



City Council Meeting Agenda
Monday, March 3, 2025 – 6:30 p.m.
City Hall, 200 South Osage, Sedalia MO

MAYOR: ANDREW L. DAWSON

MAYOR PRO-TEM: TINA BOGGESS

- A. CALL TO ORDER** – Mayor Dawson – Council Chambers
- B. LEGISLATIVE PRAYER & PLEDGE OF ALLEGIANCE**
- C. ROLL CALL**
- D. PUBLIC HEARING** – Annexation Petition – Sedalia School District 200 Property
- E. Presentation & Request** – Embassy – Opioid Funding (Ann Graff, Presenter)
- F. RETIREMENT AWARDS**
 - 1. William Garrigus – Equipment Operator III – Water – 30 Years 2 Months of service
 - 2. Curtis Campbell – Crew Supervisor – Water Pollution Control – 33 Years of service
- G. SERVICE AWARDS/SPECIAL AWARDS** - None
- I. APPROVAL OF PREVIOUS SESSION MINUTES**
 - A.** Council Meeting – February 19, 2025
 - B.** Budget Work Session – February 24, 2025
- II. REPORT OF SPECIAL BOARDS, COMMISSIONS AND COMMITTEES** - None
- III. ROLL CALL OF STANDING COMMITTEES**
 - A. FINANCE / ADMINISTRATION** – Chairwoman Tina Boggess; Vice Chairman Thomas Oldham
 - 1. Presentation:** Proposed FY 2026 Budget Highlights
 - 2. Agreement** – Construction Manager at Risk – Sedalia Fire/Aquatics/Bowling Project
Council Discussion led by Chairwoman Boggess
 - O** Call for Ordinance authorizing an Agreement for Construction Manager at Risk for the Sedalia Fire/Aquatics/Bowling Project – Mayor Dawson
 - B. PUBLIC WORKS** – Chairman Bob Hiller; Vice Chairwoman Tina Boggess – No Report.
 - C. PUBLIC SAFETY** – Chairman Jack Robinson; Vice Chairman Steve Bloess
 - 1. Police Grant Applications** – Hazardous Moving Violations (\$134,488.00) and DWI Enforcement (\$10,700.00)
Council Discussion led by Chairman Robinson
 - O** Call for Ordinance Authorizing a Grant Application for Hazardous Moving Violations – Mayor Dawson
 - O** Call for Ordinance Authorizing a Grant Application for DWI Enforcement – Mayor Dawson
 - D. COMMUNITY DEVELOPMENT** – Chairwoman Rhiannon M. Foster; Vice Chairman Bob Cross
 - 1. Presentation:** Robert Walters to the City of Sedalia – Bichsel Clock
 - R** Call for Resolution accepting a restricted donation for the purchase of the Bichsel Clock from Bichsel Jewelry – Mayor Dawson

IV. OTHER BUSINESS

A. APPOINTMENTS

Reappointments (Galaxy West Community Improvement District):

*Tim Harris – 4-year term - Expiring March 21, 2028

* Kelvin Shaw – 4-year term - Expiring March 21, 2028

B. LIQUOR LICENSES - None

V. MISCELLANEOUS ITEMS FROM MAYOR, CITY COUNCIL AND CITY ADMINISTRATOR

VI. GOOD AND WELFARE - “During the 'Good and Welfare' section of our meeting agenda, we invite residents of Sedalia to step forward and directly address their City Council. Each participant is requested to clearly state their name and address and will have three minutes to present their statement. This session is specifically designed for residents to express their views or concerns; it is not intended for dialogue, debate, or question-and-answer interactions with the Council. All statements made during this time will be formally recorded in the public record. We urge participants to keep their remarks respectful and focused on matters relevant to our community. Your contributions are a vital part of our continuous efforts to enrich and improve Sedalia, and we thank you for adhering to these guidelines and helping us maintain the decorum of this important process.”

VII. Closed Door Meeting – Motion and Second to move into closed door meeting in the upstairs conference Room pursuant to Subsections 1 (Legal Advice), 2 (Real Estate), 9 (Negotiations with employee groups) and 12 (Negotiated Contracts) of Section 610.021 RSMo.

A. Roll Call Vote for Closed Door Meeting

B. Discussion of closed items

C. Vote on matters, if necessary (require a Roll Call Vote)

D. Motion and Second with Roll Call Vote to adjourn closed door meeting and return to open meeting

VIII. BUSINESS RELATED TO CLOSED DOOR MEETING

A. Motion and Second to return to regular meeting

B. Roll Call

C. Approval of Closed-Door Meeting Items

IX. ADJOURN MEETING

A. Motion and second to adjourn meeting

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Once you have followed the link above and identified yourself you will be given options for how you want to join in with **audio**.

For **smartphones**: tap on one of the phone numbers and it will dial the phone and the meeting numbers.

For **other devices**: use the feature of call me. The phone audio will be much better than through your computer. This should come up if you have your preferences set up to show it. If it does not, in the upper right-hand corner of the GoToMeeting screen you will see an icon that looks like a gear. Click on the gear and then look for “Phone” and if it is not highlighted click on it. One of the options should be to call me. Put the phone number you want to be called on (direct dial) into the box provided and then click the “Call Me” button. Once the system calls you, you will be asked to hit pound.

[Click on any agenda item to view the related documentation](#)

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If you want to join in ***listen only*** mode you can dial the following number and enter the access code.

(For supported devices, tap a one-touch number below to join instantly.)

United States (Toll Free): 1 866 899 4679

- One-touch: <tel:+18668994679,,578973061#>

United States: +1 (669) 224-3318

- One-touch: <tel:+16692243318,,578973061#>

Access Code: 578-973-061

The City Council reserves the right to discuss any other topics that are broached during the course of this meeting.

IF YOU HAVE SPECIAL NEEDS, WHICH REQUIRE ACCOMMODATION, PLEASE NOTIFY THE CITY CLERK'S OFFICE AT 827-3000. ACCOMMODATIONS WILL BE MADE FOR YOUR NEEDS

POSTED ON FEBRUARY 28, 2025, AT 3:30 P.M. AT THE SEDALIA MUNICIPAL BUILDING, BOONSLICK REGIONAL LIBRARY, SEDALIA PUBLIC LIBRARY AND ON THE CITY'S WEBSITE AT WWW.SEDALIA.COM



OFFICE OF THE INTERIM CITY ADMINISTRATOR

To: Honorable Mayor Andrew L. Dawson & City Council Members
From: Matthew Wirt, Interim City Administrator
Re: Agenda items for City Council meeting on Monday, March 3rd, 6:30 p.m.

Presentation & Request- Ann Graff will provide an update on the ongoing repair work at the Embassy and the challenges encountered during the process. Previously, a presentation was given requesting funds, and the council authorized up to \$50,000 for repairs to the home used by the Embassy. However, additional structural issues have been discovered, and before proceeding with repairs, Ms. Graff would like to present further details and explain the additional needs.

Finance/Administration – There are two items for consideration through the Finance/Administration Committee.

1. We will be reviewing the items from the past two budget presentations and the Decision Tree for the FY26 budget. We will also review items that were requested to see changes in funding or alternate choices. This will be a chance to help determine funding levels for FY26 and further discussion on the budget.
2. As we move toward the construction phase of the new fire station, fire training center, aquatics facility, and bowling alley, which are designed to enhance public safety, recreation, and community services, the city conducted a Request for Qualifications (RFQ) process to select a construction manager. Based on established performance measures, staff selected Nabholz Construction as the most qualified firm to lead the effort. Utilizing the Construction Manager at Risk (CMAR) method will provide efficient planning, controlled costs, and streamlined construction. With multiple large-scale projects, CMAR allows for better budget management, proactive scheduling, and improved contractor coordination, ultimately ensuring that these critical facilities are delivered on time, within budget, and at the highest quality standards. Staff recommends approval of the agreement.

Public Works Committee – There are no items for consideration through the Public Works Committee.

Public Safety Committee – There is one item for the Public Safety Committee.

1. Each year, the police department seeks funding from the Missouri Department of Highway Safety for grants that support equipment and overtime for hazardous moving violations (HMV) or DWI enforcement. This year, the department is requesting \$134,488 through the HMV grant to address the critical issue of aging in-car radars and cameras. This funding would alleviate the financial burden of equipment replacement, allowing the department and city to focus on other priorities within the general fund. The HMV grant request is allocated as follows:
 - \$15,000 for double-time enforcement funding
 - \$6,400 for professional development (LETSAC and Show-Me-Zero conferences)

- \$113,088 for replacing in-car cameras and radars

Additionally, SPD is seeking \$10,700 through the DWI grant, allocated as follows:

- \$7,500 for enforcement funding
- \$3,200 for professional development (DWI and National DRE conferences)

Staff recommends approval of the request to apply for these grants.

Community Development Committee – There are three items for consideration in the Community Development Committee.

1. There will be a check presentation regarding the Bichsel Clock, a cherished landmark in Sedalia for over 143 years, marking the passage of time for generations of residents. Originally installed in 1882 on South Ohio Avenue, the clock has moved several times, most notably spending 75 years in front of 217 South Ohio Avenue before being relocated with Bichsel Jewelry in 1990 and again in 2006. With the retirement of Mark Callis and the closing of Bichsel Jewelry, there is now a unique opportunity to restore this historic timepiece to Downtown Sedalia's historic district. This resolution formally accepts a restricted donation from Robert Walters to the City of Sedalia for the purchase of the Bichsel Clock from Mark Callis, ensuring its relocation near its original site on South Ohio Avenue. The resolution also outlines the City's commitment to managing the labor and costs associated with dismantling, cleaning, relocating, and maintaining the clock. This action not only preserves an important part of Sedalia's history but also enhances the character of the city's historic downtown district. Staff recommends approval of the resolution.

NOTICE OF PUBLIC HEARING

~ Annexation Petition ~

The City of Sedalia will hold a public hearing at 6:30 p.m. on Monday, March 3, 2025, in the Council Chambers at the Municipal Building, 200 South Osage Avenue, to consider an annexation petition filed with the City on January 29, 2025.

Public comments concerning the requested annexation will be entertained at the hearing.

Legal Description for the property owned by Sedalia School District 200 states the following:

All of the following described tract of land in Pettis County, Missouri, which is contiguous and compact to the existing city limits of the City of Sedalia, Missouri, to-wit:

A PART OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 45 NORTH, RANGE 21 WEST OF THE FIFTH PRINCIPAL MERIDIAN, PETTIS COUNTY, MISSOURI, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE SOUTH LINE OF HIGHWAY "B"; THENCE SOUTH 39°55'43" WEST, ALONG SAID SOUTH LINE, 508.80 FEET TO THE POINT OF BEGINNING; THENCE LEAVING SAID SOUTH LINE, SOUTH 49°34'40" EAST, 99.66 FEET; THENCE SOUTH 39°36'48" WEST, 60.01 FEET; THENCE SOUTH 49°34'40" EAST, 130.0 FEET; THENCE SOUTH 37°38'33" EAST, 704.61 FEET TO THE NORTHWEST CORNER OF A TRACT DESCRIBED IN DOCUMENT NUMBER 2011-6823; THENCE SOUTH 02°14'42" WEST, ALONG THE WEST LINE OF SAID TRACT, 425.01 FEET TO THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 86°20'11" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 350.0 FEET TO THE SOUTHEAST CORNER OF SAID TRACT; THENCE SOUTH 02°14'42" WEST, 229.18 FEET; THENCE NORTH 88°22'27" WEST, 1015.83 FEET; (1014.71 FEET MEASURES); THENCE NORTH 02°17'52" EAST, 966.28 FEET; THENCE NORTH 56°48'24" WEST, 193.83 FEET TO A POINT ON THE SOUTH LINE OF SAID STATE HIGHWAY "B"; THENCE NORTH 39°55'43" EAST, ALONG SAID SOUTH LINE, 382.52 FEET TO THE POINT OF BEGINNING. SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS, AND COVENANTS OF RECORD, IF ANY.

Handicapped citizens needing accommodation in order to attend this public hearing should contact the Interim City Administrator's Office at (660) 827-3000 extension 1109 no later than 48 hours prior to the scheduled hearing.

Matthew Wirt, Interim City Administrator
City of Sedalia

Run 1x
2-21-2025



CITY OF SEDALIA, MISSOURI
CITY COUNCIL MEETING
FEBRUARY 19, 2025

The City has an on-line broadcast of Council Meetings available both live and recorded by going to https://global.gotomeeting.com/join/578973061

The Council of the City of Sedalia, Missouri duly met on February 19, 2025 at 6:30 p.m. at the Municipal Building in the Council Chambers with Mayor Andrew L. Dawson presiding.

ROLL CALL:

Table with 4 columns: Name, Status, Name, Status. Rows include Jack Robinson (Present), Thomas Oldham (Absent), Chris Marshall (Present), Tina Boggess (Present), Bob Hiller (Present), Bob Cross (Present), Rhiannon Foster (Present), Steve Bloess (Present).

Public Hearing – Annexation Petition – Sedalia School District 200

A public Hearing regarding the Annexation Petition for Sedalia School District 200 was moved to the March 3, 2025 Council Meeting. A notice for the Hearing was advertised for a meeting scheduled for Tuesday, February, 18, 2025, but due to the MML event that was planned, the meeting was moved to Wednesday, February 19, 2025.

SPECIAL AWARDS/SERVICE AWARDS/RETIREMENT AWARDS: None

MINUTES: The Council Meeting minutes of February 3, 2025 were approved on motion by Foster, seconded by Hiller. All Present in Favor. Oldham was Absent.

REPORTS OF SPECIAL BOARDS, COMMISSIONS & COMMITTEES: None

ROLL CALL OF STANDING COMMITTEES:

FINANCE / ADMINISTRATION – Chairwoman Tina Boggess; Vice Chairman Thomas Oldham

Presentation: Calendar Year 2024 & FY 2026 Budget Preview

Interim City Administrator Matthew Wirt presented the FY 2026 Budget Preview and key findings and infrastructure priorities from Roadway Asset Survey.

Roadway Asset Survey: This information provides the City with condition overview, critical needs, impact on Budget and assists in future planning. Sedalia has 150 centerline miles of roadway. Through the survey, many areas are in the very poor, serious and failed categories. Key takeaways include:

- Develop a Long-Term Roadway Maintenance Plan – strategic plan needed to ensure timely repair and replacement of roadways, optimizing resources for sustained infrastructure quality.
Maximize Repair Strategies Within Budget – Utilizing mix of repair and resurfacing techniques is essential to maintaining necessary roadway miles while staying within budget constraints.

- **Balance Cost and Effectiveness** – While mill and overlay is an effective solution, incorporating chip seal and macro-paving options is crucial to achieving cost-effective balance between budget limitations and necessary repairs.

Economic Outlook:

Interim City Administrator Wirt stated the areas to review for estimating growth is Real Gross Domestic Product at the State and Federal level, Consumer Price Index, Local Growth and Historical local revenue trends

Sales Tax/Use Tax Projections:

The majority of the City’s revenue sources come from Local Taxes with the largest portion being Sales and Use Taxes (33%). Service Charges (i.e. water, sanitary sewer, solid waste, airport, parks, etc.) 20%. For Fiscal Year 2026, the City of Sedalia is projecting a 4% growth.

Wages:

Personnel costs represent the largest expense in the General Fund (74%). Public Safety makes up more than 63% of personnel expenses in the General Fund.

Missouri’s minimum wage continues to rise following voter-approved legislation aimed at gradually increasing earnings for workers. As of 2024, the state’s minimum wage is significantly higher than the federal rate and exceeds that of many neighboring states. National Wage growth is trending at 3.8% or higher. Inflationary pressures force businesses to adjust wages to keep up with rising costs of living, while workforce shortages make competitive salaries necessary to attract and retain employees. As wages increase, businesses expect improvements in productivity to sustain profitability. We need to remain competitive without excessive financial strain, while workers require fair wages to keep pace with inflation.

Last year the City transitioned to a blended COLA and merit-based system. The City plans to continue the plan for Fiscal Year 2026 with a 1% COLA increase and 2% for merit-based raises.

Financial Update: Finance Director Jessica Pyle stated that Sales and Use Taxes are up Fiscal Year to Date \$850,000.00 or 5% over last Fiscal Year to Date. An increase of 4% was budgeted and the City is over Budget \$167,000.00. The Marijuana tax collection began in October 2023 and results for Fiscal year to Date comparison were \$42,000 (2 months). Franchise tax difference includes the April 2023 Charter settlement for streaming class action suit and the City received \$377,818.00. The additional \$200,000.00 difference is due to a decrease in natural gas tax of 34.8%. Transportation taxes are higher fiscal year to date as a result of increase Gas Tax of 9.2% over last Fiscal Year and an increase of 4.5% in Vehicle Sales tax and is higher than last year. Vehicle fees are flat. The bulk of Property Tax payments are collected in December and January and were reported at \$175,000.00.

- Motion by Foster, seconded by Robinson to approve a records destruction request from the Finance Department. All Present in Favor. Oldham was Absent.

PUBLIC WORKS – Chairman Bob Hiller; Vice Chairwoman Tina Boggess

- The Big Bikers Across Missouri on the Katy event has included Sedalia as one of its overnight stops. Event organizers have requested permission for overnight parking and camping in Liberty Park. The City's code of ordinances prohibits overnight parking and camping in parks, and the City Council needs to temporarily suspend this restriction. The Park Board has reviewed the request and supports allowing it. Staff recommends approval of suspending the prohibition on overnight parking and camping in Liberty Park for BAM on the Katy participants on June 2, 2025, and October 6, 2025.

BILL NO. 2025-27, ORDINANCE NO. 12211 – AN ORDINANCE ALLOWING OVERNIGHT CAMPING/PARKING IN LIBERTY PARK FOR THE “BIG BIKERS ACROSS MISSOURI (BAM) ON THE KATY” EVENT ON MONDAY, JUNE 2, 2025 AND MONDAY, OCTOBER 6, 2025 was read once by title.
2nd Reading – Motion by Cross, 2nd by Foster. All Present in Favor. Oldham was Absent.
Final Passage – Motion by Cross, 2nd by Marshall. All Present in Favor. Oldham was Absent.
Roll Call Vote: Voting “Yes” were Robinson, Marshall, Boggess, Hiller, Cross, Foster and Bloess. No one voted “No”. Oldham was Absent.

PUBLIC SAFETY – Chairman Jack Robinson, Vice Chairman Steve Bloess – No Report.

