>
<u>Iron/Oneida/Vilas</u>	<u>9%</u>	<u>3%</u>
<u>Jefferson</u>	<u>12%</u>	<u>4%</u>
<u>Kenosha</u>	<u>7%</u>	<u>10%</u>
<u>La Crosse</u>	<u>10%</u>	<u>4%</u>
<u>Langlade/Lincoln/Menominee/Shawano</u>	<u>11%</u>	<u>7%</u>
<u>Marathon</u>	<u>12%</u>	<u>4%</u>
<u>Milwaukee</u>	<u>10%</u>	<u>29%</u>
<u>Outagamie</u>	<u>10%</u>	<u>5%</u>
<u>Ozaukee</u>	<u>8%</u>	<u>3%</u>
<u>Pierce/St Croix</u>	<u>12%</u>	<u>2%</u>
<u>Portage</u>	<u>13%</u>	<u>3%</u>
<u>Rock</u>	<u>11%</u>	<u>7%</u>
<u>Sauk</u>	<u>10%</u>	<u>2%</u>
<u>Sheboygan</u>	<u>14%</u>	<u>5%</u>
<u>Walworth</u>	<u>10%</u>	<u>8%</u>
<u>Washington</u>	<u>9%</u>	<u>3%</u>
<u>Waukesha</u>	<u>7%</u>	<u>4%</u>
<u>Waupaca</u>	<u>11%</u>	<u>2%</u>
<u>Wood</u>	<u>12%</u>	<u>2%</u>
Source: Combined Occupation Distribution: 2000 Census		

§ 15.8.3.4 Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom Design-Builder has a collective bargaining agreement, to refer to either minorities or women shall excuse the Design-Builder's required initiatives under these specifications.

§ 15.8.3.5 The Design-Builder agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the Owner that sets forth the provisions of this Section 15.5.7.

§ 15.8.3.6 Failure to comply with the conditions of this Section 15.5.7 may result in the Design-Builder becoming declared an "ineligible" Design-Builder, termination of the Contract, or withholding of payment.

§ 15.9 Minimum Wages

§ 15.9.1 The Design-Builder shall post, at an appropriate conspicuous point on the site of the Project, a schedule showing all determined minimum wage rates for the various classes of laborers and mechanics to be engaged in Work on the Project under this Contract and all deductions, if any, required by law to be made from unpaid wages

actually earned by the laborers and mechanics so engaged.

§ 15.10 Electronic signatures are acceptable for all agreement and related documents.
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- ~~.3~~ AIA Document A141™–2014, Exhibit B, Insurance and ~~Bonds~~Bonds, or the following:
- ~~.4~~ AIA Document A141™–2014, Exhibit C, Sustainable Projects, if completed~~Intentionally deleted.~~
- ~~.5~~ AIA Document E202™–2022, BIM Exhibit for Sharing Models with Project Participants, Where Model Versions May Not be Enumerated as a Contract Document, if completed, or the following:~~Intentionally deleted.~~

...

- .1 Request For Qualifications dated XX/XX/XXXX
- .2 Statement of Qualifications submitted by Design-Builder dated YY/YY/YYYY

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Patrick Rebholz, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:28:33 CT on 03/28/2025 under Order No. 2114482720 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA® Document A141® – 2014 Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the day of in the year (the "Agreement")
(In words, indicate day, month and year.)

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

THE OWNER:
(Name, legal status and address)

Board of Regents of the University of Wisconsin System
c/o UW System Administration – CPB
780 Regent Street
Madison, WI 53715

THE DESIGN-BUILDER:
(Name, legal status and address)

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM**
- A.2 CONTRACT TIME**
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**
- A.5 COST OF THE WORK**

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:
(Check the appropriate box.)

☐ Intentionally deleted.

☐ Intentionally deleted.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

Init.

[] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

(Paragraphs deleted)

§ A.1.2 Intentionally deleted..

§ A.1.3 Intentionally deleted.

(Paragraphs deleted)

(Table deleted)

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:

(State a percentage of Cost of the Work for determining the Design-Builder's Fee.)

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed (\$), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide information below or reference an attachment.)

(Paragraphs deleted)

§ A.1.4.3.3 Intentionally deleted.

§ A.1.4.3.4 Unit Prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item

Units and Limitations

Price per Unit (\$0.00)

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month, ending on the last day of the

(Paragraphs deleted)
month.

