



STANDARD GENERAL CONDITIONS

APPLICABLE TO PROJECTS WHERE THE OWNER HAS RETAINED
~~THE PROFESSIONAL~~ SERVICES OF A

~~CONSTRUCTION~~ ~~MANAGER~~CONTRACTOR

**THIS ABBREVIATED DOCUMENT
CONTAINS ONLY SUBSTANTIVE
DIFFERENCES BETWEEN THE CM
AND CONTRACTOR VERSIONS OF
THE GENERAL CONDITIONS**

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STANDARD GENERAL CONDITIONS
APPLICABLE TO PROJECTS WHERE THE OWNER HAS RETAINED
THE ~~PROFESSIONAL~~ SERVICES OF A
CONSTRUCTION MANAGER/CONTRACTOR

Article 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.2 “**Addenda**” are written or graphic instruments issued by the Owner or the Design Professional ~~either~~ prior to the execution of the Agreement, ~~or in the case of phased construction, prior to the award of the applicable Trade Contract,~~ which modify or interpret the Drawings and Specifications, by addition, deletion, clarification, or correction.

1.1.3 The “**Agreement**” is that portion of the Contract Documents consisting of the written Agreement for Professional Construction Management Services between the Owner/Contractor and the Owner for Construction Manager, as amended by Modifications. ~~These Standard General Conditions, identifying the Scope of the Work, Contract Time, Contract Sum, the method of progress payments and a “Schedule of Project Details” are attached to final payment, and incorporated a listing of the Contract Documents by reference into which the Agreement/Work is to be completed.~~

~~1.1.9 The “**Construction Manager**” is that party identified in the Agreement, who will manage and direct and who is, except as expressly provided in the Contract Documents, in every way responsible to the Owner for the timely and proper performance of the Work.~~

~~1.1.9 [intentionally omitted]~~

1.1.10 The “**Construction Schedule**” is the Critical Path Method (“CPM”) schedule for construction of the Work ~~submitted as part of the Construction Manager’s Guaranteed Maximum Price Proposal or Bid Release Recommendation for the first bid package, whichever comes first,~~ prepared by the Construction Manager/Contractor and accepted by the Owner in accordance with §3.3. As provided below, the Construction Schedule can be modified only by Change Order; following any ~~such~~ Modification, the term “Construction Schedule” shall mean the most recent Owner accepted version.

~~1.1.13 The “**Contractor**” is the party named in the Agreement who will execute the Work and who is, except as expressly provided in the Contract Documents, in every way responsible to the Owner for the timely and proper performance of the Work.~~

~~1.1.13 [intentionally omitted]~~

1.1.14 The “**Contract Documents**” consist of: the Agreement, the Drawings, Specifications, and Addenda, the Construction Schedule, Change Orders and Construction Change Directives, other documents so designated in the Agreement, these Standard General Conditions and any Supplemental or Special Conditions applicable to the Work, all Modifications issued after the date of the Agreement, and any documents incorporated by reference into any of the foregoing. The Contract Documents do not include any other documents, unless designated or incorporated by reference as provided above, such as (i) bidding requirements, advertisements or invitations to bid, proposals, Bulletins, instructions to bidders, a ~~notice~~ Notice to Proceed/Proceed, sample forms, soils, geotechnical, or other reports, surveys, or analyses, which may be printed, bound, or assembled with the Contract Documents, or otherwise made available for review or information, (ii) bids, or (iii) portions of the Addenda relating to bidding requirements.

1.1.15 The “**Contract Sum**” is the maximum amount to be paid by the Owner to the Construction Manager/Contractor for performance of the Work pursuant to the Contract Documents ~~(i.e. the Guaranteed Maximum Price).~~ Such amount may be modified from time to time with a Change Order pursuant to the terms and provisions of the Contract Documents.

1.1.16 The “**Contract Time**” is the number of calendar days ~~described in between~~ the ~~Construction Schedule in which date of the Notice to Proceed and the~~ Substantial Completion ~~shall be achieved date set forth in Article 2 of the Agreement~~, subject to any extensions granted in executed Change Orders or otherwise specifically permitted by the Contract Documents.

1.1.27 The “**Milestone Dates**” are those dates included in the ~~Project Schedule or the~~ Construction Schedule that are critical to ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

1.1.30 ~~The “**Notice to Proceed**” is any written notice given by the Owner to the Contractor fixing the date on which the Contract Time will commence and on which the Contractor shall start to perform its obligations under the Contract Documents.~~

~~1.1.30 [intentionally omitted]~~

1.1.33 The “**Project**” is described in the ~~Schedule of Project Details~~ Manual. The Work may be the whole or a part of the Project, and the Project may include construction by the Owner or contractors not hired by the ~~Construction Manager~~ Contractor.

1.1.35 The “**AEC Project Manual**” is that volume, if any, assembled for the Work which may include the bidding requirements, specifications, sample forms, and portions of the Contract Documents. The Project Manual is not one of the Contract Documents.

1.1.44 A “**Subcontract**” is an agreement between ~~a Trade~~ the Contractor and a Subcontractor. Where it would be reasonable in the context of its usage, the term “Subcontract” shall include subcontracts of all tiers.

1.1.45 A “**Subcontractor**” is a person who is hired by ~~a Trade~~ the Contractor, not the ~~Construction Manager or the~~ Owner, to perform a portion of the Work at the Project Site, under a Subcontract. Where it would be reasonable in the context of its usage, the term “Subcontractor” shall include subcontractors of all tiers.

~~1.1.51 A “**Trade Contract**” is an agreement between the Construction Manager and a Trade Contractor. Where it would be reasonable in the context of its usage, the term “Trade Contract” shall also include Subcontracts.~~

~~1.1.52 A “**Trade Contractor**” is a person who is hired by the Construction Manager, not the Owner, (i) to perform a portion of the Work at the Work Site or (ii) to furnish materials fabricated to a special design according to the Contract Documents. Where it would be reasonable in the context of its usage, the term “Trade Contractor” shall include subcontractors of all tiers, and all Suppliers, working beneath a Trade Contractor.~~

~~1.1.53 “**Value Engineering**” means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Owner’s program at the lowest cost consistent with required and necessary performance, reliability, quality and safety.~~

1.1.51 [intentionally omitted]

1.1.52 [intentionally omitted]

1.1.53 [intentionally omitted]

1.2 INTERPRETATION AND PRIORITY OF DOCUMENTS

1.2.4.3 The terms "known," "knowledge," "recognize," "believe," "discover" and any derivatives thereof and similar terms, when used in reference to the ~~Construction Manager~~Contractor, shall mean that which the ~~Construction Manager~~Contractor knows or should reasonably know, recognizes or should reasonably recognize, and discovers or should reasonably discover in exercising the care, skill, and diligence required of ~~the Construction Manager by the Agreement~~a contractor familiar with the Work. Analogously, the expression "reasonably inferable" and similar terms mean reasonably inferable by a ~~construction manager~~contractor familiar with work having the same size and scope of the Work and exercising the care, skill, and diligence required of ~~the Construction Manager by a contractor familiar with the Agreement~~Work.