COMMUNITY DEVELOPMENT – Chairwoman Rhiannon M. Foster; Vice Chairman Bob Cross

- A request was submitted by W-K Business Realty for the rezoning of two vacant lots on the south side of Irene Circle. The applicant wants to change the zoning from R-3 Multi-Family Residential to M-1 Light Industrial to allow for garage storage and parking to support an adjacent automobile dealership. The request was deemed compatible with surrounding land uses, particularly as a neighboring property to the south is already zoned M-1 and used for similar purposes.

BILL NO. 2025-28 – ORDINANCE NO. 12212 – AN ORDINANCE GRANTING A CHANGE IN ZONING CLASSIFICATION FROM R-3 (MULTI-FAMILY RESIDENTIAL) TO M-1 (LIGHT INDUSTRIAL) ON CERTAIN PROPERTY LOCATED ON IRENE CIRCLE, IN THE CITY OF SEDALIA, MISSOURI, IN ACCORDANCE WITH CHAPTER 64, OF THE CITY CODE OF THE CITY OF SEDALIA, MISSOURI was read once by title.

2nd Reading – Motion by Foster, 2nd by Bloess. All Present in Favor. Oldham was Absent.

Final Passage – Motion by Foster, 2nd by Marshall. All Present in Favor. Oldham was Absent.

Roll Call Vote: Voting “Yes” were Robinson, Marshall, Boggess, Hiller, Cross, Foster and Bloess. No one voted “No”. Oldham was Absent.

- A request was submitted by Holland Holding Company LLC, to rezone vacant property at 521 East Third Street from M-2 Heavy Industrial to M-1 Light Industrial. The change would align the property more closely with surrounding land uses and reduce the intensity of potential future developments.

BILL NO. 2025-29 – ORDINANCE NO. 12213 – AN ORDINANCE GRANTING A CHANGE IN ZONING CLASSIFICATION FROM M-2 (HEAVY INDUSTRIAL) TO M-1 (LIGHT INDUSTRIAL) ON CERTAIN PROPERTY LOCATED AT 521 EAST THIRD, IN THE CITY OF SEDALIA, MISSOURI, IN ACCORDANCE WITH CHAPTER 64, OF THE CITY CODE OF THE CITY OF SEDALIA, MISSOURI was read once by title.

2nd Reading – Motion by Foster, 2nd by Marshall. All Present in Favor. Oldham was Absent.

Final Passage – Motion by Foster, 2nd by Marshall. All Present in Favor. Oldham was Absent.

Roll Call Vote: Voting “Yes” were Robinson, Marshall, Boggess, Hiller, Cross, Foster and Bloess. No one voted “No”. Oldham was Absent.

- A request was presented by Mary K. Beard MD LLC to approve the preliminary and final plat for Liahona West subdivision at 3605 West 12th Street. The development consists of 16 lots and 32 residential living units on a 4.5-acre parcel zoned R-3, Apartment House. City staff reviewed the plat and found no deficiencies.

BILL NO. 2025-30 – ORDINANCE NO. 12214 – AN ORDINANCE APPROVING THE FINAL PLAT FOR LIAHONA WEST SUBDIVISION, AN ADDITION TO THE CITY OF SEDALIA, PETTIS COUNTY, MISSOURI ON CERTAIN PROPERTY LOCATED AT 3605 WEST 12TH STREET, IN THE CITY OF SEDALIA, MISSOURI was read once by title.

2nd Reading – Motion by Foster, 2nd by Marshall. All Present in Favor. Oldham was Absent.

Final Passage – Motion by Foster, 2nd by Bloess. All Present in Favor. Oldham was Absent.

Roll Call Vote: Voting “Yes” were Robinson, Marshall, Boggess, Hiller, Cross, Foster and Bloess. No one voted “No”. Oldham was Absent.

APPOINTMENTS: None

BIDS: None

LIQUOR LICENSES:

The following new and renewal Liquor Licenses were read and approved on motion by Foster, seconded by Marshall. All Present in Favor. Oldham was Absent.

New:

*Patricia Spiess dba Alcobacco, 108 West 16th, Packaged Liquor & Sunday Sales

Renewals:

*Heather R. Trotter dba Walgreens #7428, 801 South Limit, Packaged Liquor & Sunday Sales

*Payton Burton dba Bandanas BBQ Sedalia, 2909 West Broadway, Malt Beverage & Sunday Sales

*Ravi Patel dba Liquor Locker, 513 West Main, Packaged Liquor & Sunday Sales

*Jenna Gier dba Tiger Eagle Stop, 3415 East Broadway, Packaged Liquor & Sunday Sales

MISCELLANEOUS ITEMS FROM MAYOR/COUNCIL/ADMINISTRATOR:

Fire Chief Matt Irwin stated that there was a Fire Sunday evening into Monday morning and Fire Crews rescued a woman. Unfortunately, she passed away. She was an organ donor and the hospital is conducting an honor walk for her.

Mayor Dawson expressed his condolences to the family on the death of the lady that died from the fire on Sunday.

GOOD & WELFARE:

Harry Hoffert, 1408 South Barrett, commended City road crews for their work during the recent inclement weather. Through efforts by Police Department and Public Works to get the word out about snow route rules and enforcing them to ensure vehicles were moved off the roadway made it better for road crews to complete their job. He inquired about the possibility of the public getting copies of graphs shared during the presentation so they are aware of how dollars are allocated.

Michelle Abney, 800 East Harvey, asked for an update on the Committee selected to conduct the hiring process for the City Administrator position. She also would like copies of the graphs during presentations since it is sometimes hard to see on the screen.

Kevin Lujin, 408 West 22nd, stated he would like to clarify some items to ensure he is not misinformed. On Case Net, it appears the deadline to appeal the decision in the County vs. City has passed. An update would be helpful. He also commented on a couple of Sunshine Law requests from 2023 he had reviewed: One for all the Council Candidate filings and another for anyone who receives emails at the City, their emails were provided. If it could be more prominent if people are asked to be added to the distribution list, and that they are aware that could be submitted via public records.

The meeting adjourned at 7:45 p.m. on motion by Foster, seconded by Cross to a closed-door meeting in the upstairs conference room pursuant to subsections 1 (Legal Advice), 2 (Real Estate) and 12 (Negotiated Contracts) of Section 610.021 RSMo. Roll Call Vote: Voting "Yes" were Robinson, Marshall, Boggess, Hiller, Cross, Foster and Bloess. No one voted "No". Oldham was Absent.

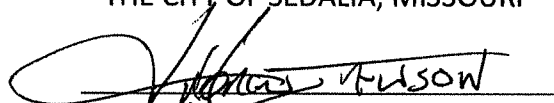
The regular meeting reopened at 9:50 p.m. on motion by Foster, seconded by Robinson.

ROLL CALL:

Jack Robinson	Present	Bob Hiller	Present
Thomas Oldham	Absent	Bob Cross	Present
Chris Marshall	Present	Rhiannon Foster	Present
Tina Boggess	Present	Steve Bloess	Present

The regular meeting adjourned at 9:51 p.m. on motion by Foster, seconded by Robinson. All Present in Favor. Oldham was Absent.

THE CITY OF SEDALIA, MISSOURI


Andrew L. Dawson, Mayor


Jason S. Myers, City Clerk



Let's Cross Paths

**CITY OF SEDALIA, MISSOURI
BUDGET WORK SESSION
FEBRUARY 24, 2025**

The City has an on-line broadcast of Council Meetings available both live and recorded by going to <https://global.gotomeeting.com/join/578973061>.

The Council of the City of Sedalia, Missouri duly met for a Budget Work Session on Monday, February 24, 2025 at 6:30 p.m. at the Municipal Building in the Council Chambers with Mayor Pro-Tem Tina Boggess Presiding. Mayor Pro-Tem Boggess called the work session to order.

ROLL CALL:

Jack Robinson	Present	Bob Hiller	Present
Thomas Oldham	Present	Bob Cross	Present
Chris Marshall	Present	Rhiannon Foster	Present
Tina Boggess	Present	Steve Bloess	Present

Budget Work Session

Interim City Administrator Matthew Wirt presented a summary of the FY 2026 budget. Key priorities for consideration: Balancing Revenue & Expenses, Sustaining Fund Balances, Maximizing Value for Citizens and remaining focused on priorities to continue fiscal responsibility and a stable future.

General Fund:

	Revenues Over (Under) Expenditures	Restricted Balance	Resulting Fund Balance	Percent
Current Net	(276,596)	-	10,167,575	57.9%
Working Model Increase (Decrease)	(65,025)	-	(65,025)	-
Updated Net	(341,621)	-	10,102,550	57.6%
Target Fund Balance	-	-	11,405,789	65.0%
Ending Fund Balance Over (Under) Target	-	-	(1,303,239)	-

Description	Ranking	Requested	Included in Draft	Working Changes	Yes	No
Revenues						
Sales & Use Taxes 2% Inc.		(160,652)	(160,652)	-	X	
-Add another 2% Sales & Use Tax Inc.		(160,652)	(160,652)	-	X	
Property Tax 2% Inc.		(40,822)	(40,822)	-	X	
Personnel Related Costs and Initiatives						
Market Increase for HR Specialist		10,000	-	-		X
Network Sys Admin from PT to FT		28,144	28,144	-	X	
Market Adj – Current Sys Admin & PC Spec		15,075	15,075	-	X	
GIS Field Asset Locator – 18.50 per hour		55,284	-	-		X
Add 3 Firefighters	4	175,000	-	-		X
Add Fire Training Officer	6	85,000	-	-		X
Police Hiring Incentives		30,000	30,000	-	X	
Building Code Certification Raises		14,018	14,018	-	X	
Cemetery Transition Crew Ldr (1,248 Hours)		37,723	-	-		X
Vet & Vet Tech	3	218,813	218,813	-	X	
Vet Supplies		57,156	57,156	-	X	

Equipment		100,000	100,000	-	X	
Donations for Equipment		(25,000)	(25,000)	-	X	
Donations for Equipment		(23,000)	(23,000)	-	X	
Revenue Offset (Proj Start 6/1)		(334,313)	(334,313)	-	X	
Outsourced offsets – Prof Svc Spay/Neuter		(47,083)	(47,083)	-	X	
Outsourced offsets – Prof Svc Euthanasia		(3,750)	(3,750)	-	X	
Outsourced offsets – Prof Svc Vet Visits		(5,583)	(5,583)	-	X	
Outsourced offsets – Incr. Med Cost Est		(2,000)	(2,000)	-	X	
Wage Rates:						
Public Safety Pay Plan						
-Police Sworn Step		60,759	60,759	-	X	
-Police Sworn Mkt (Adj Scale to start 55k)	1	531,345	531,345	-	X	
-Alternate (Scale Start @ 53k)		371,160	-	-		X
-Fire Shift Step		47,032	47,032	-	X	
-Fire Shift COLA		30,438	30,438	-	X	
Non/Public Safety/Sworn Police/Non-Shift Fire						
-COLA (1%)		46,684	46,684	-	X	
-Merit set aside 2%		93,368	93,368	-	X	
Non-Personnel Costs						
Cyber Insurance		39,785	39,785	-	X	
Sophos Monitoring with a 5% increase		47,829	47,829	-	X	
Upgrade to Office 365 from Exchange		50,700	50,700	-	X	
Secure FTP Server–Hardware 3k+1k Software		4,000	4,000	-	X	
GEO Locators (4 proposed/2 in recommended)		12,600	6,300	-	X	
High volt detection-5*\$600 warn down live lines (Recommend 2)		3,000	1,200	-	X	
CMC Capto 2*\$360 – tech rescue		720	-	-		X
Petzel ASAP 2*\$370 – tech rescue		740	-	-		X
CMC Clutch 2*\$750 – tech rescue		1,500	-	-		X
Fast-Rescue Brd/RIT 2*\$2600 sked on each truck now		5,200	-	5,200	X	
MCI Gear-Mass Casualty – pack for added truck		1,000	-	-		X
Knox Box Fund (Recommend Reduce)		3,500	1,000	-	X	
Independent station toning mod-enable 911 to tone one station		3,000	3,000	-	X	
Revolution Conf. 6*800		4,800	-	4,800	X	
Fire Investigator Cert. 3*\$975-add more cert		2,925	-	2,925	X	
FMAM Conf. 3*\$700-fire marshals for inspectors		2,100	-	2,100	X	
Smoke detectors-100*\$20		2,000	2,000	-	X	
Carbon Monoxide Detectors		2,000	2,000	-	X	
Ties – 50*\$30-make part of inventory		1,500	-	-		X
T-shirt Replacement 200*\$20 (Recommend Reduce)		4,000	2,000	-	X	
Uniform Shirts – Long Sleeve 30*\$55		1,650	1,650	-	X	
Extrication Tool compliment tool both sides of town and back up	7	40,000	-	-		X
MDT Brush 1 – computer		5,000	-	-		X
Water Rescue suits 4*\$2,000 for cold water – (2 Recommended)	11	8,000	4,000	-	X	
1.75" hose – old style blue – 12*\$300 – used as trash hose		3,600	-	-		X
2.5" hose – replc old 3" – 24*\$400 – phasing out 3"		9,600	-	-		X
1.75" hose – new style – want to build up reserve – 24*\$300		7,200	-	-		X

Flock Falcon license plate reader maintenance agreement – new 11 @ 3k		33,000	33,000	-	X	
Tactical Warrant Service (x5) new		2,800	2,800	-	X	
SRT-Advanced SWAT for new members		3,900	3,900	-	X	
Death Investigation Class SPI		3,100	3,100	-	X	
NTOA Tactical Armored Rescue Veh – tie to vehicle		1,550	1,550	-	X	
CRU Drug Investigation Training x 2		1,460	1,460	-	X	
Interview and Interrogation training x 3		1,950	1,950	-	X	
SRO Conference		1,252	1,252	-	X	
Missouri Investigation conference		550	-	-		X
Basic Narcotics Investigation conference		1,557	1,557	-	X	
SRT-Marksman observer		1,750	1,750	-	X	
NAPWDA National Workshop – K9		1,599	1,599	-	X	
School of Police Staff and Command		7,000	-	-		X
West Point model leadership training new Sergeants		2,950	2,950	-	X	
SRT-Grenadier Training – instructor level		2,900	-	-		X
Add'l SRT qualifications for rifle/pistol/marksman observer		2,695	2,695	-	X	
Drones as First Responders (1 st Year)	5	115,000	-	-		X
Callyo-new request CRU – phone app serv provider		3,540	-	-		X
Police care cameras x 12 (reimb from Hwy Safety Grant)		82,116	82,116	-	X	
Grant Rev		(82,116)	(82,116)	-	X	
Police Car radar (reimb/Hwy Safety Grant)		34,350	34,350	-	X	
Grant Rev		(34,350)	(34,350)	-	X	
2 Dodge Durangos for FY 2026 – wrap/mounts		94,264	94,264	-	X	
Tax Sale Property Purchases		22,000	-	-		X
Plaque for Jennie Jaynes		3,400	3,400	-	X	
Plasma Cutter		1,900	1,900	-	X	
Keypads-Nightwatch (Finance, Old PD to 911)		10,000	7,000	-	X	
Front Muni Doors-Est –chg piano hinge to panic bar		20,000	-	-		X
Replacement Trailer for hauling lifts/skid steer		24,255	-	-		X
Carport/Storage Shed at S. Marvin 16X30		18,000	-	-		X
Snow Blower		800	800	-	X	
Insulation for Office		2,000	2,000	-	X	
Backhoe Repic 2003-if committal shelter then go to mini ex at 90k		130,000	-	-		X
Office vehicle-replace worn out 2006 Ranger		35,000	-	-		X
Pillow Jack – not purchased in FY 25		3,000	-	-		X
Animal Shelter Walls		50,000	-	50,000	X	
Cost Sharing Contracts						
Emergency Management (Share with County & State)		34,070	34,070	-	X	
- Requested Increase estimate		31,255	-	-		X
Joint Dispatch Agreement (Incr. from 300k to 346k)		346,000	346,000	-	X	
Scott Joplin Ragtime Festival (Incr. from 10k to 12k)		12,000	12,000	-	X	
Sedalia Pettis County Economic Development		140,000	140,000	-	X	
Whiteman Area Leadership Council		5,000	5,000	-	X	
Senior Center Support		2,500	2,500	-	X	
Christmas Parade – Chamber of Commerce		2,000	2,000	-		X
Totals		2,648,090	1,345,938	65,025		

Specific Items for Council Consideration and Direction:

- Sales & Use Tax 2% increase; added additional 2% for 4% total.
- Property Tax 2% increase.
- COLA 1%
- Merit 2%
- Market Increase for HR Specialist: Not Included
- GIS Field Asset Locator: Not Included
- Add 3 Firefighters: Not Included
- Add Fire Training Officer – Not Included; Fire Chief Matt Irwin asked Council to reconsider to allow all-encompassing training in-house; would reduce need for offsite training.
- Cemetery Transition Crew Lead (1,248 Hours): Not Included; Cemetery Director Roger Waters asked Council to reconsider. Amount presented is for 1 year, but would consider 6-months.
- Police Sworn Market – Alternate (Scale Start @ 53k): Not Included
- CMC Capto 2*\$360 – Tech rescue: Not Included
- Petzel ASAP 2*\$370 – Tech rescue: Not Included
- CMC Clutch 2*\$750 – Tech rescue: Not Included
- Fast Rescue Board/RIT 2*\$2,600: Not Included. Council added back in with Motion by Foster, second by Oldham. All in Favor.
- MCI Gear – Mass Casualty: Not Included
- Revolution Conference 6*\$800: Not Included. Council added back in with Motion by Foster, second by Oldham. All in Favor.
- Fire Investigator Certification 2*\$975 – Not Included. Council added back in with Motion by Foster, second by Oldham. All in Favor.
- FMAM Conf. 3*\$700 – Fire Marshals for inspectors: Not Included. Council added back in with Motion by Foster, second by Oldham. All in Favor.
- Ties – 50*\$30 – part of inventory: Not Included
- Extrication tool/compartment tool: Not Included
- MDT Brush 1 – computer: Not Included
- 1.75" hose – blue – 12*\$300 – used as trash hose: Not Included
- 2.5" hose – replaces old 3" – 24*\$400 – phasing out 3": Not Included
- 1.75" hose – build up reserve – 24*\$300: Not Included
- Missouri Investigation Conference: Not Included
- School of Police Staff and Command: Not Included
- SRT-Grenadier Training – Instructor level: Not Included
- Drones as First Responders (1st Year) – removed due to cost: Not Included. Police Chief David Woolery stated the department could reduce to 1 to lessen cost but would still have expense tying to Joint Communications. A new estimate for 1 drone will be brought back for consideration.
- Callyo – new request from CRU – phone app serv provider for investigations: Not Included
- Tax Sale Property Purchases: Not Included
- Front Muni Doors-Est – piano hinge to panic bar: Not Included
- Replacement Trailer for hauling lifts/skid steer: Not Included
- Carport/Storage Shed at South Marvin 16X30: Not Included
- Backhoe – Replace 2003 model – If Committal shelter – to mini ex @ 90k: Not Included