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the first day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the first day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

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

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. 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.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

(Paragraphs deleted)

§ A.1.5.2 Intentionally deleted.

§ A.1.5.3 Intentionally deleted.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price 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 Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual 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.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take 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 schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add 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 Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage per the Agreement. The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage per the Agreement from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than () days from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work

Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

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

Document	Title	Date	Pages
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§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

Section	Title	Date	Pages
---------	-------	------	-------

§ A.3.1.3 The 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 Design-Builder'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
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Other identifying information:

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

.2 Contingencies

§ A.3.1.6 Design-Builder's assumptions and clarifications:

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

(Identify name, title and contact information.)

.1 Superintendent

.2 Project Manager

.3 Others

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

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

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included**Status (full-time/part-time) Rate (\$0.00)****Rate (unit of time)**

§ **A.5.1.1.3** Only if previously approved by Owner, wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, 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.

§ **A.5.1.1.4** Only if previously approved by Owner, costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such 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 Section A.5.1.1.

§ **A.5.1.1.5** Only if previously approved by Owner, bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

§ **A.5.1.2 Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ **A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction**

§ **A.5.1.3.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ **A.5.1.3.2** Costs of materials described in the preceding Section A.5.1.3.1 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 Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ **A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

§ **A.5.1.4.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder 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 Design-Builder shall mean fair market value.

§ **A.5.1.4.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ **A.5.1.4.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ **A.5.1.4.4** Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ **A.5.1.4.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ **A.5.1.5 Miscellaneous Costs**

§ **A.5.1.5.1** Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Intentionally deleted.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 Intentionally deleted.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder 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, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

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

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder 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 Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder 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 the 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 Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder'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.

This Amendment to the Agreement entered into as of the day and year first written above. The persons signing below represent they have been duly authorized by their respective organizations to sign on behalf of their organization for this Amendment to the Agreement.

OWNER *(Signature)*

(Printed name and title)

DESIGN-BUILDER *(Signature)*

(Printed name and title)

Additions and Deletions Report for AIA® Document A141® – 2014 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:22:32 CT on 03/28/2025.

PAGE 1

Board of Regents of the University of Wisconsin System
c/o UW System Administration – CPB
780 Regent Street
Madison, WI 53715

...

[] ~~Stipulated Sum, in accordance with Section A.1.2 below~~Intentionally deleted.

[] ~~Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below~~Intentionally deleted.

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~~§ A.1.2 Stipulated Sum~~

~~§ A.1.2.1 The Stipulated Sum shall be — (\$ —), subject to authorized adjustments as provided in the Design-Build Documents.~~

~~§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:~~

~~(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)~~

~~§ A.1.2.3 Unit prices, if any:~~

~~(Identify item, state the unit price, and state any applicable quantity limitations.)~~

~~§ A.1.2 Intentionally deleted..~~

~~§ A.1.3 Intentionally deleted.~~

Item	Units and Limitations	Price per Unit (\$0.00)
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~~§ A.1.3 Cost of the Work Plus Design-Builder's Fee~~

~~§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

~~§ A.1.3.2 The Design-Builder's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)~~

...

(State a ~~lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.~~ for determining the Design-Builder's Fee.)

...

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

§ A.1.4.3.3 Intentionally deleted.

...

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§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar ~~month~~ month, ending on the last day of the ~~month~~, or as follows:

month.

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the first day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the first day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

...

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- ~~1~~ — Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ~~—~~ percent (~~—~~%) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- ~~2~~ — Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (~~—~~ %);
- ~~3~~ — Subtract the aggregate of previous payments made by the Owner; and
- ~~4~~ — Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design Builder through the end of the period covered by the Application for Payment and for which Design Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design Builder's Fee, less retainage of — percent (— %). The Design Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of — percent (— %) from that portion of the Work that the Design Builder self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

§ A.1.5.3.3 The Owner and Design Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design Builder shall execute agreements in accordance with those terms.

§ A.1.5.2 Intentionally deleted.

§ A.1.5.3 Intentionally deleted.

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- .3** Add the Design-Builder's Fee, less retainage of ~~percent (—%)~~, per the Agreement. The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4** Subtract retainage of ~~percent (—%)~~ per the Agreement from that portion of the Work that the Design-Builder self-performs;

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§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, ~~with the Owner's prior approval, at off-site workshops.~~ site.