Article 2 OWNER’S RIGHTS, DUTIES AND RESPONSIBILITIES

Article 3 CONTRACTOR’S ROLE

3.2 CONTRACT DOCUMENTS; PHYSICAL CONDITION; CONCEALED CONDITIONS

3.2.2 ~~If the Contract Sum exceeds Seventy Five Thousand Dollars (\$75,000), and~~ during the course of any part of the Work, the Contractor discovers a subsurface or latent physical condition at the Project site that differs materially from those indicated in the Contract Documents or an unknown condition of an unusual nature differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract Documents, whether or not it is entitled to assert a Claim under §3.2.4, the Contractor shall promptly (and before disturbing any physical condition) notify the Owner in writing of such conditions so that the Owner can (i) comply with the requirements of MCL 125.1592 and (ii) determine if such conditions require design details which differ from those design details shown in the Design or require some other remedial action. The Contractor shall be liable to the Owner for any extra costs incurred as the result of the Contractor’s failure to promptly give such notice.

3.3 THE CONSTRUCTION SCHEDULE

3.3.1 ~~The Contractor, within twenty (20) days after the Notice to Proceed or other time period stipulated in writing by the Owner’s Representative or the Contract Documents, shall submit a comprehensive Construction Schedule to serve as the schedule for the performance of the Work and that meets the completion dates required in the Contract Documents.~~ The Construction Schedule shall be in a detailed critical path method format satisfactory to the Owner which shall also: (i) provide a graphic representation coordinating and sequencing all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; (iii) identify Float Time with early start/late start and early finish/late finish dates for each Activity on the schedule; and (iv) set forth Milestone Dates and manpower loading.

3.4 ~~CONSTRUCTION—MANAGER—SUPERVISION~~ AND ~~COORDINATION~~CONSTRUCTION PROCEDURES

~~3.4.1~~ ~~The Construction Manager shall provide professional supervisory, administrative, management, inspection and related services as required to properly coordinate, schedule and sequence the Work of the Trade Contractors with each other (to avoid both duplication and omission of Work) and with the activities and responsibilities of the Construction Manager, the Owner and the Design Professional to complete the Work in accordance with the requirements of the Contract Documents with respect to cost, time and quality and to ensure that the other goals of the Work are otherwise met or exceeded.~~

~~3.4.2~~ ~~The Construction Manager shall schedule and conduct with the Trade Contractors pre-construction and construction progress and any other meetings deemed necessary to discuss such matters~~

~~as procedures, progress, problems, safety, inspections, sequencing, and scheduling, and shall prepare and promptly distribute minutes. Construction progress meetings will be conducted by the Construction Manager at least biweekly, unless otherwise directed by the Owner, and attended by all Trade Contractors whose Work has not been completed. Executive level progress meetings will be held on a monthly basis. All progress meeting minutes shall be provided to the Owner by the Construction Manager within five (5) days after the meeting and distributed to all attendees promptly after they have been approved by the Owner. The Owner will act promptly in providing its comments or approval. The Construction Manager in consultation with the Owner and the Design Professional shall develop, implement and maintain a process of "partnering" involving both of them and all Trade Contractors so that (i) the goals and objectives of each are clearly understood and accepted by all, and (ii) potential problems, bad feelings, personal difficulties and the like are identified and resolved promptly. The Owner and Design Professional shall cooperate fully in meeting these objectives.~~

~~3.4.2.1 The partnering objective shall be to identify and develop mutual goals, which may include, as examples, achieving Value Engineering savings, meeting the financial goals of each party, limiting cost growth, limiting review periods for contract submittals, avoiding and resolving disputes, facilitating early completion and minimizing lost time because of injuries. The partnering process shall emphasize open communication, collegiality and cooperation among all parties, as well as prompt and efficient dispute resolution at the lowest appropriate level of management. Claims and disputes not resolved in the partnering process shall be subject to the procedures specified in Article 15.~~

~~3.4.1 The Construction Manager shall supervise and direct the Work, using the Construction Manager's best skill and attention. The Construction Manager~~The Contractor shall keep on the Project, at all times during the progress of the Work, a competent full time Superintendent and any necessary assistants, all satisfactory to the Owner, and the Design Professional. The Superintendent shall be located at the Project site unless otherwise approved by the Owner. The Superintendent shall represent the Contractor and all directions, directives, notices and other communications given by or to the Superintendent shall be as binding as if given by or to the Contractor. The Superintendent shall remain on-site daily until full completion of the entire Work, including Punchlist Work.

~~3.4.2 The Contractor shall conduct project progress meetings no less frequently than biweekly. The purpose of these meetings will be to update the Owner and Design Professional on project safety and project execution.~~

~~3.4.3 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over the construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.~~

3.1 QUALITY CONTROL

~~3.5.3.3 Prior to starting their Work, each Trade Contractor~~member of the Construction Team shall verify and accept the Work of the previous Trade Contractor.~~Construction Team member.~~ Any defective Work shall be reported to the ~~Construction Manager~~Contractor to assure that it is promptly corrected.

~~3.5.9 Product Standards:~~ To the extent a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the ~~Construction Manager shall require the Trade Contractor to~~shall present an affidavit from the manufacturer when requested by the Owner or required in the Specifications, certifying that the product complies with the particular Standard or Specification. When requested by the Owner or specified, support test data shall be submitted to substantiate compliance.

Article 4 DESIGN PROFESSIONAL'S ROLE

Article 5 ~~TRADE CONTRACTORS~~SUBCONTRACTORS; SUPPLY CONTRACTS

~~5.1~~ — ~~[INTENTIONALLY OMITTED]~~

5.1 AWARD OF SUBCONTRACTS

5.1.1 The Contractor shall, prior to the execution of the Contract, notify the Owner, in writing, of the names of Subcontractors and Suppliers and their business classifications, proposed for the principal parts of the Work and for others as the Owner may direct.

5.1.2 If the Owner has a reasonable objection to any of the proposed Subcontractors or Suppliers, the Contractor shall not enter into a contract with any Subcontractor or Supplier.

5.1.3 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner makes reasonable objection to substitution. If the substitution is allowed, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time on account of substitution.

5.2 RELATIONS WITH ~~TRADE CONTRACTORS~~SUBCONTRACTORS

5.2.2 By requiring the Trade Contractor to be bound to the Construction Manager by the terms of these Standard General Conditions, and without ~~Without~~ limiting the generality of ~~§5.2.1, the foregoing,~~ each Trade Contract is bound by, and includes by reference, every term of these Standard General Conditions and specifically Subcontract shall, by addendum, contain provisions that:

~~(g) requires that, if the Trade Contract includes a provision for Liquidated Damages, the Trade Contractor shall not, by contract or otherwise, require any Subcontractor or Supplier to bear the risk or burden of Liquidated Damages except to the extent of that Subcontractor or Supplier's responsibility for the delay giving rise to the imposition of Liquidated Damages; and~~

(g) [intentionally omitted];

~~5.2.3~~ — As part of the bidding process, the Construction Manager shall provide each prospective bidder with a copy of these Standard General Conditions.