- Office vehicle – replace worn out 2006 Ranger: Not Included.
- Pillow Jack – not purchased in FY 25: Not Included.
- Increase requested from Emergency Management: Not Included

Transportation:

	Revenues Over (Under) Expenditures	Other Changes To Fund	Resulting Fund Balance	Percent
Current Net	238,995	-	1,703,822	34.2%
Working Model Increase (Decrease)	(3,500)	0	(3,500)	-
Updated Net	235,495	235,495	1,700,322	34.1%
Target Fund Balance	-	-	1,993,600	40.0%
Ending Fund Balance Over (Under) Target	-	-	(293,278)	-

Description	Ranking	Amount Requested	Included in Draft	Working Changes	Yes	No
Revenues:						
Sales & Use Taxes 2% Inc.		(75,368)	(75,368)	-	X	
-Add 2% Sales & Use Tax Inc.		(75,368)	(75,368)	-	X	
Personnel Related Costs & Initiatives:						
Street Department (2 Oper. over budget)						
-Added Administrative Assistant		55,435	-	-		X
-Add 2 Laborers		97,311	-	-		X
-Add 2 Equipment Operator I's		105,144	-	-		X
Alley & ROW Maint (1 Oper. Over Budget)						
Wage Rates:						
Streets						
-COLA (1%)		12,400	12,400	-	X	
-Merit Set Aside 2%		24,801	24,801	-	X	
Alley & ROW Maint						
-COLA (1%)		2,688	2,688	-	X	
-Merit Set Aside 2%		5,375	5,375	-	X	
Non-Personnel Costs						
Street Department						
Mio Vision data link fees		8,000	-	-		X
Mio Vision scout traffic counter 2*\$30,000	5	60,000	-	-		X
Multi-function trucks	1	1,250,000	-	-		X
-Moved to CIP						
Macro Paver	2	430,000	430,000	-	X	
Forced feed loader	3	295,000	-	-		X
Ride on Belly Broom-replc old 2022 unit		90,000	-	-		X
Mosquito Sprayer replacement – current unit unserviceable		20,000	20,000	-	X	
Digital sign board (need additional)	6	25,000	-	-		X
Backhoe (concrete) replce 2006 unit		165,900	-	-		X
-Forks for replc concrete backhoe		4,000	-	-		X
Gooseneck trailer-Asphalt Paver lowboy trailer damages screed		45,000	-	-		X
Equip Trailer-haul attachments/small equip		25,000	-	-		X
48"Skid Steer Miller replc – current underpowered		30,000	30,000	-	X	

Walk behind street cut saw		4,000	4,000	-	X	
1 ton truck-pull small equip/trailers, gooseneck and bumper hitch		80,000	-	-		X
Fencing Street Department Lot		175,000	-	-		X
Structure and sewer for wash pad eliminate I & I (back lot)		150,000	150,000	-	X	
Repair roof-storage shed		40,000	40,000	-	X	
Shipping Container to Store straw		7,500	7,500	-	X	
New Tables/Chairs Break room		2,500	-	2,500	X	
Right of Way Maintenance						
Tracked excavator	4	333,144	-	-		X
-Trade in value of current wheeled		(160,000)	-	-		X
Two Stand on Mowers		17,000	17,000	-	X	
Mini Excavator w/flail mower attachment and ditching bucket		160,000	-	-		X
Utility Trailer/Equip-for added crew		10,000	-	-		X
2 stand on mini skid steer "dingo" – ditching, abatements @\$50,000		100,000	-	-		X
1 ton crew supervisors truck/plow spreader, gooseneck hitch		80,000	-	-		X
Another new truck initiative		250,000	-	-		X
Shelving, hangers, racks for small tools/weedeaters, pole saws		2,000	2,000	-	X	
Split 50/50 w/Santitation new office space, desks, chairs etc.		1,000	-	1,000	X	
Cost Sharing Contracts:						
Oats Transit Services		25,000	25,000	-	X	
Transfer to Airport		200,000	200,000	-	X	
Transfer to CIP		300,000	300,000	-	X	
Totals:		4,528,199	1,270,765	3,500		

Specific Items for Council Consideration and Direction:

- Sales & Use Tax 2% increase; added additional 2% for 4% total.
- Street Department – Added Administrative Assistant: Not Included.
- 2 Laborers: Not Included.
- 2 Operator I's: Not Included
- COLA 1%
- Merit 2%
- Miovision data link fees: Not Included. Public Works operations Director Justin Bray asked Council to reconsider.
- Miovision Scout Traffic Counter – 2 Units - \$30,000 ea.: Not Included. Public Works operations Director Justin Bray asked Council to reconsider; important for getting accurate traffic counts.
- Multi-function trucks: Not Included. Moved to CIP
- Force Feed loader: Not Included
- Ride on Belly Broom – Replace 2002 unit: Not Included
- Digital Sign Board: Not Included
- Backhoe – Concrete replace 2006 unit: Not Included
- Forks for replacement concrete backhoe: Not Included

- Gooseneck Trailer – Asphalt Paver lowboy trailer damages screed: Not Included. Public Works operations Director Justin Bray asked Council to reconsider; current trailer can't be modified to haul Paver.
- Equipment Trailer – haul attachments and smaller equipment: Not Included.
- 1-ton truck – pull small equipment, trailers, gooseneck & bumper hitch: Not Included
- Fencing Street Department Lot: Not Included
- New Tables/Chairs for Break Room: Not Included. Council added back in with Motion by Oldham, second by Hiller. All in Favor.
- Tracked excavator: Not Included
- Trade in Value of current wheeled: Not Included
- Mini Excavator w/flail mower attachment and ditching bucket: Not Included
- Utility trailer/Equipment – for added crew: Not Included
- 2-stand on mini skid steer “dingo” for ditching, abatements: Not Included
- 1-ton supervisors truck/plow spreader, gooseneck hitch: Not Included
- Another New Truck Initiative: Not Included
- Split 50/50 with Sanitation new office space, desks, chairs, etc.: Not Included. Council added back in with Motion by Oldham, second by Foster. All in Favor.

Capital Improvements:

	Revenues Over (Under) Expenditures	Other Changes To Fund Balance	Resulting Fund Balance	Unreserved Fund Balance	Percent
Current Net	<u>(4,270,726)</u>		<u>2,966,886</u>	<u>1,306,720</u>	19.5%
Working Model Increase (Decrease)	<u>0</u>	<u>0</u>	<u>0</u>		
Updated Net	<u>(4,270,726)</u>	<u>(4,270,726)</u>	<u>2,966,886</u>	<u>1,306,720</u>	19.5%
Target Fund Balance			<u>4,338,206</u>	<u>2,678,041</u>	40.0%
Ending Fund Balance Over (Under) Target			<u>(1,371,321)</u>		

Description	Ranking	Requested	Included in Draft	Working Changes	Yes	No
Revenues						
Sales & Use Taxes 2% Inc		(76,426)	(76,426)	-	X	
-Add 2% Sales & Use Tax Inc		(76,426)	(76,426)	-	X	
Capital Improvement Projects						
Multi-function trucks		1,250,000	1,250,000	-	X	
Police Department Storage/Training Facility (2 Story 40X60)	13	480,000	-	-		X
Police Special Response Veh		275,000	275,000	-	X	
Committal Shelter	5	100,000	-	-		X
COP Proc Aquatics, Bowling, Fire Station, Fire Training & Burn Tower		(19,250,000)	(19,250,000)	-	X	
Aquatics Park on Broadway		8,000,000	8,000,000	-	X	
Bowling Alley		3,000,000	3,000,000	-	X	
Increase in Bowling Alley		2,000,000	2,000,000	-	X	
Fire Station		4,500,000	4,500,000	-	X	
Training Building		1,000,000	1,000,000	-	X	
Burn Tower		750,000	750,000	-	X	
New Aerial on Order		1,680,000	1,680,000	-	X	
Engine on Order – due next FY (Leave in reserves)		1,000,000	-	-		X

Opticom Moved from Fire – 10 year cost paid upfront		231,000	231,000	-	X	
-Fire Brush Truck Replacement		160,000	-	-		X
Storm Drainage Projects		2,997,184	2,997,184	-	X	
-Grant Revenue		(1,498,592)	(1,498,592)	-	X	
Local ARPA from GF		(1,498,592)	(1,498,592)	-	X	
Balance North Central Sidewalk Project		1,345,837	1,345,837	-	X	
-Grant Revenue		(767,760)	(767,760)	-	X	
Local ARPA from GF		(578,077)	(578,077)	-	X	
CDBG Sidewalk		1,000,000	1,000,000	-	X	
-CDBG Grant		(500,000)	(500,000)	-	X	
Sidewalk State Fair Blvd 50 to 3 rd to 65	11	310,000	-	-		X
Sidewalk 65 Hwy-7 th to Liberty Park Blvd		225,000	-	-		X
Sidewalk repair/Replc Funding level	4	500,000	500,000	-	X	
Washington Street Bridge Repairs	1	1,200,000	1,200,000	-	X	
-County Infrastructure Grant		(400,000)	(400,000)	-	X	
<u>Street Paving Projects:</u>	3					
-Grand – 20 th to 24 th 3"	3-1/10	230,000	230,000	-	X	
-16 th limit, Barrett	3-2/10	220,000	220,000	-	X	
-16 th Ohio-New York	3-3/10	387,000	387,000	-	X	
-County Infrastructure Grant		(450,000)	(450,000)	-	X	
-Emmett – Broadway to Tower	3-4/10	255,000	255,000	-	X	
-Put in Macro Paving Materials		300,000	300,000	-	X	
-10 th – Ingram to Washington	3-5/10	44,000	-	-		X
-24 th -Ingram to New York	3-6/10	300,000	-	-		X
-Alley-Broadway -9 th - Ingram Merriam	3-7/10	104,000	-	-		X
-Adams/Pro Energy-Cherry Tree-Eaglevue	3-8/10	245,000	-	-		X
-Sneed-Broadway-Dead End Adjacent to Church	3-9/10	14,000	-	-		X
-Alley-Broadway & 7 th Montgomery to Merriam	3-10/10	95,000	-	-		X
32 nd to Sacajawea Winchester Extension	7	2,500,000	-	-		X
Mil Street – Potential PPP Financing	8	481,000	481,000	-	X	
-Developer Agreement	8	(481,000)	(481,000)	-	X	
16 th and Winchester to 32 nd	9	3,500,000	-	-		X
State Fair Blvd-Main Round-About	10	2,000,000	-	-		X
65 Hwy Ramps at Main-Cost Share/MoDOT	12	1,000,000	-	-		X
ProEnergy to Oak Grove	14	2,500,000	-	-		X
16 th Complete New York-65 Hwy	15	4,000,000	-	-		X
Wayfinding Signage	16	100,000	-	-		X
Balance – Bikeway 3 rd – Katy Depot-Liberty Park (TAP Grant)		832,850	832,850	-	X	
-Grant Revenue		(416,425)	(416,425)	-	X	
ERP System	2	515,000	515,000	-	X	
Transfer from Transportation (see bottom of transportation)		-	(300,000)	-		
Totals		25,633,573	6,656,573			

Specific Items for Council Consideration and Direction:

- Sales & Use Tax 2% increase; added additional 2% for 4% total.
- Police Department – Storage & Training facility (2 story 40X60): Not Included
- Committal Shelter-Currently at \$100,000: Not included. Councilwoman Boggess inquired if Committal Shelter without water, restroom, heating and cooling had been quoted. Cemetery Director Roger Waters stated this past summer it had and cost was at \$65,000-\$70,000. Council requested that a new estimate be obtained and brought back for consideration.
- An increase in the amount for the Bowling Alley was reflected. Park Director Amy Epple stated that this increase is related to Bowling Alley cost increase of approximately \$2 Million and moving eSports to the facility, increasing the square footage to accommodate the program and expanding concessions area.
- Engine on Order Due Next FY (Leave in reserves).
- Fire Brush Truck Replacement: Not Included
- Sidewalk State Fair Blvd 50 Hwy to 3rd to 65: Not Included
- Sidewalk 65Hwy – 7th to Liberty Park Blvd: Not Included
- Paving 10th Street Ingram to Washington: Not Included
- Paving 24th Street Ingram – New York: Not Included
- Paving Alley Between Broadway and 9th Ingram-Merriam: Not Included
- Paving Adams/Pro Energy-Cherry Tree-Eagleview: Not Included
- Paving Sneed Broadway-Dead end adjacent to Church: Not Included
- Paving Alley between Broadway & 7th Montgomery-Merriam: Not Included
- 32nd to Sacajawea (Winchester Extension): Not Included
- 16th & Winchester to 32nd: Not Included
- State Fair Blvd & Main Round-About: Not Included
- 65 Hwy Ramps at Main-Cost share with MoDot: Not Included
- Pro Energy to Oak Grove: Not Included
- 16th Street Complete New York-65 Hwy: Not Included
- Wayfinding Signage: Not Included

Central Business & Cultural District:

	Revenues Over (Under) Expenditures	Other Changes To Fund Balance	Resulting Fund Balance	Percent
Current Net	(89,793)	-	106,610	182.8%
Working Model Increase (Decrease)	0	0	0	-
Updated Net	(89,793)	(89,793)	106,610	182.8%
Target Fund Balance	-	-	58,309	100%
Ending Fund Balance Over (Under) Target			48,301	

Description	Amount Requested	Included in Draft	Working Changes	Yes	No
Revenue Projected					
Local Taxes	(45,664)	(45,664)	-	X	
Interest	(8,915)	(8,915)	-	X	
Misc. (Sponsors & Vendor Fees)	(3,730)	(3,730)	-	X	
Potential Alley Activation Grant	(10,000)	(10,000)	-	X	
Legal & Accounting	1,200	1,200	-	X	
Property Tax Collection Fees	1,402	1,402	-	X	
MODOT Leasing Fee	100	100	-	X	


Available Property Tours	500	500	-	X
Building and Grounds Maint.	1,500	1,500	-	X
Downtown Façade Program	45,400	45,400	-	X
Downtown Public Restrooms/Shelter	50,000	50,000	-	X
Grant Project (Alley Activation)	12,500	12,500	-	X
Banners & Murals	10,000	10,000	-	X
Downtown Wayfinding Signs	4,000	4,000	-	X
Benches	4,000	4,000	-	X
Semi Annual Mixer	1,200	1,200	-	X
Membership Training	2,700	2,700	-	X
Downtown Maps	1,200	1,200	-	X
Office Supplies/Equip/Software	1,500	1,500	-	X
Events:				
-Thanksgiving Fireworks	2,500	2,500	-	X
-Scott Joplin Festival	2,200	2,200	-	X
-Christmas Parade Sponsorship	500	500	-	X
-Criterium/Wheelman Event	4,000	4,000	-	X
Main Street Marketing/First Thurs	7,000	7,000	-	X
-Contingent Events	2,500	2,500	-	X
Branding Merchandise	2,200	2,200	-	X
Totals	89,793	89,793		

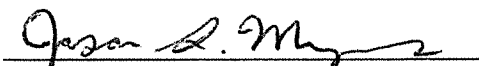
Council discussed the restrooms to be installed downtown by the Pavilion. It has been included in the Budget, however, the amount does not cover the cost. An additional \$50,000 at least would be required. Motion by Robinson, seconded by Oldham to increase the Capital Improvement Budget by \$50,000 to cover the installation of restrooms by the Pavilion. Motion withdrawn by Robinson to gather bids for exact cost.

Next Steps: Presentation of incorporated budget changes – March 3, 2025; Public Hearing on FY 2026 Budget – March 17, 2025; Adoption by Council of FY 2026 Budget – March 17, 2025 (can be delayed if more time is needed by Council).

The work session adjourned at 8:23 p.m. on motion by Oldham, seconded by Robinson. All in favor.

THE CITY OF SEDALIA, MISSOURI


 Tina Boggess, Mayor Pro-Tem


 Jason S. Myers, City Clerk

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AN AGREEMENT FOR CONSTRUCTION MANAGER AT RISK FOR THE SEDALIA FIRE/AQUATICS/BOWLING PROJECT.

WHEREAS, The City of Sedalia, Missouri, received a proposal from Nabholz Construction Corporation for a Construction Manager at Risk for the Sedalia Fire/Aquatics/Bowling Project; and

WHEREAS, under the proposal, the City of Sedalia, Missouri, shall pay a lump sum equal to \$20,000 for pre-construction services, \$36,000 per month for construction management services general conditions, and 2.25% of the gross maximum price cost of work to Nabholz Construction Corporation for said services as described in the proposed agreement attached to this ordinance and incorporated by reference herein.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SEDALIA, MISSOURI, as follows:

Section 1. The Council of the City of Sedalia, Missouri, hereby approves and accepts the agreement by and between the City of Sedalia, Missouri, and Nabholz Construction Corporation in substantively the same form and content as the agreement has been proposed.

Section 2. The Mayor or City Administrator are authorized and directed to execute and the City Clerk is hereby authorized and directed to attest and fix the seal of the City of Sedalia, Missouri, on the documents in substantively the same form and content as they have been proposed.

Section 3. The City Clerk is hereby directed to file in his office a duplicate or copy of the documents after they have been executed by the parties or their duly authorized representatives.

Section 4. This ordinance shall take effect and be in full force and effect from and after its passage and approval.

Read two times by title, copies of the proposed ordinance having been made available for public inspection prior to the time the bill is under consideration by the Council and passed by the Council of the City of Sedalia, Missouri this 3rd day of March 2025.

Presiding Officer of the Council

Approved by the Mayor of said City this 3rd day of March 2025.

ATTEST:

Andrew L. Dawson, Mayor

Jason S. Myers
City Clerk

 **AIA® Document A133® – 2019**

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

AGREEMENT made as of the 3rd day of March in the year 2025
(In words, indicate day, month, and year.)