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§ A.5.1.1.3 ~~Wages-Only if previously approved by Owner, wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, 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.~~

§ A.5.1.1.4 ~~Costs-Only if previously approved by Owner, costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such 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 Section A.5.1.1.~~

§ A.5.1.1.5 ~~Bonuses, Only if previously approved by Owner, bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.~~

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§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; ~~the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price.~~ Documents. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

...

§ A.5.1.5.7 ~~Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.~~ Intentionally deleted.

...

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for ~~relocation, and~~ temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 ~~That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~ Intentionally deleted.

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This Amendment to the Agreement entered into as of the day and year first written above. The persons signing below represent they have been duly authorized by their respective organizations to sign on behalf of their organization for this Amendment to the Agreement.



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Patrick Rebholz, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:22:32 CT on 03/28/2025 under Order No. 2114482720 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014 Exhibit A, Design-Build Amendment, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA® Document A141® – 2014 Exhibit B

Insurance and Bonds

for the following PROJECT:

(Name and location or address)

As stated in the A141 Standard Form of Agreement between Owner and Design-Builder.

THE OWNER:

(Name, legal status and address)

As stated in the A141 Standard Form of Agreement between Owner and Design-Builder.

THE DESIGN-BUILDER:

(Name, legal status and address)

As stated in the A141 Standard Form of Agreement between Owner and Design-Builder.

THE AGREEMENT

This Insurance Exhibit is part of the accompanying Agreement for the Project, between the Owner and the Design-Builder.), dated the day of in the year .

TABLE OF ARTICLES

B.1 GENERAL

B.2 DESIGN BUILDER'S INSURANCE AND BONDS

B.3 OWNER'S INSURANCE

B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

§ B.1.1 The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the higher quality and lower risk for the Owner provision shall prevail.

§ B.1.2 The Design-Builder shall not commence Work under the Agreement until the Design-Builder has obtained all the insurance required hereunder. The insurance carrier(s) must be lawfully authorized to do business in the State of Wisconsin with a minimum A.M. Best rating A, X.

ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance, containing the endorsements, and subject to the terms and conditions, as described in this Article B.2. The Design-Builder shall purchase and maintain the required insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

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

§ B.2.1.1

§ B.2.1.1.1 The Design-Builder shall procure and maintain during the life of the Contract, Commercial General Liability Insurance and Excess Liability-Umbrella coverage, with coverage amounts at least equal to that required in this section B.2.1.1, including Products and Completed Operations for all claims that might occur in carrying out the Contract.

§ B.2.1.1.2 The Design-Builder's Commercial General Liability Insurance and Excess Liability Umbrella coverage shall apply to the provisions of indemnity obligations under Section 3.1.14 of the Agreement Between Owner and Design-Builder.

§ B.2.1.1.3 Commercial General Liability insurance carried under this Contract shall contain a provision making it primary and non-contributory to any other coverage available to the Owner.

§ B.2.1.1.4 The Commercial General Liability Insurance shall have policy limits of not less than One Million Dollars (\$ 1,000,000) for each occurrence and Two Million Dollars (\$ 2,000,000) in the general aggregate 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;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned and hired vehicles used by the Design-Builder in carrying out the Contract with policy limits of not less than One Million Dollars (\$ 1,000,000) for a combined single limit for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage. Auto Liability carried under the Contract shall contain a provision making it primary and non-contributory to any other coverage available to the Owner.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

Employers Liability	\$100,000 Each Accident
Employers Liability Disease	\$100,000 Each Employee
Employers Liability Disease	\$500,000 Policy Limit

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than:

- One Million Dollars (\$ 1,000,000) per occurrence/aggregate for projects with contract values up to Ten Million Dollars (\$10,000,000); and

- Five Million Dollars (\$5,000,000) per occurrence/aggregate for those projects with contract values over Ten Million Dollars (\$10,000,000).

§ B.2.1.7

§ B.2.1.7.1 Pollution Liability covering performance of the Work, with policy limits of not less than:

- One Million Dollars (\$1,000,000) per pollution event/aggregate (for projects with contract values \$1M or less)
- Three Million Dollars (\$3,000,000) per pollution event/aggregate (for projects with contract values \$1M-\$10M)
- Five Million Dollars (\$5,000,000) per pollution event/aggregate (for projects with contract values over \$10M)