5.2.3 [intentionally omitted]

~~5.3~~ — **SCHEDULE OF TRADE CONTRACTORS' WORK**

~~5.3.1~~ — By submitting a bid, each Trade Contractor agrees to be contractually bound to the requirements of the applicable Bid Package's Construction Schedule. Each Trade Contractor shall agree to cooperate with the Construction Manager in developing a detailed CPM manpower-based schedule applicable to its portion of the Work within forty five (45) days after award of contract unless otherwise specified. The Construction Manager shall assist in the development of all Trade Contractor schedules and shall prepare such schedules if any Trade Contractor fails to do so. Trade Contractors shall meet as often as necessary with the Construction Manager to complete their detailed CPM schedules. However, the Bid Package's Construction Schedule and the Construction Schedule (or if the Construction Schedule has not been prepared, then the Project Schedule) will take precedence over any schedules prepared by Trade Contractors with respect to time of completion for each bid package. If any such schedule indicates that additional time or effort will be required to maintain these schedules, the Construction Manager and the Trade Contractor shall agree to work additional time, including weekends if necessary, or to add manpower, all at no extra cost to the Owner.

~~5.3.2—At Progress meetings, but in no case less frequently than twice monthly, the Construction Manager shall prepare and deliver to the Owner and each member of the Construction Team that are part of a particular bid package a “short term/two week look ahead schedule,” and it will take appropriate action to enforce compliance therewith.~~

5.3 [INTENTIONALLY OMITTED]

Article 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

Article 7 CHANGES IN THE WORK

7.6.2 Pricing Methods

~~7.6.2.4——If the Owner and the Construction Manager fail to agree upon the adjustment in the Contract Sum, upon issuance of a Construction Change Directive from the Owner, the Construction Manager shall nevertheless cause the changes in Work to be promptly commenced and completed. Any disagreement concerning pricing methods shall be subject to dispute resolution pursuant to Article 15.~~

7.6.3 Cost of the Changes

7.6.3.3 When using “Method 1” and “Method 3” of §7.6.2, ~~Trade Contractors~~the Contractor shall be allowed a mark-up of no more than fifteen percent (15%) on Work performed with their own tradespersons and no more than five percent (5%) on Work performed by others. Subcontractors, through all subsequent tiers, will determine their fee in the same manner as the Contractor. The cumulative mark-up charged to the Owner, from ~~the Trade Contractors and their all tiers of subcontractors,~~ shall not exceed twenty ~~six and three quarter~~six and three quarter percent (~~20.75~~26.8%) (the net compounded amount) ~~regardless of the number of tiers of subcontractors.—). This cumulative amount includes the Contractor’s markup.~~

7.6.3.4 If Changes in the Work involve both added Work and deducted Work in the same portion of the Work, ~~Construction Manager~~Contractor’s fees, applicable in accordance with the Schedule of Project Details, will not be allowed if the deducted cost exceeds the added cost. If the added cost exceeds the deducted cost, Construction Manager~~Contractor’s fees, applicable in accordance with the Schedule of Project Details,~~ will be allowed only on the difference between the two amounts.

~~7.6.3.7 If the Owner and the Construction Manager do not agree upon an adjustment in the Contract Time or the Contract Sum, the matter shall be subject to the applicable dispute resolution procedures set forth in Article 15.~~

Article 8 CONSTRUCTION PROGRESS; DELAYS AND SUSPENSION

8.6 DELAYS

8.6.3 “Owner Delay” means, and is limited to, a Critical Delay to Contractor’s completion of the Work to the extent caused by one or more of the following: (i) Change Orders and Construction Change Directives (CCDs) (excluding minor changes in the Work and Design Professional interpretations), (ii) the Owner’s failure (or that of any other person for whom the Owner is responsible to the ~~Construction Manager including, subject to the provisions of Part 2.14 of the Agreement,~~Contractor, including the Design Professional or a separate contractor hired by the Owner) to provide any data or information requested by

the Contractor in writing that is reasonably necessary for Contractor to carry out its duties and is the Owner's obligation to provide (so long as the Owner and any other responsible person are given adequate time to respond); or (iii) interference by the Owner or persons for whom it is responsible to the Contractor, including, ~~subject to the provisions of Part 2.14 of the Agreement,~~ the Design Professional or a separate contractor hired by the Owner, with the Contractor's performance of the Work (which continues after written notice to the Owner of such interference).

Article 9 PAYMENTS

9.3 SCHEDULE OF VALUES

9.3.1 Cost Breakdown - At least twenty (20) calendar days prior to the first Application for Payment, the ~~Trade~~ Contractor shall submit to the ~~Construction Manager~~ Design Professional and the Owner a schedule of values for all of the ~~Trade Contract~~ Work, allocating the ~~Trade Contract~~ Amount Sum to various portions of the Work. The ~~Trade~~ Contractor's overhead and profit will be proportionately included within each value of the construction Work identified.

9.3.3 If requested by the ~~Construction Manager or the~~ Owner, or required by the Contract Documents, the ~~Trade~~ Contractor shall submit within thirty (30) days after the receipt of ~~a notice~~ the Notice to proceed Proceed, a monthly payment cash flow schedule of anticipated progress payments for the project duration, based upon the ~~Trade~~ Contractor's planned progress of the Work.

9.4 PROGRESS PAYMENTS.

9.4.2 To assure proper performance of the Contract Documents by the Contractor, the Owner may retain out of each progress payment a "Retainage" equal to ten percent (10%) of the dollar value of the work in place until the Work is fifty percent (50%) in place, ~~excluding any portion paid for the Construction Manager personnel costs and general conditions costs.~~ After the Work is fifty percent (50%) in place, additional retainage shall not be withheld unless the Owner determines that the Contractor is not making satisfactory progress or for another specific cause relating to the Contractor's performance under the Contract Documents. If the Owner so determines, it may retain not more than ten percent (10%) of the dollar value of Work more than fifty percent (50%) in place. Retainage shall be released to the Contractor not later than the time of Final Payment.