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

City of Sedalia, MO
200 South Osage Ave
Sedalia, MO 65301

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

Nabholz Construction Corporation
1316 Old 63 S.
Columbia, MO 65201

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

Sedalia Fire/Pool/Bowling
620 E 5th Street
Sedalia, MO 65301
32 acre Mixed-Use Campus

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

Hoefler Welker
4622 Pennsylvania Avenue, Suite 1400
Kansas City, MO 64112

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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ARTICLE 1 INITIAL INFORMATION

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

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

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

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

Multiple facilities on a 32 acre Mixed Use Campus

§ 1.1.2 The Project's physical characteristics:

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

To be Developed

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

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

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

.1 Design phase milestone dates, if any:

To be Determined

.2 Construction commencement date:

To be Determined

.3 Substantial Completion date or dates:

To be Determined

.4 Other milestone dates:

To be Determined

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

Not Applicable

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

To be Determined

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

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

Not Applicable

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

Kelvin Shaw, Project Director
200 S Osage Ave
Sedalia, MO 65301
kshaw@sedalia.com
660-827-3000

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

Hoefer Welker

§ 1.1.10 The Owner shall retain the following consultants and contractors:

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

.1 Geotechnical Engineer:

To be Determined

.2 Civil Engineer:

To be Determined

.3 Other, if any:

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

To be Determined

§ 1.1.11 The Architect's representative:

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

Katherine Waldrop
Hoefler Welker
4622 Pennsylvania Avenue, Suite 1400
Kansas City, MO 64112
913-307-3700

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

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

Mitchell Fuemmeler, General Manager
Nabholz Construction
1316 Old 63 S.
Columbia, MO 65201
573-507-7700
Mitchell.fuemmeler@nabholz.com

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

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

As needed to fulfill the requirements of this agreement

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

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

In accordance with Missouri Statutes

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

Not Applicable

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

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

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User Notes:

(1177239864)

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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

§ 2.1.1 Construction Manager shall exercise the degree of care, skill and diligence in the performance of the Construction Manager's Work, to assure its Work is performed in a good and workmanlike manner, consistent with construction industry standards for similar projects and circumstances in the same geographic area (hereinafter the "Construction Manager's Standard of Care"). The Construction Manager shall be responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Construction Manager's Work under this Agreement, including all coordination of the duties of all trades, and shall furnish efficient business administration and supervision of the Work.

Construction Manager's Standard of Care specifically excludes any design or design-related responsibilities, and any action taken by Construction Manager under this Agreement does not and shall not be construed to approve, represent or warrant the adequacy and suitability of the plans and specifications for the purpose for which they are provided.

§ 2.1.2 To the extent the Owner requests that the Construction Manager provide services within its Standard of Care, such as value analysis and/or constructability suggestions or comments with respect to the Drawings and Specifications, Owner acknowledges that such services are advisory only and not professional design services. The Owner shall refer all suggestions and comments to the Architect or other design professionals for review and evaluation prior to Owner's acceptance thereof. The Owner further acknowledges that the Construction Manager is not responsible for adequacy of the drawings and specifications or for identifying errors or omissions that may exist therein. The Owner shall cause the Architect to revise the Drawings and Specifications to reflect all value analysis and constructability suggestions and comments accepted by the Owner without delay or disruption to the timely and orderly progress of the work. The contract sum and contract time may be adjusted upon the Contractor's review and pricing of the revised Drawings and Specifications.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests and the Construction Manager's Standard of Care. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. Nothing herein shall negate Construction Manager's right to equitable adjustments in the Contract Time or Contract Sum in accordance with the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction (as amended), shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law; Article 15, Claims and Disputes. The term "Contractor" as used in A201-2017 (as amended) shall mean the Construction Manager.

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall perform its Preconstruction Services consistent with the Construction Manager's Standard of Care. The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

§ 3.1.3 Consultation

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

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

§ 3.1.3.3 The Owner and Architect shall consult with the Construction Manager in establishing building information modeling and digital data protocols for the Project to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

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

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

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

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

§ 3.1.9 [Intentionally Omitted]

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

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 [Intentionally Omitted]

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

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

§ 3.1.12 Procurement

[Intentionally Omitted]

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

Not Applicable

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§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 When the Drawings and Specifications have been completed, the Construction Manager will solicit trade contractors for competitive bids in relevant trade categories. Upon completion of the bidding cycle, the Construction Manager shall propose a Guaranteed Maximum Price ("GMP"), which shall be the sum of the estimated cost of work, including contingencies described in Section 3.2.4 and the Construction Manager's Fee as described in Section 6.1.2, and General Conditions.

§ 3.2.2 The Owner and Construction Manager acknowledge that the Construction Manager will/has developed the Guaranteed Maximum Price based upon completed Contract Documents.

In the event that the Owner and Construction Manager agree that the Construction Manager will develop a Guaranteed Maximum Price before the completion of the Contract Documents, in that such Drawings and Specifications do not contain all details and requirements of the Work, the Guaranteed Maximum Price will be based on certain assumptions by the Construction Manager. To the extent that the Contract Documents are anticipated to require further development, the Construction Manager will include an allowance to be identified in the GMP Amendment for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, or any condition which was not reasonably anticipated by the Construction Manager's assumptions regarding the completion of the design, all of which, if required shall be incorporated by Change Order for additional cost and/or time as required. If the Contract Documents or final Drawings and Specifications require performance of the Work in any manner different from such assumptions, or contain changes in the scope of the Work to be performed by the Construction Manager, the Construction Manager shall as soon as practicable notify the Owner thereof and of the Construction Manager's estimate of the resulting increase or decrease in the Guaranteed Maximum Price. At such time as the Owner and the Construction Manager have agreed upon the effect of such difference and/or changes in the scope of the Work, a Change Order shall be issued substituting the finished Contract Documents for those described in this Agreement and the Guaranteed Maximum Price and Contract Time shall be adjusted as agreed by the parties. .

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- .6 The Date of Commencement of the Work shall be within ten (10) days of receipt of 1) Owner's Notice to Proceed, 2) the issuance of all applicable permits, and 3) Proof of adequate financing for the Work by the Owner and/or Owner's lender (in a form suitable to the Construction Manager shall include its), whichever is later.

§ 3.2.4 The GMP shall contain a mutually agreeable and separately identified contingency (the "Construction Contingency") for the sole use by the Construction Manager. The Construction Contingency is not allocated to any particular item of the cost of the Work and is established for the Cost of the Work incurred by the Construction Manager, including mitigation of weather impact, losses, expenses or damages not covered by insurance or bonds, low estimates or deviations from the estimated cost and overly aggressive scheduling, supply chain delays or shortage of properly skilled workforce. It is understood by the Parties that this contingency is not to be allocated to costs due to errors and omissions in the Contract Documents or to remedy, correct or resolve any inconsistencies, ambiguities, errors or omissions contained within the Architect's work product on which the Construction Manager's Guaranteed Maximum Price was based.

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

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

§ 3.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, with the exception of reimbursable costs associated with Preconstruction Services, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents, provided the Architect clouds all changes to the Drawings and Specifications on which the Guaranteed Maximum Price was based.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.2.10 The GMP will be calculated based on current prices for component building materials. Contractor will use commercially reasonable diligence with respect to the selection and management of material suppliers and supply chains in an effort to minimize the risk of price increases or schedule disruptions; however, due to volatile market conditions, Contractor cannot warrant material prices or the timely performance of material suppliers. Should there be a significant price increase in the prices of the specified materials that are purchased after execution of the GMP Amendment, the Owner agrees that the GMP will be adjusted. A significant price increase means a change in price from the date of establishment of the GMP to the date of purchasing the materials by an amount exceeding five percent (5%). Such price increases shall be documented by available vendor quotes, estimates, invoices, catalogs, receipts or other documentation.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201-2017 (as amended), the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

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

§ 3.3.2 Administration

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

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

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

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

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

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

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

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

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

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents in a timely manner so as not to delay the Project schedule. The Owner shall also furnish any other

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information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

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

§ 4.2 Owner's Designated Representative

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The Owner's representative shall render decisions promptly and furnish information expeditiously, to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017 (as amended), the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

(Paragraph deleted)

The fee for preconstruction services shall be a lump sum of **Twenty Thousand Dollars (\$20,000)**. Any miscellaneous costs associated with the delivery of preconstruction services (printing, advertising, travel, etc.) shall be invoiced at direct cost of the item without mark-up or profit for the Construction Manager. Preconstruction Services will be invoiced on a pro-rata monthly basis for the term of the preconstruction services as identified in Article 5.1.2.

(Paragraphs deleted)

§ 5.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond (90) days from the date of this Agreement or if the originally contemplated scope of services is significantly modified. If preconstruction services extend past the time frame identified, Owner will be billed the direct personnel expense plus 10% on a timecard basis for those individuals working on this project.

Should the date of commencement, as defined in the initial solicitation, be delayed through no fault of the Construction Manager, the Construction Manager reserves the right to substitute project team members from those originally proposed or be entitled to compensation for those team members per the rate schedule list above.

(Table deleted)

§ 5.1.2.1 Compensation for direct personnel expense shall include the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project plus all costs related thereto to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, retirement plans, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 [Intentionally Omitted]

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services will be in accordance with 5.1.1.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice without retainage. Amounts unpaid 30 (thirty) days after the invoice date shall bear interest at the rate of 1.5% per month or the maximum rate of 1.5% allowed by applicable law, whichever is less.

(Paragraph deleted)

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

Fee Compensation shall be calculated and paid to Nabholz at 2.25% of the guaranteed maximum price

§ 6.1.3 A lump sum equal to 2.25% of the Cost of the Work. The Construction Manager's Fee shall be adjusted for changes in the Work by zero percent (0%) for deductive changes and 10% for additive changes.

§ 6.1.4 [Intentionally Omitted]

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed One Hundred percent (100 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

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

\$0/day

§ 6.1.7 Other:

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

Not Applicable

§ 6.2 Guaranteed Maximum Price

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

§ 6.2.1 [Intentionally Omitted]

§ 6.3 Changes in the Work

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

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

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

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201-2017 (as amended), as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement.

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Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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

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

§ 6.4 **Payment for General Conditions.** Construction Manager shall be paid the sum of \$36,000/month for General Conditions. This amount shall be subject to adjustment as provided in the final schedule established by the Guaranteed Maximum Price Amendment.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs Included in the Guaranteed Maximum Price

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

§ 7.1.1.1 The sum for General Conditions will be billed as a lump sum and paid in monthly installments commencing with the next calendar month following the date of commencement of construction of the Project and concluding on the date of completion of the Work. Payments will be pro-rated for part of a calendar month at the commencement of construction and the calendar month in which Final Completion occurs.

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

§ 7.1.3 [Intentionally Omitted]

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or at off-site locations or workshops.

§ 7.2.2 Salaries and burden of the Construction Manager's supervisory, project/operations management, executive, safety and administrative personnel when engaged in execution of the Work, whether at the site, at the Construction Manager's principal office or offices other than the site office. These person costs will be included in the agreed upon General Conditions costs.

§ 7.2.2.1

(Paragraphs deleted)

[Intentionally Omitted]

§ 7.2.3 [Intentionally Omitted]

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

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

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§ 7.3 Subcontract Costs

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

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

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

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

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

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Equipment owned by the Construction manager shall be rented at a rate not to exceed the standard rental rate in the geographical area in which the project is located.

§ 7.5.3 Costs of removal of debris and/or costs associated with diverting waste to a waste recycling center from the site of the Work and its proper and legal disposal.

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

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 Charges for that portion of insurance, bonds and other surety programs required by the Contract Documents and the Construction Manager that can be directly attributed to this Contract.

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

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

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

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

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

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

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

§ 7.6.6 Costs for communications services, data lines, telephone service, electronic equipment, and software, directly related to the Work and located at the site.

§ 7.6.7 Costs of document reproductions, postage, and delivery charges.

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

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

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

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, including travel expenses, lodging, and meals.

§ 7.7 Other Costs and Emergencies

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

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

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

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

§ 7.7.5 **Warranty Reserve (CM at Risk).** A warranty reserve in the amount of **one half of one percent (0.5%)** of the Cost of the Work will be established and included in the GMP Amendment(s) to cover the Construction Manager's cost for providing the warranty as outlined in the Contract Documents. The warranty reserve shall be deemed a Cost of the Work. In order to facilitate the final payment process, set forth in Article 11.2, the Construction Manager will bill the Owner a lump sum amount for the full warranty reserve at the time of final payment. The expenditure of the warranty reserve will not be subject to the audit provisions of this Agreement.

§ 7.8 Related Party Transactions

§ 7.8.1 [Intentionally Omitted]

§ 7.8.2 [Intentionally Omitted]

§ 7.9 Costs Not To Be Included in the Guaranteed Maximum Price

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

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

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. If Construction Manager notifies the Owner of any discounts, rebates or refunds from subcontractors or vendors for early payment at the beginning of the Project, unless Owner elects to make payment early to take advantage of said discounts, the Construction Manager may choose to make payments and then accrue the discounts to the Construction Manager.

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

§ 10.1 The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The 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, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. Documentation reviewed by the Owner and/or the Owner's auditors pursuant to the audit rights provided herein shall not be construed as documents subject to public disclosure under applicable open records laws. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ 10.2 The Contractor shall not be obligated to provide any services, information or documentation relating to its Work to auditors working on a contingency fee basis (auditor's fees calculated as a percentage of the client's net recovery), nor shall any reimbursement obligation otherwise required by the Contract Documents be applicable to Contractor when an auditor is hired by Owner on a contingency fee basis.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 Provided an Application for Payment is received by the Architect not later than the 1st day of the month, the Owner shall make payment to the Construction Manager not later than the 20th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than 30 days after the Architect received the Application for Payment. Owner and Construction Manager agree that the terms outlined in 5.2.2 shall apply to this Article 11.1.3. An Application for Payment shall be deemed certified 14 days after submittal unless the Owner or Architect objects to all or part of the Application for Payment within 14 days of submittal.

§ 11.1.4 If required by the Owner, with each Application for Payment, the Construction Manager shall submit a detailed cost transaction report generated from the Construction Manager's accounting system, and upon request by the Owner or Architect, shall provide any other evidence reasonably required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager, less (2) that portion of those payments attributable to the Construction Manager's Fee, plus (3) payrolls for the period covered by the present Application for Payment.

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

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

§ 11.1.5.2 Owner acknowledges that the Guaranteed Maximum Price applies in the aggregate to all categories and line items of the Cost of the Work. The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

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§ 11.1.5.3 [Intentionally Omitted]

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

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

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017 (as amended);
- .3 [Intentionally Omitted];
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017 (as amended);
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

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

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

Five percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

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

General Conditions, Bonds, Insurance, Permits and CM Fee

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

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

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If the manner of completion of the work, and its progress are and remain satisfactory for the Owner, and the Work is shown at fifty percent (50%) or more complete in the Application for Payment, without reduction of previous retainage, no further retainage will be withheld.

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

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

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

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

§ 11.1.11 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). Upon recommendation of the Construction Manager, a Subcontractor's retainage may be reduced by a percentage established and agreed upon by the Construction Manager. The full five percent (5%) retainage may be reinstated with respect to remaining payments for identified Subcontractors whose manner of completion of the work and its progress do not remain satisfactory to the Construction Manager and/or the Owner, or if any surety withholds its consent, or for other good and sufficient reasons.

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

§ 11.1.13 The receipt by Construction Manager of a partial payment of any amount due to Construction Manager endorsed as payment in full will be deemed to be a part payment only, and any endorsements or statements on a check or other form of commercial paper, or any other document accompanying the payment, shall not be deemed an accord and/or satisfaction, notwithstanding such endorsements.

§ 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017 (as amended);
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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

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

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

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

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

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

§ 11.3 Interest

Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate of 12% per annum or the maximum rate allowed by applicable law, whichever is less.

(Paragraph deleted)

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201-2017 (as amended). However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution.

§ 12.1.2

(Paragraphs deleted)

[Intentionally Omitted]

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

Arbitration pursuant to Article 15 of AIA Document A201-2017 (as amended)

Litigation in a court of competent jurisdiction

Other: *(Specify)*

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

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

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201-2017 (as amended), then the Owner shall pay the Construction Manager a termination fee as follows:
(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

Payment shall be reimbursed for all costs to the date of termination plus any costs to demobilize the site, reimbursement to subs/suppliers and the contracted fee

§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Owner shall provide Construction Manager with advance written notice of such assignment. The

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Construction Manager shall execute all consents reasonably required to facilitate the assignment and acceptable to Construction Manager.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with policy limits of Two million dollars (\$ 2,000,000) for each occurrence and two million dollars (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of two million dollars (\$ 2,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits of one million dollars (\$ 1,000,000) each accident for bodily injury, one million dollars (\$ 1,000,000) each employee for bodily injury by disease, and one million dollars (\$ 1,000,000) policy limit for bodily injury by disease.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of two million dollars (\$ 2,000,000) per claim and two million dollars (\$ 2,000,000) in the aggregate.

§ 14.3.1.6 Other Insurance

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

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

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

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

§ 14.3.2 Construction Phase

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

§ 14.3.2.1 The Construction Manager shall provide bonds if required in AIA Document A133™-2019 Exhibit B, and elsewhere in the Contract Documents. Bonds may be obtained through the Construction Manager's usual source and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

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

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

§ 14.5 Other provisions:

§ 14.5.1 Owner acknowledges that Contractor is an independent contractor and the Owner has no ownership or control over Contractor, a private entity. Contractor has not agreed to act as a custodian of public records for the Owner subject to the provisions of the Missouri Open Records Act. Owner acknowledges and agrees that certain documents and information provided to Owner pursuant to the terms and conditions of this agreement may place Contractor and Owner at a competitive disadvantage if the information is disclosed and may constitute Contractor's trade secret, confidential, proprietary, or information otherwise excluded from disclosure under the Act. In the event Owner receives a request for disclosure pursuant to letter, subpoena or other means, Owner shall provide notice of such request to Contractor within twenty-four (24) hours of receipt of the request, subpoena or demand, and shall not disclose such records without having provided Contractor with such notice and opportunity to take reasonable action to protect such records.

§14.5.2 If Drawings are revised after the Drawings referenced in the Contract, the Owner shall have the Architect re-date all revised sheets and clearly identify all changes by bubble and delta number or other means acceptable to the Construction Manager and Owner. The Owner and Construction Manager acknowledge that it is difficult to determine and implement changes that are not so identified. Regardless if the Contract is amended to incorporate revised Drawings, the Guaranteed Maximum Price and Contract Time are subject to additional equitable adjustments for the cost and time impacts if implementing any changes not so identified.

§ 14.5.3 This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document, and will be effective when counterparts have been signed by each of the parties and delivered to the other parties. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of a copy of this Agreement bearing an original manual or electronic signature, or through the use of electronic signature software, will have the same effect as physical delivery of the paper document bearing an original signature.