§ B.2.1.7.2 Pollution Legal Liability Insurance

- 1 If the scope of services in the Contract requires the disposal of any hazardous or non-hazardous materials off the job site, the disposal site operator or abatement Contractor (or Design-Builder, as appropriate), upon request of the Owner, must furnish a certificate of insurance for Pollution Legal Liability (PLL) with coverage for:
 - Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
 - Property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed;
 - Defense costs including costs, charges, and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and
 - Losses that arise from the insured facility that is accepting the waste under this Contract.
- 2 The Pollution Legal Liability policy must be written on a claims made form,. Coverage amounts must be at least \$2,000,000 per loss, and \$4,000,000 annual aggregate for disposal at non-hazardous treatment, storage and disposal facilities (TSDFs). Upon request of the Owner, Design-Builder must obtain a certificate of insurance for Pollution Legal Liability (PLL) from the disposal site and provide a copy thereof to Owner.
- 3 Coverage shall apply to sudden and non-sudden pollution conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in bodily injury or property damage.

§ B.2.1.8 Cyber Risk Insurance- The Design-Builder shall purchase Cyber Risk Insurance for loss to the Owner due to data security and privacy breach including costs of investigating potential or actual breach of confidential or private information with a policy limit of not less than One Million Dollars (\$1,000,000).

§ B.2.1.9 Builder's Risk Insurance

§ B.2.1.9.1 The Design-Builder shall, prior to commencement of the Work, purchase and maintain through the life of the Project, Builder's Risk "all-risks" insurance in the amount of, at least, the initial Contract Sum as well as subsequent modifications and labor performed and materials or equipment supplied by others thereto for the entire Work at the site on a replacement cost basis. The Builder's Risk insurance shall be maintained until Substantial Completion unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by the parties to the Agreement.

§ B.2.1.9.2 Design-Builder's Builder's Risk policy shall provide coverage for direct physical loss or damage, and shall not exclude or sublimit risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, terrorism, water damage and equipment breakdown including but not limited to hot and cold testing. All limits must apply per occurrence and not be subject to annual or project term aggregates. The insurance shall also provide coverage for loss or damage from error, omission, or deficiency in construction methods, design,

specifications, workmanship, or materials. Minimum allowable sub-limits for earthquakes and floods are the lesser of the project contract value or Seventy-five Million Dollars (\$75,000,000).

§ B.2.1.9.3 In addition to providing coverage for direct physical loss or damage, Design-Builder's Builder's Risk policy shall provide coverage for loss or damage to false work and other temporary structures, materials stored off-site including with the manufacturer prior to delivery, materials in transit, 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, Consultant's, and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

- Loss of Use, Business Interruption, and Delay in Completion Insurance – One Million Dollars (\$1,000,000)
- Extra Expense Insurance – Internal Determination
- Civil Authority Insurance – sixty (60) days of coverage
- Ingress/Egress Insurance – sixty (60) days of coverage
- Soft Costs Insurance – Seven Million Five Hundred Thousand Dollars (\$7,500,000)

§ B.2.1.10 Deductibles and Self-Insured Retentions. If the insurance required by §B.2 is subject to deductibles or self-insured retentions, the Design-Builder shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.2.1.11 Occupancy or Use Prior to Substantial Completion. The insurance required by §A.3 shall allow for occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion.

§ B.2.1.13 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within three (3) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first. Upon receipt of notice from the Design-Builder, 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 Design-Builder. The furnishing of notice by the Design-Builder shall not relieve the Design-Builder of any contractual obligation to provide any required coverage and shall not relieve the Design-Builder of consequences of Owner stopping work. The Design-Builder shall bare all costs of such work stoppage.

§ B.2.1.14 Additional Insured & Waiver of Subrogation Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's policies for Builders Risk, Commercial General Liability, Automobile Liability, Umbrella Liability and Pollution Liability. Furthermore, these policies shall also include a waiver of subrogation provision in favor of the Owner, its officers, employees and agents. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.15 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ B.2.1.16 Except with respect to insurance that Contractors are required to obtain and carry, Design-Builder shall be responsible for any deductibles for all insurance required under Article B.2, provided, however, that in the event a

claim arises as a result of Owner's negligent acts or omissions or intentional misconduct, Owner shall be responsible for paying the lesser of the deductible or Twenty-five Thousand Dollars (\$25,000).

§ B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide

(Paragraphs deleted)

Owner with surety bonds prepared using surety bond forms provided by the Owner.

(Table deleted)

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

(Paragraphs deleted)

§ B.3.2.2 Intentionally deleted.

(Paragraphs deleted)

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

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

Additions and Deletions Report for AIA® Document A141® – 2014 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:22:41 CT on 03/28/2025.