Article 10 PROTECTION OF PERSONS AND PROPERTY

Article 11 INSURANCE AND INDEMNIFICATION; BONDS

11.1 GENERAL PROVISIONS

11.1.1 ~~The Construction Manager shall commence Work only after all of the insurance requirements set forth herein (and in the Schedule of Project Details, if any) have been fully satisfied. Before Work is started, the Contractor shall file with the Owner certificates of the insurance coverage required to be maintained by the Contractor, evidencing such insurance. No Work under the Contract shall be commenced until all insurance required by the Contract Documents has been obtained and reviewed by the Owner.~~ If there is a conflict between the insurance requirements of these Standard General Conditions and any set forth in the ~~Schedule of Project Details~~ Special Conditions, if any, those set forth in the ~~Schedule of Project Details~~ Special Conditions shall govern. The insurance required under the Contract Documents shall be maintained without interruption from the date the Work commences until (i) the date of Final Payment, or (ii) a later date if required under the Contract Documents.

~~11.1.6 It is the Construction Manager's responsibility to verify that all members of the Construction Team have obtained the insurance coverage the Contract Documents require them to hold.~~

11.1.6 [intentionally omitted]

~~11.1.7 Each member of the Construction Team~~The Contractor shall be solely responsible for insuring against any loss or damage to all owned, borrowed or rented property, including but not limited to tools, materials, supplies, equipment, forms, scaffolding, towers, staging, bunkhouses and other temporary structures, including their contents. Such insurance shall be for the full replacement cost of such items and shall include the waiver of subrogation required by §11.3.1.

11.1 CERTIFICATES OF INSURANCE

11.2.1 Prior to commencing any Work at the Project Site, the ~~Construction Manager~~Contractor shall submit to the Owner or the Owner's designee one or more certificates of insurance evidencing both the coverage and coverage limits required ~~for itself (initially) and each Trade Contractor (subsequently) scheduled to be active on the Project Site.~~ Each certificate of insurance shall (i) be in the form required by §11.2.2, (ii) be addressed to the Owner at its Insurance Notice Address (below), (iii) provide for written notice by mail to the Owner at its Insurance Notice Address no less than thirty (30) calendar days prior to any cancellation, non-renewal or reduction in coverage limits, and (iv) not be qualified by the words "endeavor to" or similar words.

11.4 MINIMUM INSURANCE REQUIREMENTS FOR ~~MEMBERS OF THE CONSTRUCTION TEAM~~CONTRACTOR

~~Each member of the Construction Team present at the Project Site shall provide at a minimum the insurance coverage described in this §11.4.~~

~~11.4.1 Workers' Compensation—Insuring all operations in full compliance with the workers' compensation and occupational disease laws of all authorities having jurisdiction in Michigan and all other locations in which the Work is performed, with Coverage A in Statutory limits and Coverage B—Employer's Liability with limits of One Million Dollars (\$1,000,000) each Accident for "Bodily Injury by Accident," One Million Dollars (\$1,000,000) Policy Limit for Bodily Injury by Disease, and One Million Dollars (\$1,000,000) each Employee for Bodily Injury by Disease. Where a Professional Employer Organization or "leased employees" are utilized, the Construction Manager shall require its leasing company to provide workers' compensation insurance for said workers, and such policy shall be endorsed to provide an Alternate Employer Endorsement satisfactory to the Owner.~~

~~11.4.1.1—Where there is a known exposure or potential exposure which may be subject to any maritime law, federal workers' compensation laws, or federal employers' liability laws (including, but not limited to, the Longshore and Harbor Workers Compensation Act, Jones Act, Defense Base Act, and the Federal Employer's Liability Act), the policy shall be endorsed to include coverage for each respective exposure.~~

~~11.4.2 Commercial General Liability—On an "occurrence" (versus "claims-made") basis. The coverage shall insure all operations by or under the Construction Manager including explosion, collapse and underground coverage; elevators; independent contractors; products and completed operations; contractual liability coverage for any contracts related to the Work (including tort liability of another assumed in a business contract); and personal and advertising injury liability. Products and completed operations coverage shall be maintained for not less than the greater of (i) six (6) years beyond Final Completion or (ii) that period of time within which, under the applicable Michigan statutes of repose and limitations, presently codified at MCL 600.5839, actions may be brought against a contractor (hereinafter referred to as "the Post-Completion Period").~~

~~11.4.2.1—The following minimum limits of insurance can be satisfied through so-called "primary" insurance policies or a combination of both "primary" and so-called "excess" or "umbrella" liability policies:~~

~~Minimum coverage limits for the Construction Manager shall be based upon the "Project Value," which shall be determined using the Contract Sum or the Fixed Limit of Construction Cost, whichever is in effect:~~

Construction Manager Project Value	Minimum Coverage Limits Per Occurrence	Minimum General Aggregate Limit
≤\$5,000,000	\$3,000,000	\$6,000,000
>\$5,000,000, but ≤\$50,000,000	\$10,000,000	\$20,000,000
>\$50,000,000, but ≤\$100,000,000	\$25,000,000	\$50,000,000
>\$100,000,000	\$50,000,000	\$75,000,000 (must be a per project aggregate)

~~Minimum coverage for Trade Contractors shall be as follows:~~

Trade Contract Value (Actual or Estimated)	Minimum Coverage Limit (Unless a lower limit is approved by Owner)
≤\$5,000,000	\$ 1,000,000 Each Occurrence Limit \$ 1,000,000 Personal and Advertising Injury Limit \$ 2,000,000 General Aggregate Limit \$ 1,000,000 Products and Completed Operations Limit
>\$5,000,000	\$ 5,000,000 Each Occurrence Limit \$ 5,000,000 Personal and Advertising Injury Limit \$10,000,000 General Aggregate Limit \$ 5,000,000 Products and Completed Operations Limit
Crane Owner and Operator Minimum(s)	\$ 5,000,000 Each Occurrence Limit \$ 5,000,000 General Aggregate Limit

- ~~(a) Commercial General Liability insurance is to be endorsed as to ongoing operations, and shall include Electronic Data Liability coverage to the full limits of the policy. There shall be no exclusion for the acts or omissions of the named insureds. Defense will be provided as an additional benefit and not included within the limits of liability.~~
- ~~(b) Excess umbrella coverage, if any, shall be excess over and be no less broad than all coverages described for the base Commercial General Liability and base auto policies and shall include a duty to defend any insured. Policy limits for the primary and excess umbrella policy may be allocated between the primary and excess umbrella as elected by the Named Insured. Inception and expiration dates of any excess umbrella coverage must be the same as the underlying base Commercial General Liability policy. Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits of the base Commercial General Liability policy, and the excess umbrella coverage shall be "following form" to the underlying policies.~~
- ~~(c) As part of its package of Commercial General Liability insurance, Construction Manager shall maintain Products-Completed Operations coverage with respect to "Bodily Injury" and Property Damage caused, in whole or in part, by Construction Manager's Work at the Project Site for not less than the Post-Completion Period, and this insurance shall be endorsed to schedule Owner as an Additional Insured for not less than the Post-Completion Period.~~

~~11.1.2 Automobile Liability Insurance~~ Insuring all owned, hired and non-owned automobiles (including trucks and trailers and cranes having vehicle licenses) with coverage not less than that of the commercial Business Auto Policy in limits not less than:

~~(d) With respect to all contracts having a value in the aggregate of greater than or equal to One Million Dollars (\$1,000,000):~~

~~(1) Construction Manager: Five Million Dollars (\$5,000,000) "combined single limit" for each occurrence for bodily injury and property damage; and~~

~~(2) Trade Contractors: Unless a lower limit is approved by the Owner, Five Million Dollars (\$5,000,000) "combined single limit" for each occurrence for bodily injury and property damage.~~

~~(e) With respect to contracts having a value in the aggregate of less than One Million Dollars (\$1,000,000):~~

~~(3) Construction Manager: Five Million Dollars (\$5,000,000) "combined single limit" for each occurrence for bodily injury and property damage; and~~

~~(4) Trade Contractors: Unless a lower limit is approved by the Owner, One Million Dollars (\$1,000,000) "combined single limit" for each occurrence for bodily injury and property damage.~~

~~11.1.2.1 Excess-umbrella coverage, if any, shall be excess over and be no less broad than all coverages described for the base auto policy and shall include a duty to defend any insured. Policy limits for the primary and excess-umbrella policy may be allocated between the primary and excess-umbrella as elected by the Named Insured. Inception and expiration dates of any excess-umbrella coverage must be the same as the underlying base auto policy. Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits of the base auto policy, and the excess-umbrella coverage shall be "following form" to the underlying policies.~~

~~11.4.4 Aviation and/or Marine Liability~~ Should aircraft or watercraft of any kind be used in performance of the Work, the Construction Manager shall maintain or cause the operator of the aircraft/watercraft to maintain aircraft/watercraft public liability insurance including bodily injury, property damage, and passenger liability, in connection with any aircraft/watercraft owned, used, operated, or hired in connection with the Work in limits of Fifteen Million Dollars (\$15,000,000) "combined single limit" for bodily injury and property damage in any one occurrence.

~~11.4.5 Builder's Risk~~ The Construction Manager shall obtain a policy of builder's risk insurance in respect of the Project. This policy shall have coverage limits of not less than \$2,000,000, be in form and substance satisfactory to the Owner, and name each member of the Construction Team and the Owner as additional insured parties.

~~11.4.6 Professional Liability~~ The Construction Manager shall maintain professional liability insurance meeting at least the following specifications:

~~(a) Limits.~~ The minimum limits of coverage are not to be less than the following amounts:

~~\$2,000,000 Per Claim
\$4,000,000 General Aggregate~~

~~(b) Scope of Coverage.~~ Such insurance shall cover all Services rendered by the Construction Manager and its Trade Contractors under the Contract Documents. This insurance shall not include any type of exclusion or limitation of coverage applicable to claims arising from Bodily Injury or Property Damage unless coverage therefore is provided in the Construction Manager's Commercial General Liability policy.

~~(c) Coverage Period. Coverage is to be retroactive to the earlier of the date of the Agreement or the commencement of the Construction Manager's Services for the Project.~~

~~(d) Post-Completion Coverage. "Claims Made" policies must be renewed annually to show evidence of insurance coverage for the Post-Completion Period, and if the insured changes insurance carriers during its engagement for the Project or thereafter, it shall obtain either "tail coverage" from its former carrier or "prior acts" coverage from the new carrier so as to assure that continuing insurance, at the levels required herein, is available in respect of the Project~~

~~11.4.7 Pollution Liability. The Construction Manager shall maintain pollution liability insurance meeting at least the following specifications:~~

~~(a) Limits. The minimum limits of coverage are not to be less than the following amounts:~~

~~\$2,000,000 — Per Claim
\$4,000,000 — General Aggregate~~

~~(b) Scope of Coverage. The policy must provide coverage for:~~

~~(1) The full scope of the Work under the Agreement, endorsed to name the Additional Insureds as additional insureds.~~

~~(2) Loss arising from pollutants including, but not limited to, fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall.~~

~~(3) Third-party liability for bodily injury, property damage, cleanup expenses, and defense arising from the operations.~~

~~(4) Diminution of value and natural resources damages.~~

~~(5) Contractual liability.~~

~~(6) Claims arising from owned and non-owned disposal sites utilized in the performance of the Agreement.~~

~~(c) Prohibited Matters. The pollution liability insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from:~~

~~(1) Impaired property that has not been physically injured.~~

~~(2) Materials supplied or handled by the Named Insured.~~

~~(3) Property damage to the Work performed by the Construction Manager.~~

~~(4) Faulty workmanship as it relates to cleanup costs.~~

~~(5) Work performed by members of the Construction Team.~~

~~(6) A separate limitation for the time period of protection for the Additional Insureds.~~

~~(d) Reporting. The policy will offer an extended discovery or extended reporting clause of not less than the Post-Completion Period.~~

~~(e) Completed Operations. Completed operations coverage shall be maintained through the purchase of renewal policies to protect the insured and the Additional Insureds for not less than the Post-Completion Period. The purchase of an extended discovery period or an extended reporting period on a claims-made policy or the purchase of occurrence based Contractor Environmental Insurance will not be sufficient to meet the terms of this provision.~~

~~11.4.7.1 Abatement. All Trade Contractors that are responsible for abatement work shall provide the following:~~

~~(a) Commercial Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the Work, in amounts not less than Five Million Dollars (\$5,000,000) each.~~

~~(b) Environmental Impairment Liability Insurance—Storage and/or Final Disposal Site Facility Form:~~

~~\$5,000,000 — Per Occurrence;~~

~~\$5,000,000 — Aggregate.~~

~~(c) In addition, such Trade Contractors shall provide evidence of the following insurance coverage carried by the disposal site operator:~~

~~(1) — Environmental Impairment Liability Insurance—Contractors and Professionals Form:~~

~~\$5,000,000 — Per Occurrence;~~

~~\$5,000,000 — Aggregate~~

~~11.4.7.2 All Environmental Impairment Liability policies shall be endorsed to show the Additional Insureds as additional insureds. If coverage is provided on a claims-made basis, coverage will at least be retroactive to the earlier of the date of the Agreement or the commencement of Services. "Claims Made" policies must show evidence of insurance coverage for not less than the Post-Completion Period, and if the insured changes insurance carriers during its engagement for the Project or thereafter, it shall obtain either "tail coverage" from its former carrier or "prior acts" coverage from the new carrier so as to assure that continuing insurance, in the amounts required hereunder, is available in respect of the Project.~~

~~11.4.1 The Contractor shall, during the continuance of the Work under the Contract, including any extra or changed Work, maintain insurance coverage as described below. Such insurance will protect the named insured from claims which may arise out of or result from the Contractor's operations under the Contract, including extra or changed Work in connection therewith, whether such operations be by the Contractor or by a Subcontractor or by a Sub-subcontractor or by anyone directly or indirectly employed by the Contractor or any Subcontractor or any Sub-subcontractor.~~