§ 14.5.4 Owner and Construction Manager acknowledge and agree that the Guaranteed Maximum Price and Contract Time does not fully account for all cost impacts or schedule impacts (collectively "Impacts") associated with COVID-19, any other virus, disease, epidemic, pandemic, or public health crisis ("Epidemic"). Construction Manager cannot reasonably foresee or carry all necessary costs or contingencies for such Impacts. Therefore, if Construction Manager's work is delayed, suspended, disrupted, or otherwise adversely impacted, directly or indirectly, by an Epidemic, including but not limited to the following impacts: (1) material or equipment supply chain disruptions; (2) illness and related costs; (3) unavailability of labor or increased labor costs, including, but not limited to any labor shortage or increased labor costs resulting from loss of labor productivity, strike, labor force reduction required or created by the CDC or OSHA guidelines, regulations, or governmental order; (4) government orders, closures, changes in the law, or other directives or restrictions that impact the work or the Project site, including without limitation vaccine or testing mandates; or (5) fulfillment of Construction Manager's contractual obligations regarding safety specific to COVID-19, any Epidemic, or both, then Construction Manager shall be entitled to an equitable increase in the Guaranteed Maximum Price and Contract Time for all such Impacts.

ARTICLE 15 SCOPE OF THE AGREEMENT

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

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§ 15.2 The following documents comprise the Agreement:

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

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

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

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

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

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

 OWNER (Signature)

 CONSTRUCTION MANAGER (Signature)

 (Printed name and title)

 (Printed name and title)

init.

AIA Document A201[®] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Sedalia Fire/Pool/Bowling
620 E 5th Street
Sedalia, MO 65301
32 acre Mixed-Use Campus

THE OWNER:

(Name, legal status and address)

City of Sedalia, MO
200 South Osage Ave
Sedalia, MO 65301

THE ARCHITECT:

(Name, legal status and address)

Hoefler Welker
4622 Pennsylvania Avenue, Suite 1400
Kansas City, MO 64112

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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.

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically excluded in the Agreement, the Contract Documents include other documents such as the advertisement or invitation to bid, Instructions to Bidders, Contractors Bid Manual, schedules, sample forms, other information furnished by the Owner or Contractor in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

[Intentionally Omitted]

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

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

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees. Any agreement to such protocols shall be included in the

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Contract Documents as "BIM Addendum," or other agreed designation. The Owner shall cause an identical version of the BIM Addendum, if any, to be appended or incorporated into all written agreements between the Owner and any design professional performing obligations to be modeled.

§ 1.9 Order of Precedence

§ 1.9.1 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of the omissions or errors in figures, drawings or specifications, the Contractor shall immediately submit the matter to the Architect for clarification. The Architect's clarifications are final and binding on all parties, subject to an equitable adjustment in Contract Time or Price pursuant to Articles 7 and 8 or claims and disputes in accordance with Article 15.

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

§ 1.9.3 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in the Contract Documents, shall be interpreted in accordance with the well-known meanings.

§ 1.9.4 In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order:

- a. Change order and written Modifications to this Agreement
- b. this Agreement
- c. drawings (large scale governing over small scale)
- d. approved submittals
- e. information furnished by the Owner
- f. other documents listed in the Agreement (Among categories of documents having the same order of precedence, the term or provision that includes the most recent date shall control).

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.1.3 For projects located in the State of Missouri, the following required statutory notice is provided:

NOTICE TO OWNER

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO. TO AVOID THIS RESULT, YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

§ 2.2 Evidence of the Owner's Financial Arrangements

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

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§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence satisfactory to Contractor that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence within fourteen (14) days of the Contractor's request, the Contract may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start up, plus interest as provided in the Contract Documents.

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

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

§ 2.3 Information and Services Required of the Owner

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

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

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

§ 2.3.4 The Owner shall, before the Schematic Design budgeting phase, furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. If, after establishing the Contract Sum, Owner provides such information to Contractor, and the information necessitates an increase in the Contract Sum or Time, the Owner shall provide for increase.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness and, in any event, within seven (7) days of Contractor's request, so as not to delay or hinder the progress of the Work. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work within seven (7) days after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one hard copy and one electronic copy of the Contract Documents for purposes of bidding pursuant to Section 1.5.2. Prior to commencement of the Work, and to the extent available, Owner shall furnish the Contractor any electronic drawings (.dwg, .dxf, .ifc, .rvt, .nwd or others as appropriate) that will enable, but not require, Contractor to build an electronic model of the Project.

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor. The Contractor can rely on written instructions/directions/interpretations of the Architect as well as the Owner's testing firm in performing its Work.

§ 3.1.4 The Owner hereby agrees that Contractor shall not be liable or responsible in any manner whatsoever for any claims, damages, expenses, costs, errors or omissions arising out of the professional services performed by the Architect or other design professionals, whether through indemnity or otherwise. The Owner's sole recourse shall be against the Architect, or other design professionals performing such professional services, and any insurance procured by the Architect.

To the extent that the Owner requires, or the Contractor otherwise provides, any incidental services, construction consulting, or value engineering, the Owner acknowledges that such services are advisory and are not professional design services. The Owner shall, with due diligence, refer such questions, matters and inquiries to the design professionals, and the Contractor shall have no liability to the Owner or to the Architect or its consultants for such services required by the Owner and rendered hereunder.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully review the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions (if practical

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without destructive inspections) related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by Contractor. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional.

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

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

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. Unless otherwise required by the Construction Documents, the Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures but Contractor shall not be held responsible for any loss or damage to the Work or adjacent property caused by the means, methods, techniques, sequences, or procedures required by the Contract Documents. If the Contractor determines that such means, methods, techniques, sequences or procedures required by the Contract Documents may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. This provision shall in no way be construed as creating any rights or obligations to third parties.

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

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

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

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are applicable and legally enacted when bids are received, or negotiations concluded.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. ("Legal Obligations"). In the event that Contractor may be adversely impacted by any change to, or increase of, Legal Obligations (as well as any additional health and safety practices required in order to comply with existing Legal Obligations), the Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs, plus reasonable overhead and profit thereon. The Contract Sum and Contract Time are based upon a mutual expectation that reasonable positions will be taken by federal, state, or local inspectors and officials ("Authorities"), and that such Authorities shall act with reasonable promptness and diligence regarding issuance of permits, approvals, certificates of occupancy, and in interpreting applicable codes and standards. Contractor shall be entitled to a change order adjusting the Contract Sum and Contract Time for any impact resulting from a deviation.

§ 3.7.2 Without assuming any design responsibilities, the Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall, upon discovery, notify the Architect in writing, and necessary changes shall be accomplished by appropriate Modifications. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed, if possible, and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, shall be entitled to equitable adjustment in the Contract Sum or Contract

Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness to avoid delay in the Work.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

(Paragraph deleted)

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

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection. The Contractor shall not change the superintendent without informing the Owner.

§ 3.10 Contractor's Construction and Submittal Schedules

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

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Contractor at appropriate intervals in its discretion and without prior notice as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor shall prepare and keep current a schedule of submittals that is coordinated with the Contractor's construction schedule and which allows the Architect reasonable time to review submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. When changes do not affect the Substantial Completion date, they may be made at Contractor's discretion.

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals.

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

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

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

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Contract Documents.

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

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

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so upon seventy-two (72) hours advance written notice to Contractor, and the Owner shall be entitled to reimbursement of reasonable costs from the Contractor.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, except to the extent such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

§ 3.18.3 The obligations of the Contractor shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them, including but not limited to any liability arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants and agents and employees of any of them.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Contractor (1) known deviations

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from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

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

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

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

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness; however, delivery of such interpretation shall not be extended to cause the Contractor delay in the Work.

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

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness, and delivery of such interpretation shall not be extended to cause the Contractor delay in the Work or cause the Work to be performed out of sequence. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall inform the Owner through the Architect 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. Within 14 days of receipt of such information, the Architect may reply to the Contractor in writing stating whether the Owner or the Architect(1) has reasonable objection to any proposed person or entity or (2) requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If, in the opinion of the Contractor, the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time may be allowed for such change if the Contractor did not act promptly and responsively in submitting names as required.

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

§ 5.3 Subcontractual Relations

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract

Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

- § 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that
- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
 - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. To the extent the Owner chooses to perform construction or operations related to the Project, or to award separate contracts in connection with other portions of the Project or other construction or operations on the site, the Owner shall be required to secure a separate permit for that Work, if required by the authority having jurisdiction. Regardless, the Owner shall ensure that the Contractor is listed as an additional insured on the Separate Contractor's general liability and excess liability policy. Further, the Owner agrees to defend, indemnify and hold harmless the Contractor from any claims made against the Contractor resulting from damage to property (other than the Work) or injury to, or death of, persons in or about the Project caused by, arising out of or in connection with the construction, services, labor, materials, and equipment which have been performed, provided or supplied to the Project by the Owner or its Separate Contractor. If the Contractor claims that delay or additional cost is involved because of performance of construction or operations of Separate Contractors, of such action by the Owner or its Separate Contractors, the Contractor shall make such Claim as provided in Article 15.

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

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

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§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

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

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

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

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

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner, after notifying responsible party(s) by written notice and allowing the responsible party(s) to resolve this issue, may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

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.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

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

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

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

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

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

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

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

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

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The

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Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. Notwithstanding, in the event the Architect has issued multiple Additional Supplementary Instructions that, in the aggregate, result in the changes justifying an adjustment in Contract Sum or extension of the Contract Time, Contractor shall be entitled to submit a request for an equitable adjustment.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. Date of Commencement shall not be earlier than the date upon which all necessary permits are procured that would allow the Contractor to initiate and continue the Work and a written notice to proceed is received by the Contractor.

§ 8.1.3 The date of Substantial Completion is the date established under Section 9.8.

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

§ 8.2 Progress and Completion

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

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

§ 8.2.3 The Contractor shall use commercially reasonable efforts to achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor shortages and/or disputes, fire, unusual delay in deliveries, transportation delays not within the Contractor's control, unavailability of suitable materials, riots, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, epidemics, pandemic, or other designated health emergency, or other causes beyond the Contractor's control; (4) disruptions in labor or materials supply resulting from a public health crisis regardless of whether an infectious disease, epidemic, pandemic or isolated to areas from which such labor and materials are supplied; (5) by adverse government actions, including without limitation embargoes and tariffs; (6) quarantine restrictions or government vaccine mandates; (7) by delay authorized by the Owner pending mediation and binding dispute resolution; or (8) by other causes that the Contractor asserts, and the Architect determines, justify

delay, then the Contract Sum shall be adjusted and the Contract Time shall be extended by Change Order for such reasonable time, and amounts as arise out of or relate to such cause.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

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

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

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. This provision does not prohibit Contractor from withholding payments to Subcontractors or suppliers pursuant to a provision or its agreements with such Subcontractors and suppliers providing for such withholding.

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

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

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encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

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

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

However, in no event shall the Architect refuse to certify or shall the Owner withhold payment of an amount greater than that which is sufficient to pay the direct expenses the Owner reasonably expects to incur to correct any of the above reasons set forth by the Architect for withholding certification.

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

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

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§ 9.5.4 If the Architect properly withholds certification for payment under Section 9.5.1.3, the Owner may, upon providing ten (10) days' prior written notice to Contractor, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to properly make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Contractor agrees to reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

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

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

§ 9.6.3 [Intentionally Omitted]

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

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

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

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

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

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within fourteen days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received, or terminate the Contract. In the event the Work is stopped, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. If the Contractor terminates the Contract, Owner shall pay Contractor for Work executed and for incurred costs related to materials, equipment, tools and construction equipment and machinery, including reasonable overhead, profit and damages.

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§ 9.7.1 Upon execution of the Agreement, Contractor shall provide Owner with written payment instructions and all necessary forms required by Owner to effectuate payments to Contractor by wire transfer (the "Payment Information"). Contractor shall submit the initial Payment information to Owner by certified mail or hand delivery only. If Owner receives a request to change such Payment Information, Owner agrees that it will not modify or make change to this Payment Information without oral communication, followed by written confirmation, from Contractor's Controller. Owner shall make no changes to the Payment Information if it does not receive the oral and written confirmations as stated herein. If Owner makes any change to the Payment Information without first receiving the confirmations stated herein, it shall be solely responsible for any monies lost or stolen and not paid to Contractor as required under the terms of this Agreement.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Substantial Completion will be achieved by Contractor when the last of the following occurs:

- .1 custody and control of the Work (or designated portion of the Work) is provided to the Owner ; and
- .2 inspections and approvals from government agencies required by the Work (or designated portion of the Work) have been completed and a certificate of occupancy, whether temporary or final, for the Work (or designated portion of the Work) has been issued;

If the Work (or designated portion of the Work) includes installation of items furnished by the Owner, completion of such installation will be considered punch list work and will not delay designation of Work as Substantially Complete.

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

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

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

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

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance,

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heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld, provided if Contractor is delayed at any time in the progress or completion of the Work, or if Contractor's work is made more costly, by any cause or condition arising directly or indirectly from such partial occupancy or use, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs, plus reasonable overhead and profit thereon. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect. At the time Owner takes partial occupancy or use, the Owner shall reduce retainage proportionately.

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

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents. Owner shall indemnify, defend, and hold Contractor harmless from any and all damages, losses, claims and expenses, including attorneys' fees arising out of or related to such partial occupancy or use, including, but not limited to claims for property damage and bodily injury.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. In no event shall the Architect unreasonably withhold the final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied or will be promptly made upon receipt of final payment from the Owner, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties as required by the Contract Documents, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner has been compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor (including, but not limited to any cause identified in §8.3 above) or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

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§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 Without accepting any responsibility or liability for the remediation of hazardous materials that exist on or contiguous to the Project site as of the date of the Agreement, the Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable property damage, bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

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

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. Unless required by the Contract Documents, the Contractor shall not be required to perform without its consent any Work relating to a hazardous material or substance, provided that such Contractor consent shall not be unreasonably withheld.

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

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

§ 10.3.7 Unless required by the Contract Documents, the Contractor shall not be required to perform, without consent, any Work relating to mold, asbestos or polychlorinated biphenyl ("PCB"). The Contractor shall perform no work involving toxic, contaminant, contaminated or hazardous material of any type, which removal or responsibility to render harmless is the Owner's obligation.

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§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

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

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

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

§11.1.5 Contractor may use a traditional insurance process, or it can use a Controlled Contractor Insurance Program ("CCIP").

§ 11.2 Owner's Insurance

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

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. The cost of the Contractor-procured property insurance shall be charged to the Owner by a Change Order. When the failure to provide coverage has been cured or resolved by the Contractor or by the Owner, the Contract Sum and Contract Time shall be equitably adjusted. If the Owner does not provide written notice to the Contractor of the Owner's failure to procure the required property insurance with all of the coverages and in the amounts described in the Contract Documents, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain such insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto. In the event the Owner fails to procure coverage the required property insurance with all of the coverages and in the amounts described in the Contract Documents, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner with respect to damage to the Work, furnishings, fixtures, equipment, and materials intended to be incorporated into the permanent structure, and consequential damages stemming therefrom..

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

§ 11.3 Waivers of Subrogation

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

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

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

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

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

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proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

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

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

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

§ 12.2.5 *[Intentionally Omitted]*

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§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

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

§ 13.2.2 The Owner may, with consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment. Contractor shall not be obligated to perform pursuant to the assignment unless or until Owner or Lender has paid Contractor for Work performed prior to the effective date of the assignment.

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

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

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

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

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

§ 13.5 Interest

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

§ 13.6 Severability

If any term or provision of this Contract is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.
- .5 if the Owner suspends the Work for convenience in accordance with paragraph 14.3 herein; or
- .6 if Owner is responsible for providing the property insurance coverage required in Exhibit A to the Agreement herein and Contractor becomes aware that Owner did not procure and maintain such coverage.

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

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

§ 14.1.4 If the Work is stopped for a period of 30 consecutive days or 60 cumulative days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make an undisputed payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers, provided such nonpayment is not due to the Owner's failure to pay Contractor for Work performed;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, upon thirty (30) days written notice to the Contractor, terminate the Contract for the Owner's convenience and without cause.

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed, materials procured, fabricated, partially fabricated or otherwise purchased for the project whether delivered or not yet delivered to the site and costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

If the Project is "mixed use", any claims against the Contractor arising under this Agreement shall be brought exclusively by the Owner and Owner shall indemnify and hold harmless the Contractor, Subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from claims brought by a lessee or owner of an apartment or condominium relating in any to the Work. The Owner represents and warrants that for 8 years after the Date of Substantial Completion, the residential portions of the completed Project shall be maintained as apartments and shall not be converted into condominiums.

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with Article 15.2. The Architect will issue Certificates for Payment pursuant to the agreement of the parties unless the parties are unable to reach an agreement, in which case the procedures set in Articles 15.3 and 15.4 shall apply.

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.5.1 Where the price of labor, material, equipment or energy necessary to perform the Work increases significantly during the term of the Contract, through no fault of the Contractor, the Contract Sum shall be equitably adjusted by Change Order as provided in Section 7 of the General Conditions of the Contract. A significant price increase means a change in price occurring during the period of time between the date of Contract execution to the date of Substantial Completion by an amount exceeding five percent (5%). Such price increases shall be documented by available vendor quotes, estimates, invoices, catalogs, receipts or other documentation. Further, if material or equipment required by the Contract Documents are not available due to shortage or unavailability or if the price to procure such material or equipment increases as set forth in this Section, then an acceptable substitute may be found and an adjustment in the Contract Sum shall be made accordingly.

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§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

(Paragraph deleted)

Neither Contractor nor Owner shall be liable to the other for any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing.

(Paragraph deleted)

§ 15.2 DIRECT DISCUSSIONS

§ 15.2.1 If the Parties cannot reach resolution on a Claim or matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith, face-to-face direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of the first discussions. If the dispute remains unresolved after fifteen (15) days from the date of first discussion, the Parties shall endeavor to resolve the dispute by mediation before recourse to binding dispute resolution procedures selected herein. Mediation shall be subject to direct discussions under this Section 15.2.1 as a condition precedent to binding dispute resolution.

(Paragraphs deleted)

§ 15.2.2 *[Intentionally Omitted]*

§ 15.2.3 *[Intentionally Omitted]*

§ 15.2.4 *[Intentionally Omitted]*

§ 15.2.5 *[Intentionally Omitted]*

§ 15.2.6 *[Intentionally Omitted]*

§ 15.2.6.1 *[Intentionally Omitted]*

§ 15.2.6.2 All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

§ 15.2.7 *[Intentionally Omitted]*

§ 15.2.8 *[Intentionally Omitted]*

§ 15.3 Mediation

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

§ 15.3.2 If the parties' good faith direct discussions are unsuccessful in resolving any Claims, 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, unless otherwise agreed by the parties, in accordance with its

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

(Paragraph deleted)

§ 15.3.3 [Intentionally Omitted]

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

§ 15.4 Arbitration

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

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations under the law of the State where the Project is located as if the Claim had been asserted in a state or federal court. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In no event shall the arbitrators be empowered to assess punitive damages, and any punitive damages assessed as part of an award shall not be enforceable under the Agreement.