PAGE 1

As stated in the A141 Standard Form of Agreement between Owner and Design-Builder.

...

As stated in the A141 Standard Form of Agreement between Owner and Design-Builder.

...

As stated in the A141 Standard Form of Agreement between Owner and Design-Builder.

...

This Insurance Exhibit is part of the accompanying ~~agreement~~ Agreement for the Project, between the Owner and the ~~Design-Builder (hereinafter, the Agreement), Design-Builder.),~~ dated the day of in the year .
(In words, indicate day, month and year.)

...

~~The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.~~ § B.1.1 The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the higher quality and lower risk for the Owner provision shall prevail.

§ B.1.2 The Design-Builder shall not commence Work under the Agreement until the Design-Builder has obtained all the insurance required hereunder. The insurance carrier(s) must be lawfully authorized to do business in the State of Wisconsin with a minimum A.M. Best rating A, X.

...

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance, containing the endorsements, and subject to the terms and conditions, as described in this Article B.2. The Design-Builder shall purchase and maintain the required insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

PAGE 2

§ B.2.1.1 Commercial General Liability with policy limits of not less than (\$) for each occurrence and (\$) in the aggregate providing coverage for claims including

§ B.2.1.1.1 The Design-Builder shall procure and maintain during the life of the Contract, Commercial General Liability Insurance and Excess Liability-Umbrella coverage, with coverage amounts at least equal to that required in this section B.2.1.1, including Products and Completed Operations for all claims that might occur in carrying out the Contract.

§ B.2.1.1.2 The Design-Builder's Commercial General Liability Insurance and Excess Liability Umbrella coverage shall apply to the provisions of indemnity obligations under Section 3.1.14 of the Agreement Between Owner and Design-Builder.

§ B.2.1.1.3 Commercial General Liability insurance carried under this Contract shall contain a provision making it primary and non-contributory to any other coverage available to the Owner.

§ B.2.1.1.4 The Commercial General Liability Insurance shall have policy limits of not less than One Million Dollars (\$ 1,000,000) for each occurrence and Two Million Dollars (\$ 2,000,000) in the general aggregate providing coverage for claims including

...

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned and hired vehicles used by the Design-Builder in carrying out the Contract with policy limits of not less than (\$) per claim and (\$) in the aggregate One Million Dollars (\$ 1,000,000) for a combined single limit for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage. Auto Liability carried under the Contract shall contain a provision making it primary and non-contributory to any other coverage available to the Owner.

...

<u>Employers Liability</u>	<u>\$100,000 Each Accident</u>
<u>Employers Liability Disease</u>	<u>\$100,000 Each Employee</u>
<u>Employers Liability Disease</u>	<u>\$500,000 Policy Limit</u>

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate, than:

- One Million Dollars (\$ 1,000,000) per occurrence/aggregate for projects with contract values up to Ten Million Dollars (\$10,000,000); and
- Five Million Dollars (\$5,000,000) per occurrence/aggregate for those projects with contract values over Ten Million Dollars (\$10,000,000).

§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than (\$) per claim and (\$) in the aggregate. Pollution Liability covering performance of the Work, with policy limits of not less than:

- One Million Dollars (\$1,000,000) per pollution event/aggregate (for projects with contract values \$1M or less)
- Three Million Dollars (\$3,000,000) per pollution event/aggregate (for projects with contract values \$1M-\$10M)
- Five Million Dollars (\$5,000,000) per pollution event/aggregate (for projects with contract values over \$10M)

§ B.2.1.7.2 Pollution Legal Liability Insurance

- 1 If the scope of services in the Contract requires the disposal of any hazardous or non-hazardous materials off the job site, the disposal site operator or abatement Contractor (or Design-Builder, as appropriate),

upon request of the Owner, must furnish a certificate of insurance for Pollution Legal Liability (PLL) with coverage for:

- Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
 - Property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed;
 - Defense costs including costs, charges, and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and
 - Losses that arise from the insured facility that is accepting the waste under this Contract.
- .2 The Pollution Legal Liability policy must be written on a claims made form,. Coverage amounts must be at least \$2,000,000 per loss, and \$4,000,000 annual aggregate for disposal at non-hazardous treatment, storage and disposal facilities (TSDFs). Upon request of the Owner, Design-Builder must obtain a certificate of insurance for Pollution Legal Liability (PLL) from the disposal site and provide a copy thereof to Owner.
- .3 Coverage shall apply to sudden and non-sudden pollution conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in bodily injury or property damage.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first. Cyber Risk Insurance- The Design-Builder shall purchase Cyber Risk Insurance for loss to the Owner due to data security and privacy breach including costs of investigating potential or actual breach of confidential or private information with a policy limit of not less than One Million Dollars (\$1,000,000).