~~11.4.1.1 Workers' Compensation & Employer's Liability insurance and any insurance required by any employee benefit acts or other statutes applicable where the Work is to be performed. All such insurance limits shall be statutory. The Employer's Liability limits shall not be less than:~~

~~(a) \$500,000 Each Accident~~

~~(b) \$500,000 Disease - Policy Limit~~

~~(c) \$500,000 Disease - Each Employee~~

~~11.4.1.2 Commercial General Liability and Property Damage insurance (including Contractor's protective), which may be satisfied by a combination of Primary General Liability insurance coverage together with a following form Umbrella/Excess Liability insurance coverage, in any amounts required by the Owner on an occurrence form (not claims made) but not less than the following limits of liability:~~

Contract Sum	Item	Minimum
<\$5 million	General Aggregate	\$ 2,000,000
	Products/Completed-Operations Aggregate	\$ 1,000,000

	Personal & Advertising Injury	\$ 1,000,000
	Each Occurrence	\$ 1,000,000

≥\$5 million	General Aggregate	\$10,000,000
	Products/Completed-Operations Aggregate	\$ 5,000,000
	Personal & Advertising Injury	\$ 5,000,000
	Each Occurrence	\$ 5,000,000

and affording insurance for the protection against all risks of damage or destruction of property or bodily injury, wherever located, resulting from any action, omission or operation under the Contract or in connection with the Work. Such insurance shall be primary and non-contributory.

11.4.1.3 Comprehensive Automobile Liability insurance, covering all liability arising out of any vehicle operations, covering all owned or rented equipment:

	Combined Single Limit	\$ 1,000,000
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including death resulting at any time therefrom.

11.1.2 Except as specifically provided with respect to property damage only under this §0, the Contractor shall specifically and distinctly assume, and does so assume, all risk of damage or destruction of property or of bodily injury, occupational sickness or disease of persons (including death resulting at any time therefrom) used or employed on or in connection with the Work, and of all damages or destruction of property or of bodily injury, occupational sickness or disease of persons (including death resulting therefrom), wherever located, resulting from any action, omission or operation under the Contract or in connection with the Work.

11.1.3 Compliance by the Contractor with the foregoing requirements as to carrying insurance and furnishing certificates shall not relieve the Contractor of the Contractor's liabilities and obligations under this Article 11 or any other portion of the Contract.

11.1.4 In the event that any class of employees is engaged in hazardous Work under the Contract and such class is not included under the Workers' Compensation Acts, the Contractor shall maintain Special Hazards Insurance of a nature and in limits as approved by the Owner.

11.1.5 The Contractor shall maintain all insurance coverage for a period not less than two (2) years following the date final payment under the contract is made by the Owner to the Contractor.

11.1.6 All insurance policies shall be endorsed to cover the liabilities assumed under this Contract.

11.5 THE OWNER'S INSURANCE OBLIGATIONS; RIGHTS OF RECOVERY

~~11.5.1 The Owner shall provide builder's risk insurance, or a program of self-insurance similar to builder's risk coverage, that will protect the Project (including Work in progress). Any such insurance coverage maintained by the Owner will contain waiver of subrogation for losses in excess of Two Million Dollars (\$2,000,000) per occurrence, but each member of the Construction Team remains fully liable to the Owner, the Owner's insurers (if any), and third parties for any and all loss of and damage to the Project (including Work in progress) arising out of or in connection with its acts and omissions, except to the extent (i) there is recovery under the Construction Manager's policy of builder's risk insurance, or (ii) the loss or damage exceeds Two Million Dollars (\$2,000,000) per occurrence. Losses recoverable under the Owner's policy of casualty insurance shall be adjusted with the Owner and made payable to the Owner.~~

~~11.5.1.1 By way of example, and to add clarification to the foregoing, if a member of the Construction Team negligently causes a fire that damages the Project (including Work in progress), resulting in a loss to the Owner of Five Million Dollars (\$5,000,000), that member of the Construction Team would, except to the extent of recovery under the Construction Manager's policy of builder's risk insurance, be required to bear and reimburse the Owner or its insurance carrier Two Million~~

~~Dollars (\$2,000,000), and the Owner or its insurance carrier would, without recovery, bear the remainder.~~

~~11.5.1.2 By way of further example, and to add additional clarification to the foregoing, if a wind storm causes damage and destruction to the Work, then the Owner or its insurance carrier would bear the loss.~~

~~11.5.2 The Owner's casualty insurance, or program of self-insurance, will apply to Work performed at the Project Site and materials and equipment located on the Project Site which are to be included in and remain a part of the permanent construction. However, the Owner's casualty insurance, or program of self-insurance, will not apply to property, material, and equipment while in transit or while stored away from the Project Site or to property owned by members of the Construction Team and not intended to remain a part of the permanent construction. Each respective member of the Construction Team shall secure insurance against loss or damage under a standard ISO Causes of Loss Special Form, including flood and earthquake coverage, on such property, material and equipment not destined to be part of the permanent construction at one hundred percent (100%) values on a replacement cost basis.~~

~~11.5.3 Except to the extent provided in §11.5.1 with respect to loss of or damage to the Project (including Work in progress), any insurance carried by the Owner, or program of self-insurance, will not benefit the Construction Manager or any other member of the Construction Team, and except to the limited extent provided in §11.5.1, WILL NOT contain waiver of subrogation.~~

~~11.5.4 If more than one member of the Construction Team causes a personal injury or loss of or damage to the Project (including Work in progress) in the same occurrence (except to the extent that loss to the Owner's property exceeds Two Million Dollars (\$2,000,000) per occurrence), each responsible member of the Construction Team shall be accountable for an appropriate proportion of the liability, loss or damage, unless and to the extent covered by the Construction Manager's builder's risk insurance.~~

~~The provisions of §11.5 apply only to the Project (including Work in progress) and do not apply to damage to any of the Owner's other property.~~

11.5 OWNER'S FIRE AND EXTENDED COVERAGE INSURANCE

11.5.1 The Owner shall effect and maintain insurance against loss or damage arising from fire or other perils normally insured against by standard "All Risk" property insurance policies to cover not less than the value of Work performed and materials delivered to the site of the Project which are to be included in and remain a part of the permanent construction whether or not installed, only while on the premises described or within one hundred (100) feet thereof, except as otherwise provided in §0.

11.5.2 Losses, if any, under such insurance shall be payable to the Owner.

11.5.3 The Contractor shall be responsible for any and all loss of materials, equipment and tools connected with the construction due to unexplainable disappearance, theft or misappropriation of any kind or nature and any other loss that may be excluded in the Owner's standard "All Risk" property insurance policy.

11.5.4 The foregoing provisions shall not operate to relieve the Contractor of the responsibility for insuring against any loss or damage to owned or borrowed or rented property or property of employees, of whatever kind or nature occurring from the above named causes or due to any other cause, including but not limited to tools, materials, supplies, equipment, forms, scaffolding, towers, staging, bunkhouses and other temporary structures including their contents, regardless of Ownership of such contents, except for such contents as are to be included in and remain a part of the permanent construction. The Owner shall in no event be liable for any loss or damage to any of the aforementioned items, or the work connected with the Contractor or the Design Professional, or employees, agents or servants of same, which is not to be included in and remain a part of the permanent construction.