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

§ 15.4.3.1 The Parties expressly agree that the Arbitration Rules are modified so that those cases falling under the regular track will result in an award no more than six (6) months from the date of the confirmation of appointment of the arbitrators. In all cases in which less than \$1,000,000 in total is at issue, there shall be a sole arbitrator and the Parties shall each have three preemptory strikes in selection of the arbitrator, plus all strikes for cause that can be justified. In all cases in which \$1,000,000 or more in total is at issue, there shall be three arbitrators and the Parties shall each have five preemptory strikes plus all strikes for cause that can be justified. The place of mediation and arbitration shall be the county and state in which the Work is performed. The Parties understand and agree that the arbitration award shall be binding upon, and shall include, any and all agents, employees, successors, and assigns of either party to this Contract.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to

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be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

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

ARTICLE 16 RENOVATIONS OR ADDITIONS TO AN EXISTING STRUCTURE AND TEMPORARY UTILITIES

§ 16.1 Investigation, Analysis, and Testing

§ 16.1.1 The Contractor has not investigated or determined the current conditions of the existing superstructure, building systems and the adequacy of utilities that may impact Contractor's performance of the Work. The cost of correcting any such deficiencies is not included within the GMP.

Accepted as of the last date entered below:

_____	_____
<i>OWNER (Signature)</i>	<i>CONTRACTOR (Signature)</i>
_____	_____
<i>(Printed name and title)</i>	<i>(Printed name and title)</i>
_____	_____
Dated	Dated

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REQUEST FOR QUALIFICATIONS FOR CONSTRUCTION MANAGER AT RISK

The City of Sedalia is seeking a Construction Manager at Risk in connection with the design and construction of a new fire station, fire training center, fire training burn tower, bowling alley, and pool and will accept sealed proposals from qualified firms interested in providing the following:

**SIX (6) SIGNED COPIES AND ONE (1) ELECTRONIC COPY
MUST BE RECEIVED BY:
3:00 P.M. FEBRUARY 10TH, 2025**

**PLEASE MARK YOUR SUBMITTAL "SEALED PROPOSAL – PROPOSAL - CONSTRUCTION
MANAGER AT RISK AND SEND IT TO:**

**City of Sedalia
Attention: Kelvin Shaw, Project Director
200 S Osage Ave
Sedalia, Missouri 65301
660-827-3000**

The City reserves the right to reject any and all proposals, to waive technical defects, and to select the proposal(s) deemed most advantageous to the City.

The undersigned certifies that he/she has the authority to bind this company in an agreement to supply the service or commodity in accordance with all terms and conditions specified herein. Please type or print the information below. Respondent is **REQUIRED** to complete, sign and return this form with their submittal.

Company Name <hr/>	Authorized Person (Print) <hr/>
Address <hr/>	Signature <hr/>
City/State/Zip <hr/>	Title <hr/>
Telephone # <hr/>	Date <hr/>
Fax # <hr/>	Tax ID # <hr/>
E-mail <hr/>	Entity Type <hr/>

Cover Title-Signature Page
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REQUEST FOR QUALIFICATIONS

PROJECT

The City of Sedalia, Missouri hereby gives notice of their intent to contract for construction management services using a Construction Manager at Risk (CMR) model in connection with the design and construction of a new fire station, fire training center, fire training burn tower, bowling alley, and pool.

PART I

GENERAL INFORMATION: CITY OF SEDALIA

There may not be a better place in all of America to cross paths than right here in Sedalia. Two busy highways intersect allowing passage to St. Louis, Kansas City, or Lake of the Ozarks. New and old, mild and bold, stories shared and those not yet told - get started telling yours.

DESCRIPTION OF THE PROJECT

The City of Sedalia, Missouri has selected Hoefler Welker, LLC as the architectural firm that will assist the city in planning, programming, and designing the new fire station, fire training center, fire burn tower, bowling alley, and public swimming pool. The selected Construction Manager will work as part of the team with the City of Sedalia, Sedalia Parks and Rec Department, Hoefler Welker, and other consultants. It is the desire of the City of Sedalia, Missouri to collaborate and communicate with both the architect and the construction manager to best fulfill the needs of the project from conceptual design phase to building turnover.

The City of Sedalia, Missouri (City) is in Pettis County at the intersection of US highway 50 and US highway 65. The 2020 US Census Population was 21,725.

The City of Sedalia purchased a 32 acre site in the center of the city that has been distressed for decades to redevelop. The site has a lot of potential due to its location, particularly since it is dissected by the popular Katy Trail, a rails to trails project that extends across the State and through the City Center. In accordance with this strategy, the City has been successful in attracting retail developments along with a boys and girls club facility, and a social services office building. The rest of the property is being developed into a campus of City projects. The centerpiece of the public amenities will be a bowling alley / recreation center connected to a new aquatics park. The City has historically maintained two outdoor swimming pools that are at the end of their useful life. Replacing these two swimming pools with an updated and larger aquatics park will not only provide a more enjoyable experience, but will be more efficient to operate, thereby spreading the public's funds further for more services. The bowling alley and recreation center has been a missing piece in opportunities for Sedalia citizens for decades. A well-known benefactor has graciously pledged a generous gift to fund the majority of this part of the project.

The City's central fire station, that is adjacent to this site, has also reached the end of its useful life. Combining a new station with the rest of this campus provides some synergies and efficiencies of the use of the public's funds. Lastly, a portion of the site that is separated by a

trail lends itself well to construct a training facility for not only the City's firefighters, but is also intended to be contracted out to provide regional training opportunities to help offset the overhead.

The construction cost is anticipated to be approximately \$15,000,000 spread across the entire site.

Project Schedule:

Schematic Design	January – February 2025
Design Development & Construction Docs	March – May 2025
Bidding and Construction	June 2025 – Fall 2026

CMR Selection Schedule:

Publish Request for Qualifications	January 15 th , 2025
Mandatory Pre-Submittal Meeting – City Hall – 11:00AM	January 30 th , 2025
Submit Qualification Statements	February 10 th , 2025
Notification of up to (3) Shortlisted Firms -Fee Request (Shortlisted Firms)	February 14 th , 2025
Interviews of up to (3) Shortlisted Firms	February 19 th , 2025
CMR Selection Notification	February 25 th , 2025
City Council Contract Award	March 3 rd , 2025

Questions regarding the RFQ and process are directed via only email to Kelvin Shaw at kshaw@sedalia.com. Late submissions will not be accepted.

PART II

AGREEMENT

The agreement between the City and CMR will be AIA Document A133-2014 Standard Form of Agreement between Owner and Construction Manager at Risk where the basis of payment is the Cost of Work plus a Fee with a Guaranteed Maximum Price, as amended by the City, and AIA Document A201-2007 General Conditions of the Contract for Construction, as amended by the City.

The City of Sedalia gives notice that prevailing wage law is applicable in accordance with the State of Missouri.

The City of Sedalia, Missouri is not responsible for paying any costs incurred in preparing or submitting proposal or pricing or participating in any interviews requested.

PART III

SCOPE OF SERVICES

Phase I – Preconstruction Services

CMR shall consult with the City and the Architect throughout Phase I of the Project to the point of developing a Guaranteed Maximum Price and Contract Time.

Phase II – Construction Services

At the option of the City, after approval of the Guaranteed Maximum Price and the Contract Time by the Governing Body of the City, CMR shall provide construction services.

Detailed scope of services provided by the CMR for the Project are included in AIA Document A133-2009, as amended by the city.

PART IV

SUBMISSION OF PROPOSALS

Proposals will be submitted by February 10th, by 3pm CST in the form of six (6) copies and one (1) electronic copy. Mark and deliver to:

City of Sedalia
Attention: Kelvin Shaw, Project Manager
200 South Osage Ave
Sedalia, Missouri 65301
RE: Construction Manager at Risk – Fire/Pool/Bowling

The information to be submitted shall be organized as listed below and on 8 1/2" by 11" pages with minimum 11-point font size, double sided, exclusive of front and back hard covers and tabs. Submissions shall not contain more than 20 pages. All information should pertain to one of the categories listed and have relevance to this project.

1. Table of Contents
2. Qualification Statement. Qualification Statements must use the following format and be organized in the following sequence:
 - a. Cover Letter – Provide a one-page cover letter on company letterhead. Identify the primary contact for the CMR including telephone number, mailing address, and e-mail address. Summarize your firm's experience and capabilities to provide the required services.
 - b. Firm Background
 - i. Company profile – local/regional/national firm, years in business, number of employees, public or private entity
 - ii. Current Workload – indicate the amount of work in-progress and under contract.
 - iii. Licensing – Provide registration of license numbers, as applicable, indicating your firm is legally qualified to do business in Sedalia, Missouri.
 - iv. Safety Program – Describe your firm's safety program and provide your firm's Experience Modification Rate (EMR) and Total Recordable Incident Rate (TRIR).
 - v. Bonding Capacity – Provide a letter from your Surety indicating your firm's total and available bonding capacity.
 - vi. Work not Completed – Provide a list, if applicable, of work awarded to your firm but it failed to complete.
 - c. Project Team

The personnel proposed in CMR submittal cannot be removed from the project without consent of the City.

 - i. Provide a one-page organizational chart of key personnel including – but not limited to – Project Executive, Project Manager, Superintendent, and Preconstruction Manager.

- ii. Provide a one-page resume for each key individual listed in the organizational chart. Resume must include:
 - Name and title
 - Description of role and responsibilities
 - Police stations and other public-sector construction experience
 - Years of relevant experience
 - Education – highest academic degree received / school
 - Credentials, awards, and training relevant to proposed project
- d. Relevant Project Experience
 - i. Submit projects, (1) page each, your firm has completed: civic center, city hall, police headquarters, community/recreation center, recreation fields/parks, and/or outdoor aquatic center projects within the last 10 years. For those firms with multiple office locations, projects submitted to demonstrate the firm's qualifications must be limited to those projects managed or constructed by the firm's office that will be responsible for this project.
 - ii. Include in each profile:
 - Project name, location, owner
 - Delivery method (CMR preferred)
 - Description of the project including, but not limited to, square footage and cost of the project
 - Rendering and/or photographs
 - Project references including name, current phone and email address
- e. Management Capabilities and Services

This section is intended to demonstrate the CMR's management capabilities for successfully completing the project utilizing the Construction Manager at Risk delivery method.

 - i. Preconstruction Services – Describe your firm's approach, processes and procedures including project management, current construction climate, and your approach to developing a Guaranteed Maximum Price (GMP), the preferred timing of establishing the GMP, and establishing and managing contingency.
 - ii. Construction Services – Describe your firm's approach, processes and procedures including subcontractor selection and methods for disclosing all raw bid data, change order management, schedule development and managing the schedule, approach to use of contingency funds within the GMP and disposition of unused funds, Self-Performed Work and which scopes of work you recommend on this project, and Quality Assurance/Quality Control programs.
- f. References
 - i. Provide (3) references of public sector clients whom your firm has performed work in the last 6 years.
 - ii. Provide (3) financial references.
- g. Additional Information
 - i. Please include any additional information your firm feels would be pertinent to this project.
 - ii. Proximity to and familiarity with the geographical area in which the project shall be located. Provide the location of your nearest office and the number of area employees.
 - iii. Respondent's financial strength as demonstrated through qualifying reference checks for bank, bonding agent, and financial services auditing firm. Financial Statements are not required at this time. However, the Owner reserves the right to

request such information should it deem necessary, and/or to request/require such information as part of the step two proposal process.

PART V

SELECTION PROCESS

The process for selection of the CMR will be generally as follows:

1. The City of Sedalia, Missouri reserves the right to reject any and all proposals and to waive any and all irregularities based on its sole discretion.
2. The proposals will be individually reviewed by members of a selection committee appointed for this purpose and given a score not more than 100 points based the following:
 - a. Evaluation Criterion Description Points

Expertise, Experience and Qualifications: 25
Past Record of Performance: 20
Staffing Plan and Personnel: 25
Preconstruction Fee, General Conditions, Construction Mgmt Fee, Construction: 30
Total Potential Points: 100
3. References will be contacted, and results provided to the selection committee for consideration along with the proposals.
4. Interviews will be conducted of up to the (3) short-listed firms. Additional information may be asked of the short-listed firms to clarify information provided in the Qualifications Statement. In addition, these firms shall provide its proposed fee and its price for fulfilling the general conditions. Following the interview, the selection committee will adjust the initial qualification scoring and determine the highest ranked firm based on qualifications and the fees. The committee will meet and select the best-qualified firm and negotiate a contract with that firm. The top ranked firm, including a consideration of fees, will be identified as the successful CMR for this project. If an agreement cannot be reached, the City will negotiate a contract with the next most qualified firm. This process will continue until an agreement is reached.

EXHIBIT "A" NON-COLLUSION CERTIFICATION

STATE OF MISSOURI

CITY/COUNTY

OF _____

_____ being first duly sworn, deposes and says that he is

Title of Person Signing

of _____

Name of Bidder

that all statements made and facts set out in the proposal for the above project are true and correct; and the bidder (The person, firm, association, or corporation making said bid) has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with said bid or any contract which may result from its acceptance.

Affiant further certifies that bidder is not financially interested in, or financially affiliated with, any other bidder for the above project.

BY _____

BY _____

BY _____

SWORN to before me this _____ day of _____ 20 ____.

Notary Public

My Commission Expires _____

**GENERAL CONDITIONS
GOVERNING RESPONSES AND SUBSEQUENT CONTRACTS
CITY OF SEDALIA, MO**

1. **SCOPE:** The following terms and conditions, unless otherwise modified by the City of Sedalia within this document, shall govern the submission of proposals and subsequent contracts. The City of Sedalia reserves the right to reject any proposal that takes exception to these conditions.
2. **DEFINITIONS AS USED HEREIN:**
 - a. The term "request for proposal" means a solicitation of a formal, sealed proposal.
 - b. The term "respondent" means the person, firm, bidder or corporation who submits a formal sealed proposal.
 - c. The term "City" means City of Sedalia, MO.
 - d. The term "City Council" means the governing body of the City of Sedalia, MO.
 - e. The term "contractor" means the respondent awarded a contract under this proposal.
3. **COMPLETING PROPOSAL:** All information must be legible. Any and all corrections and/or erasures must be initialed. Each proposal must be signed in ink by an authorized representative of the respondent and required information must be provided. The contents of the proposal submitted by the successful respondent of this RFP will become a part of any contract award as a result of this solicitation.
4. **REQUEST FOR INFORMATION:** Any requests for clarification of additional information deemed necessary by any respondent to present a proper proposal shall be submitted in writing to the City of Sedalia, 200 S Osage Ave, Sedalia, MO 65301, referencing this RFP number, a minimum of five (5) calendar days prior to the proposal submission date. Any request received after the above stated deadline will not be considered. All requests received prior to the above stated deadline will be responded to in writing by the City in the form of an addendum addressed to all prospective respondents.
5. **PROPOSALS SUBJECT TO OPEN RECORDS LAW:** The Offerors are hereby advised that all proposals and the information contained in or related thereto are subject to Missouri Open Records Act and after contract award and execution of the Resulting Agreement shall be open to public inspection and may be viewed and copied by any member of the public; therefore, the City does not assume any responsibility whatsoever in the event that such information is used or copied by individual persons or organizations.
6. **SUBMISSION OF PROPOSAL:** Proposals are to be sealed and submitted to the City of Sedalia, 200 S Osage Ave, Sedalia, MO 65301, prior to the date and time indicated on the cover sheet. At such time, all proposals received will be formally opened. The opening will consist of only the name and address recording of respondents.
7. **ADDENDA:** All changes, additions and/or clarifications in connection with this proposal will be issued by the Purchasing office in the form of a WRITTEN ADDENDUM. SUBMIT EQUAL NUMBER OF SIGNED ADDENDUM WITH THE NUMBER OF PROPOSALS REQUIRED. Verbal responses and/or representations shall not be binding on the City.
8. **LATE PROPOSALS AND MODIFICATION OR WITHDRAWALS:** Proposals received after the date and time indicated on the cover sheet shall not be considered. Proposals may be withdrawn or modified in writing prior to the proposal submission deadline. Proposals that are resubmitted or modified must be sealed and submitted to the Purchasing Office prior to the proposal submission deadline. Each respondent may submit only one (1) response to this proposal.
9. **BONDS:** When a Bond is required it shall be executed with the proper sureties, through a company licensed to operate in the State of Missouri, and hold a current Certificate of Authority as an acceptable surety under 31 CFR Part 223 (and be listed on the current U.S. Department of the Treasury Circular 570 and have at least A Best's rating and a FPR9 or better financial performance rating per the current A.M. Best Company ratings.)
10. **NEGOTIATION:** The City reserves the right to negotiate any and all elements of this proposal.

11. **TERMINATION:** Subject to the provisions below, any contract derived from this Request For Proposal may be terminated by either party upon thirty (30) days advance written notice to the other party; but if any work or service hereunder is in progress, but not completed as of the date of termination, then said contract may be extended upon written approval of the City until said work or services are completed and accepted.

(a) TERMINATION FOR CONVENIENCE

In the event that the contract is terminated or cancelled upon request and for the convenience of the City, without the required thirty (30) days advance written notice, then the City shall negotiate reasonable termination costs, if applicable.

(b) TERMINATION FOR CAUSE

Termination by the City for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any, shall not apply. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.

(c) TERMINATION DUE TO UNAVAILABILITY OF FUNDS IN SUCCEEDING FISCAL YEARS

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

12. **TAX EXEMPT:** The City and its Agencies are exempt from State and local sales taxes. Sites of all transactions derived from this proposal shall be deemed to have been accomplished within the State of Missouri.
13. **SAFETY:** All practices, materials, supplies, and equipment shall comply with the Federal Occupational Safety and Health Act, as well as any pertinent Federal, State and/or local safety or environmental codes.
14. **RIGHTS RESERVED:** The City reserves the right to reject any or all proposals, to waive any minor informality or irregularity in any proposal, and to make award to the response deemed to be most advantageous to the City.
15. **RESPONDENT PROHIBITED:** Respondents are prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this proposal or any resultant agreement or its rights, title, or interest therein or its power to execute such agreement to any other person, company or corporation without the previous written approval of the City.
16. **DISCLAIMER OF LIABILITY:** The City, or any of its agencies, will not hold harmless or indemnify any respondent for any liability whatsoever.
17. **HOLD HARMLESS:** The contractor shall agree to protect defend, indemnify, and hold the City Council, City of Sedalia, MO, its officers, commissions, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character resulting from the error, omission or negligent act of the contractor, its agents, employees or representatives, in the performance of the contractor's duties under any agreement resulting from award of this proposal.
18. **LAW GOVERNING:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Missouri.
19. **ANTI-DISCRIMINATION CLAUSE:** No respondent on this request shall in any way, directly or indirectly discriminate against any person because of age, race, color, handicap, sex, national origin, or religious creed.
20. **DOMESTIC PRODUCTS:** The City of Sedalia encourages the purchase of products manufactured or produced in the United States.
21. **CONFLICTS:** No salaried officer or employee of the City, and no member of the City Council shall have a financial interest, direct or indirect, in this contract. A violation of this provision renders the contract void. Federal conflict of interest regulations and applicable provisions of Sections 105.450 – 105.496 shall not be violated. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict

in any manner or degree with the performance of services to be performed under this contract. The Contractor further covenants that in the performance of this contract no person having such interest shall be employed.