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

Builder's Risk Insurance

§ B.2.1.9.1 The Design-Builder shall, prior to commencement of the Work, purchase and maintain through the life of the Project, Builder's Risk "all-risks" insurance in the amount of, at least, the initial Contract Sum as well as subsequent modifications and labor performed and materials or equipment supplied by others thereto for the entire Work at the site on a replacement cost basis. The Builder's Risk insurance shall be maintained until Substantial Completion unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by the parties to the Agreement.

§ B.2.1.9.2 Design-Builder's Builder's Risk policy shall provide coverage for direct physical loss or damage, and shall not exclude or sublimit risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, terrorism, water damage and equipment breakdown including but not limited to hot and cold testing. All limits must apply per occurrence and not be subject to annual or project term aggregates. The insurance shall also provide coverage for loss or damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Minimum allowable sub-limits for earthquakes and floods are the lesser of the project contract value or Seventy-five Million Dollars (\$75,000,000).

§ B.2.1.9.3 In addition to providing coverage for direct physical loss or damage, Design-Builder's Builder's Risk policy shall provide coverage for loss or damage to false work and other temporary structures, materials stored off-site

including with the manufacturer prior to delivery, materials in transit, 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, Consultant's, and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

- Loss of Use, Business Interruption, and Delay in Completion Insurance – One Million Dollars (\$1,000,000)
- Extra Expense Insurance – Internal Determination
- Civil Authority Insurance – sixty (60) days of coverage
- Ingress/Egress Insurance – sixty (60) days of coverage
- Soft Costs Insurance – Seven Million Five Hundred Thousand Dollars (\$7,500,000)

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness. **Deductibles and Self-Insured Retentions.** If the insurance required by §B.2 is subject to deductibles or self-insured retentions, the Design-Builder shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.2.1.11 Occupancy or Use Prior to Substantial Completion. The insurance required by §A.3 shall allow for occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion.

§ B.2.1.13 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within three (3) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first. Upon receipt of notice from the Design-Builder, 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 Design-Builder. The furnishing of notice by the Design-Builder shall not relieve the Design-Builder of any contractual obligation to provide any required coverage and shall not relieve the Design-Builder of consequences of Owner stopping work. The Design-Builder shall bare all costs of such work stoppage.

§ B.2.1.14 Additional Insured & Waiver of Subrogation Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's policies for Builders Risk, Commercial General Liability, Automobile Liability, Umbrella Liability and Pollution Liability. Furthermore, these policies shall also include a waiver of subrogation provision in favor of the Owner, its officers, employees and agents. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.15 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution

Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ B.2.1.16 Except with respect to insurance that Contractors are required to obtain and carry, Design-Builder shall be responsible for any deductibles for all insurance required under Article B.2, provided, however, that in the event a claim arises as a result of Owner's negligent acts or omissions or intentional misconduct, Owner shall be responsible for paying the lesser of the deductible or Twenty-five Thousand Dollars (\$25,000).

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The Design-Builder shall provide surety bonds as follows:

(Specify type and penal sum of bonds.)

Owner with surety bonds prepared using surety bond forms provided by the Owner.

Type

Penal Sum (\$0.00)

...

ARTICLE B.3 — OWNER'S INSURANCE

§ B.3.1 Owner's Liability Insurance

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

§ B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy 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 11.2.2 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps

to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design Builder shall be named insureds. Intentionally deleted.

§ B.3.2.3 ~~If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design Builder in writing prior to any construction that is part of the Work. The Design Builder may then obtain insurance that will protect the interests of the Owner, Design Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.~~

§ B.3.2.4 Loss of Use Insurance. At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

§ B.3.2.5 ~~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, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

§ B.3.2.6 ~~Before an exposure to loss may occur, the Owner shall file with the Design Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.~~

§ B.3.2.7 Waivers of Subrogation. The Owner and Design Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, 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 covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ B.3.2.8 ~~A loss insured under the Owner's property insurance 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 B.3.2.10. The Design Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design Builder, and by appropriate agreements,~~

written where legally required for validity, the Design Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.