11.5.5 The Owner's "All Risk" policy excludes losses on account of faulty workmanship, faulty material, faulty construction and/or faulty design, from any cause. The Contractor is liable and indemnifies the Owner from all loss under the contract, as outlined within §11.1.2.

11.5.6 The Contractor shall report to the Owner each claim immediately after an occurrence of a loss.

11.5.7 Compliance by the Contractor with the foregoing requirements shall not relieve the Contractor of the Contractor's liabilities or obligations under this §0 or any other portion of the Contract Documents.

11.6 WAIVER OF RIGHTS OF RECOVERY

~~Except to the extent otherwise prohibited by law, the Construction Manager hereby waives all rights of recovery against the Owner for personal injury and property damage and shall cause all members of the Construction Team to do so as well. Likewise, to the extent permitted by law, the Owner hereby waives all rights of recovery against the Construction Manager and members of the Construction Team on account of damage to the Project (including Work in progress), to the extent (i) there is recovery under the Construction Manager's policy of builder's risk insurance, or (ii) the loss or damage exceeds Two Million Dollars (\$2,000,000) per occurrence, regardless of how caused.~~

The Contractor, Subcontractors, and Sub-subcontractors severally waive any rights of recovery they may have against the Owner and Design Professional for damage or destruction of their own or borrowed or rented property, or property of their employees, of whatever kind or nature.

11.7 INDEMNIFICATION

~~11.7.2 The indemnification obligations under this §11.7 shall not apply to loss of or damage to the Project (including Work in progress) to the extent (i) there is recovery under the Construction Manager's policy of builder's risk insurance, or (ii) the loss or damage exceeds Two Million Dollars (\$2,000,000) per occurrence.~~

11.7.2 [intentionally omitted]

11.8 PERFORMANCE BOND AND PAYMENT BONDS

11.8.1 ~~Each Trade~~The Contractor shall furnish a Performance Bond and Labor and Material Payment Bond meeting all statutory requirements of the State of Michigan and complying with the following specific requirements:

- (c) The Performance Bond and the Labor and Material Payment Bond shall each be in an amount sufficient to comply with all statutory requirements ~~and shall be "dual obligee" type bonds naming both the Owner and the Construction Manager as obligees;~~

Article 12 UNCOVERING AND CORRECTION OF WORK

12.2 CORRECTION OF WORK

12.2.1 The Owner may reject Defective Work. During the course of the Work, the Contractor shall cause all Work rejected by the Owner to be corrected without extension of the Contract Time and without increase in the Contract Sum ~~and without use of any contingency,~~ whenever observed prior to Final Completion. If any additional Design Professional's fees are incurred because of corrective Work, the Contractor shall pay them promptly upon demand.

12.2.2 In addition, if, within one (1) year after the date of (i) Substantial Completion and acceptance of the Work or any designated portion thereof or (ii) the completion of Work not finished at Substantial Completion, or within the terms of an applicable special warranty required by the Contract

Documents, or (iii) in the case of defects that could not reasonably have been discovered within one (1) year, then within two (2) years of Substantial Completion (the "**Correction Period**"), any of the Work is found by the Owner to be Defective, and the Owner provides written notice thereof within ninety five (95) days of discovery, the Contractor shall, without interfering materially with the Owner's facilities, personnel or operations, promptly cause it to be corrected, unless the Owner has previously specifically accepted such defect in writing. The Contractor shall bear all costs of correcting Defective Work, without increase in the Contract Sum, ~~and without use of any contingency~~, including any additional testing and inspections made necessary thereby. These obligations shall apply regardless of whether such Work has been fabricated, installed, or completed and shall survive acceptance of the Work and termination of the Agreement.

Article 13 STATUTORY REQUIREMENTS

Article 14 TERMINATION OF THE CONTRACT

Article 15 CLAIMS ~~AND DISPUTES~~

15.5 ASSERTION OF CLAIMS BY CONTRACTOR

~~15.5.2 If, following the process set forth in §15.5.1, the Claim remains unresolved within thirty (30) days after notice to both individuals of the Claim, prior to Arbitration such Dispute shall then be submitted to a Senior Officer from each party for resolution by mutual agreement. Any mutual agreement reached by the Senior Officers shall be binding upon the parties.~~

~~15.5.2.1 For purposes of this section, the term "Senior Officer" shall mean, with respect to the Construction Manager, the Construction Manager's president or chief executive officer, and with respect to the Owner, the Associate Vice President of Facilities and Operations~~

~~15.5.2.2 If the Senior Officers fail, after at least one (1) face-to-face meeting, to come to a resolution by mutual agreement within thirty (30) days, after notice to both Senior Officers of the Claim, the Claim shall be submitted to binding arbitration.~~

15.5.2 [intentionally omitted]

~~15.5.3 All applicable periods of limitation shall be tolled during the pendency of negotiations under this § If the parties mutually agree to defer resolution of any Claim until completion of the Work or another mutually acceptable date, all applicable limitations periods shall remain tolled until the agreed date.~~

15.5.3 [intentionally omitted]

15.6 — MEMORIALIZATION

~~The resolution of all Disputes under this Article 15 resulting in a change in the Contract Sum or the Contract Time shall be memorialized by a Change Order.~~

15.6 [INTENTIONALLY OMITTED]

15.8 — ARBITRATION

~~15.8.1 A Claim that has not been resolved in accordance with the terms and provisions of §15.5 is a "Dispute" that shall be settled by arbitration in accordance with the terms and provisions set forth in §15.8.2 through §15.9.~~

~~15.8.2 All arbitration proceedings shall be conducted in accordance with the procedure established by the American Arbitration Association for Construction Disputes of similar magnitude.~~

~~Arbitration shall be commenced within a reasonable time after the parties fail to resolve a Claim in accordance with the provisions of §15.5. In no event shall demand for arbitration be made or permitted after the date when the institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations. All arbitration proceedings shall take place in Washtenaw County, Michigan, and shall be conducted in accordance with the "Modified Fast Track" Construction Industry Arbitration Rules set forth in §15.9.~~

~~15.9 — MODIFIED FAST TRACK RULES~~

~~15.9.1 Applicability — The Modified Fast Track Rules ("MFTR") shall apply to all arbitration proceedings under the Agreement, regardless of the amount in controversy. The MFTR shall be applied as described herein, in addition to any other portion of the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") that are not in conflict with the Arbitration provisions of the General Conditions (Part 09.1, *et seq.*) and the MFTR.~~