22. **DEBARMENT:** By submission of its response, the Contractor certifies that neither it nor its principals is presently debarred or suspended by any Federal Department or agency, including listing in the U.S. General Services Administrations List of Parties Excluded from Federal Procurement or Non-Procurement programs; or if the amount of this response is equal to in excess of \$100,000, that neither it nor its principals nor its subcontractors receiving sub-awards equal to or in excess of \$100,000 is presently disbarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by an Federal Department , agency or prevision of law. If the Contractor is unable to certify any of the statements in this certification, the responder must attach an explanation to its response.
23. **EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED:** Pursuant to Section 285.530, RSMo., as a condition for the award of any contract or grant in excess of five thousand dollars by the City to a business entity, the business entity shall, by sworn affidavit and provision of documentation:
 - a. Enrollment in Federal Work Authorization Program: Affirm its enrollment and participate in in a federal work authorization program (E-Verify) with respect to the employees working in connection with the contracted services.
 - i. Acceptable enrollment and participation documentation consisting of a valid copy of the signature page of the E-Verify Memorandum of Understanding, completed and signed by the Offeror, and the Department of Homeland Security - Verification Division.
 - ii. Through its enrollment and participation in a federal work authorization program (E-Verify) the employer business entity shall verify the employment eligibility of every employee in the employer's hire whose employment commences after the employer enrolls in a federal work authorization program. The employer business entity shall retain a copy of the dated verification report received from the federal government. Any business entity that participates in such program shall have an affirmative defense that such business entity has not violated subsection 1 of this section. [RSMO 285.530 (4)]. The online address to enroll in the E-Verify program is: <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>.
 - b. Worker Eligibility Affidavit: Affirm that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. [RSMO 285.530 (2)]
24. **LAW OF MISSOURI TO GOVERN:** This RFP and the Resulting Agreement shall in all respects be interpreted under and governed by the laws of the State of Missouri without giving effect to conflicts of law principles. The Offeror shall comply with all local, state, and federal laws and regulations relating to this RFP and, if applicable, the performance of the Resulting Agreement.
25. **VENUE:** Any legal action, suit or proceeding brought by any Offeror in any way arising out of or relating to this RFP and/or, as applicable, the Resulting Agreement shall be brought solely and exclusively in the Circuit Court of Pettis County, Missouri and each Offeror irrevocably accepts and submits to the sole and exclusive jurisdiction of such court, generally and unconditionally. The Offeror shall not bring any legal action, suit or proceeding in any other jurisdiction against the City. The Offeror irrevocably waives and agrees not to assert by way of motion, as a defense or otherwise, any objection that it may now or hereafter have to the venue of any of the aforesaid actions, suits or proceedings in the courts described herein, and further waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper, or that this RFP and/or, as applicable, the Resulting Agreement or the subject matter hereof or thereof may not be enforced in and by such court.

FORM NO. 1: FIRM PROFILE

1. Company Name and Address:
 - 1a. Firm / Provider is: National Regional Local
 - 1b. Year Firm / Provider Established:
 - 1c. Years of Experience providing services:
 - 1d. Licensed to do business in the State of Missouri: Yes No
 - 1e. Name, title, telephone number and email address of Principal to contact:
 - 1f. Address of office to perform work, if different from Item No. 1:
2. Please list the number of persons by discipline that your Firm/Joint Venture will commit to the City's project:
3. If submittal is by Joint Venture or utilizes subcontractors, list participating firms / providers and outline specific areas of responsibility (including administrative, technical, and financial) for each firm:
 - 3a. Has this Joint Venture previously worked together? Yes No

FORM NO. 2: EXPERIENCE / REFERENCES

Work by Firm/ Provider (including any subcontractors or Joint-Venture companies) that best illustrate current qualifications relevant to the City's project that has been/is being accomplished by personnel that shall be assigned to the City's project. List no more than ten (10) total projects:

Project Name & Location:

Completion Date (Actual or Estimated):

Project Owners Name & Address:

Project Owner's Contact Person, Title & Telephone Number:

Estimated Cost (in Thousands) for Entire Project: \$

Scope of Entire Project: (Please give quantitative indications wherever possible).

Nature of Firm's / Provider's responsibility in project: (Please give quantitative indications wherever possible).

Firms / Providers Personnel (Name/Project Assignment) who worked on the stated project that shall be assigned to the City's project and applicable certifications that personnel hold:

FORM NO. 3: QUALIFICATION CHECKLIST

- Signed Qualification
- Evidence of required licenses and certificates
- Evidence of Insurance
- Form No. 1
- Form No. 2
- Form No. 3
- Signed Non-Collusion Certification
- Addendum (if applicable)

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING A GRANT APPLICATION FOR HAZARDOUS MOVING VIOLATIONS.

WHEREAS, the City of Sedalia, Missouri approves and accepts the terms of Missouri Department of Transportation Highway Safety and Traffic Division’s Hazardous Moving Violation Grant; and

WHEREAS, the City of Sedalia, Missouri accepts and approves the Hazardous Moving Violation Grant for the Sedalia Police Department in the amount of One Hundred Thirty-four Thousand Four Hundred Eighty-eight Dollars (\$134,488.00) attached hereto and incorporated by reference herein.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SEDALIA, MISSOURI, AS FOLLOWS:

Section 1. The Council of the City of Sedalia, Missouri hereby approves and accepts the Hazardous Moving Violation Grant by and between the City of Sedalia, Missouri and the Missouri Department of Transportation Highway Safety and Traffic Division in substantively the same form and content as the application has been proposed.

Section 2. The City Council and Mayor are authorized and directed to execute and the City Clerk is hereby authorized and directed to attest and fix the seal of the City of Sedalia, Missouri on the authorization in substantively the same form and content as it has been proposed.

Section 3. The City Clerk is hereby directed to file in his office a duplicate or copy of the authorization after it has been executed by the parties or their duly authorized representatives.

Section 4. This Ordinance shall be in full force and effect from and after its passage and approval.

Read two times by title, copies of the proposed ordinance having been made available for public inspection prior to the time the bill is under consideration by the Council and passed by the Council of the City of Sedalia, Missouri this 3rd day of March 2025.

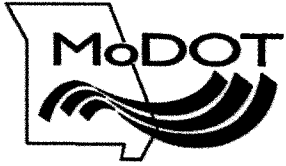
Presiding Officer of the Council

Approved by the Mayor of said City this 3rd day of March 2025.

Andrew L. Dawson, Mayor

ATTEST:

Jason S. Myers
City Clerk



Highway Safety and Traffic Division
TRAFFIC ENFORCEMENT APPLICATION
October 01, 2025 through September 30, 2026
 (Application due by March 01, 2025)

Highway Safety and Traffic Division
 P.O. Box 270
 830 MoDOT Drive
 Jefferson City, MO 65102

Agency:	Sedalia Police Dept.	Agency ORI#:	MO0800300
Address:	201 W. Second St.	Federal Tax ID#:	4460002630
		DUNS #:	NBRKXF5U79J4
City:	Sedalia	State:	MO
		Zip:	65301-4334
		County:	Pettis
Phone:	660-826-8100	Fax:	660-826-7040
Contact:	Corp. A.J. Silvey	Email:	ajsilvey@sedaliapolice.com
Jurisdiction:	Urban	Jurisdiction Population:	22,039
Targeted Population:	All Drivers		

Project activity for which your agency is requesting funding:
 Hazardous Moving Violation

Project Title:	Hazardous Moving Violation	Requested Amount:	\$134,488.00
Brief Description:	Enforcement of all HMV Violations		

 David Woolery
 Authorizing Official

 Authorizing Official Signature

 Chief
 Authorizing Official Title

PROBLEM IDENTIFICATION

Per the FY 24-26 Triennial Highway Safety Plan, during the last 5 years, no behavior on Missouri roadways has contributed to traffic fatalities as frequently as speed and aggressive driving. From 2017-2021, there were 2,547 fatalities involving a speeding or aggressive driver, accounting for 53% of all traffic fatalities. Speed and aggressive driving are cited in fatal crash reports as a contributing circumstance more than twice as often as impaired driving, and feedback and citation data from law enforcement agencies indicate speeds are up significantly during the last 3 years.

For the years of 2021-2023, according to MSHP Static Crash Reports, Sedalia is "ranked" 26th amongst Missouri cities, noting 2,213 crashes.

Utilizing in-house records Sedalia documented 711 crashes for the year of 2024, which is a decrease of 44 crashes from 2023. Again, 89 percent of these crashes occur between the hours of 0700 and 2200. HVM enforcement will be targeted at those high-crash times and locations. Supporting documents are attached to this application.

Looking further in-depth at the 711 crashes from 2024, 230 people were injured with 14 of those being classified as "Suspected Serious Injury". Sedalia had 2 fatal crashes in 2024 though each were single vehicle crashes.

Crashes remain the largest issue facing the safety of our public in Sedalia.

GOALS/OBJECTIVES

As outlined in the FY24-26 Triennial Highway Safety Plan, Core Performance Measure Goals:

Based on a goal of 0 fatalities by 2030, Missouri is setting a five-year average fatality target of 897.6 by December 31, 2026.

Based on a goal of 0 serious injuries by 2040, Missouri is setting a five-year average serious injury target of 4,486.1 by December 31, 2026.

Based on a goal of 0 fatalities by 2030, Missouri is setting a five-year average speed related fatality target of 293.8 by December 31, 2026.

Sedalia PD has set a goal of below 700 for the year of 2025 and below 500 for the year of 2030. Crashes have slowly been decreasing over the years, aside from 2023, and these grant efforts and enforcement projects play a critical role in enforcement of poor driving behaviors.

The objective of this grant is to continue to provide funds for Officers to aggressively enforce poor driving behaviors that lead to crashes. This grant is imperative for allowing Officers to come on their own time. Staffing and patrol constraints limit Officer's on shift ability to enforce traffic. This grant historically fills that gap.

PROJECT DESCRIPTION

Sedalia Police Officers will use the overtime enforcement hours to target and enforce high-crash locations at high-crash times. Attention will be given to all hazardous moving violations and secondary offenses that may develop from that stop, such as seatbelt and cell phone use. Officers are encouraged to enforce the new hands-free law in Missouri.

Overtime funds will also be utilized for special enforcement projects targeting vulnerable road users. Projects include school zone enforcement and school bus stop arm violations. The requested overtime funding directly contributes to the success and frequency of these projects as they can be a burden on budgeted overtime.

The Sedalia Police Department Traffic Unit consists of four members. We are requesting funding for all four to attend the LETSAC conference as well as the Show-Me-Zero conference.

The Sedalia Police Department is requesting replacement of ten (10) Stalker in-car radar units. Our current DSR radars have reached end of life and are no longer supported by warranty. The radars are slowly failing. We are requesting funding to replace all of them with new Stalker DSR2 units. We understand these are not cheap but the Sedalia PD is giving budget priority to recruitment and retention as well as crime prevention. Our priority to recruitment, retention and crime prevention is in-line with Governor Kehoe's "Blue Shield" program but it will create gaps in equipment replacement.

The Sedalia Police Department is also requesting replacement of twelve (12) in-car camera systems. Our current ones have also reached end of life and are not currently budgeted for replacement for the aforementioned reasons. Again, these are large expenses but they are necessary for effective enforcement. We do not have dedicated grant patrol cars so Officers routinely use whichever patrol vehicle is available.

SUPPLEMENTAL INFORMATION

<u>Question</u>	<u>Answer</u>
You must answer the following questions.	
1 Does your agency have and enforce a safety belt policy for all employees/personnel?	Yes
2 Does your agency have and enforce a policy restricting cell phone use while driving?	Yes
3 Does your agency report racial profiling data annually?	Yes
4 Does your agency report to MOCARS?	Yes
5 Does your agency report MIBRS information annually?	Yes
6 Please explain any NO answer(s) to questions 1-5:	
7 Does your agency have adequate manpower to fully perform the activities, expend the funds requested, and to submit vouchers on a monthly and/or quarterly basis in this application?	Yes
8 If NO, please explain.	
9 Have any significant changes occurred with your agency within the last year that would affect performance, including personnel or system changes?	No
10 If YES, please explain.	
11 Are you aware of any fraud, waste or abuse on grant projects in your office /agency within the last 5 years?	No
12 If YES, please explain.	
13 Have any of your officers/personnel been debarred and are therefore not eligible to receive federal funds for reimbursement of salary, fringe benefits, or overtime?	No
14 If your agency received Highway Safety grant funding in the last three (3) fiscal years and there were unexpended balances, please explain why. All funds expended.	
15 Did your political entity receive more than 80% of its annual gross revenues in Federal Awards in your preceding fiscal year?	No
16 Did your political entity receive \$25,000,000 or more in Federal Awards in your preceding fiscal year?	No
17 If you answered NO to either question 15 and 16, DO NOT answer this question. If you answered YES to both question 15 and 16, and the public does not have access to this information, list the names and compensation amounts of the five most highly compensated employees in your business or organization (the legal entity to which the UEI number it provided belongs).	

Please use the most current 12-months of data available for answering questions 18-23. INCLUDE ALL OF YOUR AGENCY'S STATISTICS, NOT JUST THOSE ISSUED DURING GRANT ACTIVITY.

18 Total number of DWI violations written by your agency.	266
19 Total number of speeding citations written by your agency.	245
20 Total number of HMV citations written by your agency.	418
21 Total number of child safety/booster seat citations written by your agency.	20
22 Total number of safety belt citations written by your agency.	24
23 Total number of warnings issued.	277

Use the most current three years crash data from the Missouri State Highway Patrol (MSHP) or your internal record management system for questions 24-34.

24 Total number of traffic crashes.	2213
25 Total number of traffic crashes resulting in a fatality.	4
26 Total number of traffic crashes resulting in a serious injury.	45
27 Total number of speed-related traffic crashes.	134
28 Total number of speed-related traffic crashes resulting in a fatality.	2
29 Total number of speed-related traffic crashes resulting in a serious injury.	7
30 Total number of alcohol-related traffic crashes.	75
31 Total number of alcohol-related traffic crashes resulting in a fatality.	0
32 Total number of alcohol-related traffic crashes resulting in a serious injury.	6
33 Total number of unbuckled fatalities.	1
34 Total number of unbuckled serious injuries.	7

Enter your agency's information below.

35 Total number of commissioned law enforcement officers.	45
36 Total number of commissioned patrol and traffic officers.	28
37 Total number of commissioned law enforcement officers available for overtime enforcement.	45
38 Total number of vehicles available for enforcement.	12

- 39 Total number of radars/lasers. 14
- 40 Total number of in-car video cameras. 12
- 41 Total number of PBTs and/or oral fluid testing devices. Please indicate the number of each type of instrument.
- 16 - Intox FST
1 - SoToxa Drug Testing Device
- 42 Total number of Breath Instruments. 2

The following information explains the strategies your agency will use to address the traffic crash problem. This information is considered to be the Project Description and should be specific to the crash problem.

- 43 Identify primary enforcement locations.
- US 50, US 65, Winchester Dr, State Fair Blvd, Thompson Blvd, W 16th St
- 44 Enter the number of enforcement periods your agency will conduct each month. 5
- 45 Enter the months in which enforcement will be conducted.
- All months. If needed, program will be suspended during winter and lowest crash months to prevent over-spending.
- 46 Enter the days of the week in which enforcement will be conducted.
- All days of the week.
- 47 Enter the time of day in which enforcement will be conducted.
- 0700 to 2200
- 48 Enter the number of officers assigned during the enforcement period. 1
- 49 If equipment or supplies are requested to conduct this project, explain below why it is needed and how it will be used.
- *More information found in Project Description*
- The Sedalia Police Department, under Governor Kehoe's vision, is focusing its budget efforts toward recruitment, retention and crime reduction. This is creating a budget void needed to replace our end of life equipment, primarily in-car cameras and radar units. We are having to make tough financial decisions and are not able to do everything at once.

PROJECT EVALUATION

The MHTC will administratively evaluate this project. Evaluation will be based, at a minimum, upon the following:

1. Law enforcement compliance with state UCR, Racial Profiling, and MOCARS reporting requirements (law enforcement contracts only)
2. Timely submission of monthly reimbursement vouchers and appropriate documentation to support reimbursement for expenditures (i.e., personal services, equipment, materials)
3. Timely submission of periodic reports (i.e., monthly, quarterly) as required
4. Timely submission of the Year End Report of activity (due within 30 days after contract completion date)
5. Attaining the Goals set forth in this contract
6. Accomplishing the Objectives* established to meet the project Goals, such as:
 - Enforcement activities (planned activities compared with actual activities)
 - Programs (number and success of programs held compared to planned programs, evaluations if available)
 - Training (actual vs. anticipated enrollment, student evaluations of the class, student test scores on course examinations, location of classes, class cancellation information)
 - Equipment purchases (timely purchase of equipment utilized to support and enhance the traffic safety effort ; documentation of equipment use and frequency of use)
 - Public awareness activities (media releases, promotion events, or education materials produced or purchased)
 - Other (any other information or material that supports the Objectives)
7. The project will be evaluated by the Highway Safety and Traffic Division through annual crash analysis

Evaluation results will be used to determine:

- The success of this type of activity in general and this particular project specifically ;
- Whether similar activities should be supported in the future; and
- Whether grantee will receive funding for future projects

This project is continually evaluated every three months when reimbursement vouchers are completed. As part of Sedalia's "Vision Zero" commitment, we continually analyze data and trends to best focus our efforts . We have set a goal of below 700 for 2025 and efforts will be continually evaluated for effectiveness .