~~15.9.2 Limitation on Extensions — In the absence of extraordinary circumstances, the AAA may grant a party no more than one seven (7) business-day extension of the time in which to respond to a demand for arbitration or counterclaim as provided in §15.9.3. In extraordinary instances, the AAA or the arbitrators may grant an additional extension.~~

~~15.9.3 Changes of Claim or Counterclaim — A party may at any time prior to the close of the hearing increase or decrease the amount of its claim or counterclaim. Any new or different claim or counterclaim, as opposed to an increase or decrease in the amount of a pending claim or counterclaim, shall be made in writing and filed with the AAA, and a copy shall be mailed to the other party, who shall have a period of five (5) business days from the date of such mailing within which to file an answer with the AAA. The arbitrators shall determine whether such new or different claims or counterclaims shall be heard together with or separately from a pending claim or counterclaim, toward the goal of assuring a just, speedy, and economical determination of all disputes.~~

~~15.9.4 Communication of Notices — The parties shall accept all notices from the AAA by mail, overnight delivery, telephone, or email. Such notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any notice hereunder, the proceeding shall nonetheless be valid if notice has, in fact, been given by telephone.~~

~~15.9.5 Appointment and Qualification of Arbitrator — The arbitrators shall be appointed and qualified as provided in §15.9.16.~~

~~15.9.6 Preliminary Telephone Conferences — Unless otherwise agreed by the parties and the arbitrators, as promptly as practicable after the submission of a claim, a preliminary telephone conference shall be held among the parties or their attorneys or representatives, and the arbitrators.~~

~~15.9.7 Exchange of Exhibits — At least five (5) business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrators are authorized to resolve any disputes concerning the exchange of exhibits.~~

~~15.9.8 Discovery — Discovery shall be limited and shall be permitted only as agreed by the parties or as ordered by the arbitrators when the demands of justice require it, toward the goal of assuring a just, speedy, and economical determination of all disputes.~~

~~15.9.9 Date, Time and Place of Hearing~~

~~15.9.9.1 — Where no party's claim exceeds Ten Thousand Dollars (\$10,000), exclusive of claimed interest and arbitration fees and costs, the dispute shall be resolved by submission of documents, unless any party requests an oral hearing, or the arbitrators determine that an oral hearing is necessary. The arbitrators shall establish a fair and equitable procedure for the submission of documents.~~

~~15.9.9.2 In all other cases, unless the parties agree otherwise, there shall be a hearing. The arbitrators shall set the date, time, place of the hearing, and number of hearing days, which shall be scheduled to commence within ninety (90) days after submission to the AAA of the initial demand for arbitration as to the claim. The AAA will notify the parties in advance of the hearing date. A formal notice of hearing will also be sent by the AAA to the parties.~~

~~15.9.10 The Hearing~~

~~15.9.10.1 Unless the arbitrators determine otherwise, each party shall have equal opportunity to submit its proofs and complete its case. The arbitrators shall determine the order of the hearing, and may require further submission of documents within five (5) business days after the hearing.~~

~~15.9.10.2 There will be a stenographic record. The moving party, or the complainant (as the case may be) shall make arrangements directly with a stenographer, and shall notify the other party of these arrangements in advance of the hearing. A copy shall be made available for inspection by the other party and the arbitrators, at the expense of the ordering party.~~

~~15.9.11 Time of Award Unless otherwise agreed by the parties, the award shall be rendered no later than seven (7) business days from the date of the closing of the hearing.~~

~~15.9.12 Time Standards The arbitration shall be completed by settlement or award within one hundred twenty (120) days after submission of the demand for arbitration, unless all parties and the arbitrators agree otherwise or the arbitrators extend this time in extraordinary cases when the demands of justice require it.~~

~~15.9.13 Arbitrator's Compensation Arbitrators will receive compensation as determined pursuant to §15.9.21.~~

~~15.9.14 All demands for arbitration must contain a statement of the Dispute sufficient for the arbitrators and the other party to understand it.~~

~~15.9.15 Discovery shall be limited to the exchange of documents relevant to the Dispute, except as otherwise ordered by the arbitrators pursuant to the MFTR.~~

~~15.9.16 The arbitration panel shall consist of three (3) individuals and shall be selected promptly after a Dispute arises in accordance with the procedure established by the American Arbitration Association for Construction Disputes of similar magnitude.~~

~~15.9.17 The parties consent to the inclusion, by consolidation or joinder or in any other reasonable manner, of other persons involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration.~~

~~15.9.18 The Owner and Construction Manager may in their joint sole discretion agree to waive the provisions of this Article 15.~~

~~15.9.19 The arbitrators shall liberally allow for the admission of evidence that is helpful in the resolution of the Dispute.~~

~~15.9.20 The agreement herein among the parties to arbitrate shall be specifically enforceable in any court having jurisdiction thereof. Any award rendered by the arbitrators pursuant to any arbitration shall be final and binding upon the parties hereto, and judgment may be entered upon it in accordance with Applicable Law in any court of competent jurisdiction. The parties agree that this matter involves interstate commerce and, as such, the Federal Arbitration Act will be applicable to any arbitration arising out of the agreement, notwithstanding the provisions of §15.1.~~

~~15.9.21 Each party in any arbitration proceeding shall be responsible for its own costs, expenses and charges, including, without limitation, attorneys' fees. The fees paid to the arbitrators (which may~~

~~include “retainers” or “stand-by” fees) shall be shared equally by the Owner and the Construction Manager; provided, however, that the fees for any particular arbitration proceeding shall be divided equally among the parties to the proceeding. The arbitrators shall fix their own compensation on a reasonable basis, together with the time and manner of payment. Any costs paid by the Construction Manager under this Article 15 shall be at the Construction Manager’s sole expense and shall not be subject to recovery through any method whatsoever, including the Contract Sum or any contingency.~~

~~15.9.22 The parties consent to the inclusion, by consolidation or joinder or in any other reasonable manner, of other persons involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration.~~

~~15.9.22.1 Either party, in its sole discretion, may consolidate an arbitration conducted under this Article 15 with any other arbitration to which it is a party, provided that (i) the arbitration agreement governing the other arbitration permits consolidation, (ii) the arbitrations to be consolidated substantially involve common questions of law or fact, and (iii) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~15.9.22.2 Any person or entity made a party to an arbitration conducted under this Article 15, whether by joinder or consolidation or otherwise, shall enjoy the same rights of joinder and consolidation as are given the Owner and Construction Manager.~~

15.8 [INTENTIONALLY OMITTED]

15.9 [INTENTIONALLY OMITTED]

Article 16 MISCELLANEOUS PROVISIONS

~~16.5 LIQUIDATED DAMAGES~~

~~If Liquidated Damages are applicable as set forth in the Owner/Construction Manager Agreement, then the combined total of all Liquidated Damages included in the Trade Contractors’ contracts may not exceed the total amount of Liquidated Damages included in the Owner/Construction Manager Agreement.~~

16.5 [INTENTIONALLY OMITTED]