ADDITIONAL FUNDING SOURCES

Patrick Leahy Bulletproof Vest Program - \$9,200

2025 DPS LVCP Grant - \$25,000

State FY 2024 / American Rescue Plan Act / Communications Equipment Grant - \$74,725

FY 24 SHSP CTO Equipment Grant - \$7,184

BUDGET

Category	Item	Description	Quantity	Unit Cost	Total	Match	Total Requested
Equipment							
	Dash Camera	Panasonic In-Car Camera Systems plus 5% for inflation Via Turn Key Mobile Estimate includes Warranty which will not be requested or considered.	12	\$6,419.00	\$77,028.00	\$0.00	\$77,028.00
	RADAR/LIDAR	Stalker DSR 2x Radar	10	\$3,606.00	\$36,060.00	\$0.00	\$36,060.00
					\$113,088.00	\$0.00	\$113,088.00
Personnel							
	Overtime and/or Fringe	Officer Overtime	300	\$50.00	\$15,000.00	\$0.00	\$15,000.00
					\$15,000.00	\$0.00	\$15,000.00
Training							
	Professional Development	LETSAC Conference for Four	4	\$1,000.00	\$4,000.00	\$0.00	\$4,000.00
	Professional Development	SMZ Conference for Four	4	\$600.00	\$2,400.00	\$0.00	\$2,400.00
					\$6,400.00	\$0.00	\$6,400.00
Total Contract					\$134,488.00	\$0.00	\$134,488.00

ATTACHMENTS

<u>Document Type</u>	<u>Description</u>	<u>Original File Name</u>	<u>Date Added</u>
PDF	PDF Document	citationsreport.pdf	01/30/2025
PDF	PDF Document	crashdowreport.pdf	01/30/2025
PDF	PDF Document	topintersectionsreport.pdf	01/30/2025
PDF	PDF Document	Stalker Estimate.pdf	01/30/2025
PDF	PDF Document	Panasonic Turn Key Estimate.pdf	01/30/2025
PDF	PDF Document	Double Time Policy - 2024.pdf	01/30/2025

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING A GRANT APPLICATION FOR DWI ENFORCEMENT.

WHEREAS, the City of Sedalia, Missouri approves and accepts the terms of Missouri Department of Transportation Highway Safety and Traffic Division’s DWI Enforcement Grant; and

WHEREAS, the City of Sedalia, Missouri accepts and approves the DWI Enforcement Grant for the Sedalia Police Department in the amount of Ten Thousand Seven Hundred Dollars (\$10,700.00) attached hereto and incorporated by reference herein.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SEDALIA, MISSOURI, AS FOLLOWS:

Section 1. The Council of the City of Sedalia, Missouri hereby approves and accepts the DWI Enforcement Grant by and between the City of Sedalia, Missouri and the Missouri Department of Transportation Highway Safety and Traffic Division in substantively the same form and content as the application has been proposed.

Section 2. The City Council and Mayor are authorized and directed to execute and the City Clerk is hereby authorized and directed to attest and fix the seal of the City of Sedalia, Missouri on the authorization in substantively the same form and content as it has been proposed.

Section 3. The City Clerk is hereby directed to file in his office a duplicate or copy of the authorization after it has been executed by the parties or their duly authorized representatives.

Section 4. This Ordinance shall be in full force and effect from and after its passage and approval.

Read two times by title, copies of the proposed ordinance having been made available for public inspection prior to the time the bill is under consideration by the Council and passed by the Council of the City of Sedalia, Missouri this 3rd day of March 2025.

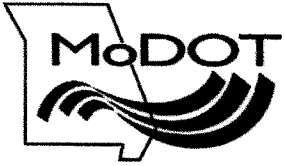
Presiding Officer of the Council

Approved by the Mayor of said City this 3rd day of March 2025.

Andrew L. Dawson, Mayor

ATTEST:

Jason S. Myers
City Clerk



**Highway Safety and Traffic Division
TRAFFIC ENFORCEMENT APPLICATION
October 01, 2025 through September 30, 2026**
(Application due by March 01, 2025)

Highway Safety and Traffic Division
P.O. Box 270
830 MoDOT Drive
Jefferson City, MO 65102

Agency:	Sedalia Police Dept.	Agency OR#:	MO0800300
Address:	201 W. Second St.	Federal Tax ID#:	4460002630
		DUNS #:	NBRKXF5U79J4
City:	Sedalia	State:	MO
		Zip:	65301-4334
		County:	Pettis
Phone:	660-826-8100	Fax:	660-826-7040
Contact:	Corp. A.J. Silvey	Email:	ajsilvey@sedaliapolice.com
Jurisdiction:	Urban	Jurisdiction Population:	22,039
Targeted Population:	Impaired Drivers		

Project activity for which your agency is requesting funding:
Impaired Driving

Project Title:	DWI Enforcement	Requested Amount:	\$10,700.00
Brief Description:	DWI Enforcement		

David Woolery
Authorizing Official

David Woolery

Authorizing Official Signature

Chief
Authorizing Official Title

PROBLEM IDENTIFICATION

Per the FY24-26 Triennial Highway Safety Plan, substance-impaired drivers contributed to 22% of Missouri's traffic crash fatalities during the past five years. Alcohol remains the primary contributor to substance-impaired driving crashes; however, the number of persons under the influence of prescription medications and/or illicit drugs has increased significantly over the past decade. With recreational marijuana now legal in Missouri, there are concerns this trend will continue.

Male drivers were more likely than females to be involved in substance-impaired driving crashes. During the past five years, males were responsible for 81.7% of substance-impaired driving fatalities. Ten percent of the children less than 15 years of age, who were killed in motor vehicle crashes over the last five years, were riding with a substance-impaired driver.

Depending on the jurisdiction, impaired driving offenses in Missouri are prosecuted differently. Prosecutors and judges may not always be aware of the severity of the impaired driving problem or how to best provide treatment for an offender.

The Sedalia DWI, consisting of two full-time officers, made 225 DWI arrests in 2024. Alcohol-involved crashes still remain a problem in our community.

GOALS/OBJECTIVES

As outlined in the FY24-26 Triennial Highway Safety Plan, Core Performance Measure Goal:

Based on a goal of 0 fatalities by 2030, Missouri is setting a five-year average alcohol-involved fatality target of 232.6 by December 31, 2026.

To aggressively pursue impaired drivers on Sedalia roadways and remove them in order to improve public safety and reduce crashes on our roadways.

PROJECT DESCRIPTION

Department members will utilize overtime enforcement funds to deploy across the city in search of impaired drivers on our roadways. Officers will work evening and overnight hours during high DWI times.

Sedalia PD is also seeking funding to send Officer Kyle Schmitt (DRE and Department Phlebotomist) to the National DRE Conference. Kyle is a motivated top performer and this training will further improve his skills and network.

We are also seeking funding for both DWI units to attend the DWI/DRE Conference.

It should be noted that Pettis County remains a no-refusal county with commitment from all parties involved. We now have a department phlebotomist as well and are sending a second Officer in 2025.

SUPPLEMENTAL INFORMATION

Question

Answer

You must answer the following questions.

- | | |
|--|-----|
| 1 Does your agency have and enforce a safety belt policy for all employees/personnel? | Yes |
| 2 Does your agency have and enforce a policy restricting cell phone use while driving? | Yes |
| 3 Does your agency report racial profiling data annually? | Yes |
| 4 Does your agency report to MOCARS? | Yes |
| 5 Does your agency report MIBRS information annually? | Yes |
| 6 Please explain any NO answer(s) to questions 1-5: | |
| 7 Does your agency have adequate manpower to fully perform the activities, expend the funds requested, and to submit vouchers on a monthly and/or quarterly basis in this application? | No |
| 8 If NO, please explain. | |
| 9 Have any significant changes occurred with your agency within the last year that would affect performance, including personnel or system changes? | No |
| 10 If YES, please explain. | |
| 11 Are you aware of any fraud, waste or abuse on grant projects in your office/agency within the last 5 years? | No |
| 12 If YES, please explain. | |
| 13 Have any of your officers/personnel been debarred and are therefore not eligible to receive federal funds for reimbursement of salary, fringe benefits, or overtime? | No |
| 14 If your agency received Highway Safety grant funding in the last three (3) fiscal years and there were unexpended balances, please explain why.
All funds expended | |
| 15 Did your political entity receive more than 80% of its annual gross revenues in Federal Awards in your preceding fiscal year? | No |
| 16 Did your political entity receive \$25,000,000 or more in Federal Awards in your preceding fiscal year? | No |
| 17 If you answered NO to either question 15 and 16, DO NOT answer this question. If you answered YES to both question 15 and 16, and the public does not have access to this information, list the names and compensation amounts of the five most highly compensated employees in your business or organization (the legal entity to which the UEI number it provided belongs). | |

**Please use the most current 12-months of data available for answering questions 18-23.
INCLUDE ALL OF YOUR AGENCY'S STATISTICS, NOT JUST THOSE ISSUED DURING GRANT
ACTIVITY.**

18 Total number of DWI violations written by your agency.	266
19 Total number of speeding citations written by your agency.	245
20 Total number of HVM citations written by your agency.	418
21 Total number of child safety/booster seat citations written by your agency.	20
22 Total number of safety belt citations written by your agency.	24
23 Total number of warnings issued.	277

**Use the most current three years crash data from the Missouri State Highway Patrol (MSHP)
or your internal record management system for questions 24-34.**

24 Total number of traffic crashes.	2213
25 Total number of traffic crashes resulting in a fatality.	4
26 Total number of traffic crashes resulting in a serious injury.	45
27 Total number of speed-related traffic crashes.	134
28 Total number of speed-related traffic crashes resulting in a fatality.	2
29 Total number of speed-related traffic crashes resulting in a serious injury.	7
30 Total number of alcohol-related traffic crashes.	75
31 Total number of alcohol-related traffic crashes resulting in a fatality.	0
32 Total number of alcohol-related traffic crashes resulting in a serious injury.	6
33 Total number of unbuckled fatalities.	1
34 Total number of unbuckled serious injuries.	7

Enter your agency's information below.

35 Total number of commissioned law enforcement officers.	45
36 Total number of commissioned patrol and traffic officers.	28
37 Total number of commissioned law enforcement officers available for overtime enforcement.	45
38 Total number of vehicles available for enforcement.	12

- 39 Total number of radars/lasers. 14
- 40 Total number of in-car video cameras. 12
- 41 Total number of PBTs and/or oral fluid testing devices. Please indicate the number of each type of instrument.
- 16 - Intox FST
1 - SoToxa Drug Testing Device
- 42 Total number of Breath Instruments. 2

The following information explains the strategies your agency will use to address the traffic crash problem. This information is considered to be the Project Description and should be specific to the crash problem.

- 43 Identify primary enforcement locations.
- All municipal roadways
- 44 Enter the number of enforcement periods your agency will conduct each month. 5
- 45 Enter the months in which enforcement will be conducted.
- All months of the year
- 46 Enter the days of the week in which enforcement will be conducted.
- All days of the week
- 47 Enter the time of day in which enforcement will be conducted.
- 1800 to 0600
- 48 Enter the number of officers assigned during the enforcement period. 1
- 49 If equipment or supplies are requested to conduct this project, explain below why it is needed and how it will be used.
- None

PROJECT EVALUATION

The MHTC will administratively evaluate this project. Evaluation will be based, at a minimum, upon the following:

1. Law enforcement compliance with state UCR, Racial Profiling, and MOCARS reporting requirements (law enforcement contracts only)
2. Timely submission of monthly reimbursement vouchers and appropriate documentation to support reimbursement for expenditures (i.e., personal services, equipment, materials)
3. Timely submission of periodic reports (i.e., monthly, quarterly) as required
4. Timely submission of the Year End Report of activity (due within 30 days after contract completion date)
5. Attaining the Goals set forth in this contract
6. Accomplishing the Objectives* established to meet the project Goals, such as:
 - Enforcement activities (planned activities compared with actual activities)
 - Programs (number and success of programs held compared to planned programs, evaluations if available)
 - Training (actual vs. anticipated enrollment, student evaluations of the class, student test scores on course examinations, location of classes, class cancellation information)
 - Equipment purchases (timely purchase of equipment utilized to support and enhance the traffic safety effort ; documentation of equipment use and frequency of use)
 - Public awareness activities (media releases, promotion events, or education materials produced or purchased)
 - Other (any other information or material that supports the Objectives)
7. The project will be evaluated by the Highway Safety and Traffic Division through annual crash analysis

Evaluation results will be used to determine:

- The success of this type of activity in general and this particular project specifically ;
- Whether similar activities should be supported in the future; and
- Whether grantee will receive funding for future projects

As with any project this one will be measured by performance during the process of quarterly vouchering.

ADDITIONAL FUNDING SOURCES

Patrick Leahy Bulletproof Vest Program - \$9,200

2025 DPS LVCP Grant - \$25,000

State FY 2024 / American Rescue Plan Act / Communications Equipment Grant - \$74,725

FY 24 SHSP CTO Equipment Grant - \$7,184

BUDGET

Category	Item	Description	Quantity	Unit Cost	Total	Match	Total Requested
Personnel							
	Overtime and/or Fringe	Officer Overtime	150	\$50.00	\$7,500.00	\$0.00	\$7,500.00
					\$7,500.00	\$0.00	\$7,500.00
Training							
	Professional Development	IACP National DRE Conference	1	\$2,000.00	\$2,000.00	\$0.00	\$2,000.00
	Professional Development	DWI/DRE Conference	2	\$600.00	\$1,200.00	\$0.00	\$1,200.00
					\$3,200.00	\$0.00	\$3,200.00
Total Contract					\$10,700.00	\$0.00	\$10,700.00

ATTACHMENTS

<u>Document Type</u>	<u>Description</u>	<u>Original File Name</u>	<u>Date Added</u>
PDF	PDF Document	Double Time Policy - 2024.pdf	01/30/2025
PDF	PDF Document	citationsreport.pdf	01/30/2025

RESOLUTION NO. _____

A RESOLUTION ACCEPTING A RESTRICTED DONATION FOR THE PURCHASE OF THE BICHSEL CLOCK FROM BICHSEL JEWELRY.

WHEREAS, for approximately 143 years, the Bichsel Clock has marked the passage of time for the Sedalia community. It was first proudly displayed within the 100 block of South Ohio Avenue in 1882 then relocated in the 1890s to the 200 block of South Ohio Avenue. The clock would spend the next 75 years in front of 217 South Ohio Avenue; and

WHEREAS, in 1990, the Bichsel Clock moved with Bichsel Jewelry to Thompson Hills Shopping Center and then to its current location at 770 Winchester Drive in 2006*; and

WHEREAS, with the retirement of Mark Callis and closing of one of Sedalia’s legacy businesses, Bichsel Jewelry, Robert Walters and Mark Callis desire to see the clock returned to Downtown Sedalia’s historic district.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SEDALIA, MISSOURI as follows:

Section 1. The City of Sedalia accepts the restricted donation from Robert Walters for the purchase of the Bichsel Clock from Mark Callis of Bichsel Jewelry.

Section 2. The clock is to be relocated within the area where it last stood in Downtown Sedalia, in the approximate vicinity of 217 South Ohio Avenue. If the location needs to be changed for any reason, Mr. Walters will be involved in the decision making process for alternate placement of the clock.

Section 3. Upon the acceptance of Robert Walters’ restricted donation, the City of Sedalia takes responsibility for the labor and cost of dismantling, cleaning, relocating and maintaining the clock in the future.

Section 4. This resolution shall be in full force and effect from and after its passage and approval.

PASSED by the City Council of the City of Sedalia, Missouri, on March 3, 2025

Presiding Officer of the Council

ATTEST: _____

Jason S. Myers
City Clerk

*Credit to *All Along Ohio Street* by Becky Carr Imhauser

Office of the Mayor

TO: Members of City Council
FROM: Mayor Andrew Dawson
DATE: February 27, 2025
RE: Reappointments

I would like to make the following recommendations:

Reappointments:

BOARD/COMMITTEE	MEMBER	TERM
Galaxy West Community Improvement District		
	Tim Harris	Four Year Term Expiring March 21, 2028
	Kelvin Shaw	Four Year Term Expiring March 21, 2028

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE APPROVING A VACANT LAND SALE CONTRACT FOR THE SALE OF PROPERTY COMMONLY KNOWN AS _____ FROM THE CITY OF SEDALIA, MISSOURI TO _____.

WHEREAS, The City of Sedalia, Missouri has received a proposal from _____ to purchase property commonly known as _____ for the sum and amount of _____ as contained in the vacant land sale contract attached hereto and incorporated by reference.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SEDALIA, MISSOURI, AS FOLLOWS:

Section 1. The Council of the City of Sedalia, Missouri approves and accepts the terms as contained in the vacant land sale contract in substantially the same form and content as proposed.

Section 2. The Council of the City of Sedalia, Missouri, hereby approves the conveyance of property commonly known as _____ to _____ in substantially the same form and content as proposed.

Section 3. The Mayor or City Administrator are authorized to accept said vacant land sale contract, sign said agreement and execute any and all closing documents on behalf of the City of Sedalia, Missouri and the City Clerk is hereby authorized and directed to file in his office the said agreement after recording said agreement and ordinance with the Pettis County Recorder of Deeds.

Section 4. This ordinance shall be in full force and effect from and after its passage and approval.

Read two times by title, copies of the proposed ordinance having been made available for public inspection prior to the time the bill is under consideration by the Council and passed by the Council of the City of Sedalia, Missouri this 3rd day of March, 2025.

Presiding Officer of the Council

Approved by the Mayor of said City this 3rd day of March, 2025.

Andrew L. Dawson, Mayor

ATTEST:

Jason S. Myers
City Clerk

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF SEDALIA, MISSOURI AND _____.

WHEREAS, the City of Sedalia, Missouri has received a request from _____ for incentives on a project for _____; and

WHEREAS, the City of Sedalia has determined certain incentives to the development would be in the public's best interest.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SEDALIA, MISSOURI as follows:

Section 1. The Council of the City of Sedalia, Missouri hereby approves and accepts the development agreement by and between the City of Sedalia, Missouri and _____ in substantially the same form and content as attached hereto.

Section 2. The Mayor or City Administrator are authorized and directed to execute such agreement and the City Clerk is hereby authorized and directed to attest and fix the seal of the City of Sedalia, Missouri on the agreement.

Section 3. The City Clerk is hereby directed to file in his office a duplicate or copy of the agreement after it has been executed by the parties or their duly authorized representatives.

Section 4. This ordinance shall be in full force and effect from and after its passage and approval.

Read two times by title, copies of the proposed ordinance having been made available for public inspection prior to the time the bill is under consideration by the Council and passed by the Council of the City of Sedalia, Missouri this 3rd day of March, 2025.

Presiding Officer of the Council

Approved by the Mayor of said City this 3rd day of March, 2025.

Andrew L. Dawson, Mayor

ATTEST:

Jason S. Myers
City Clerk