



MONROE COUNTY COMMISSIONERS

Julie Thomas, President
Penny Githens, Vice President
Lee Jones

Monroe County Courthouse, Room 323
100 W Kirkwood Avenue
Bloomington, Indiana 47404
Office: 812-349-2550

COMMISSIONERS' HYBRID MEETING AGENDA

Wednesday, MAY 15, 2024, at 10:00 am

Nat U. Hill Meeting Room – 3rd Floor, Courthouse and Microsoft Teams
Connection

https://teams.microsoft.com/join/19%3ameeting_NTMSY2U2YTYtZmExMCO0MGJklTkzZjltZTU2OGVkn2YIZGQw%40thread.v2/0?context=%7b%22id%22%3a%2249a60700-4c0c-4ece-b904-fb92c600e553%22%2c%22oid%22%3a%22db83725f-c48f-476f-8894-d4bb087d29f8%22%7d

fb92c600e553%22%2c%22oid%22%3a%22db83725f-c48f-476f-8894-d4bb087d29f8%22%7d

Meeting ID: 230 025 251 609 Password: 2TWvKZ Dial by your location: 1 872 242 9432, 694151466# US (Chicago)

- The public's video feed will be turned off by the Technical Services Department meeting administrator.
- The public will be able to listen and record.
- The public should raise their hand if they wish to speak during the public comment period.

"Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of Monroe County, should contact the Monroe County Title VI Coordinator, Elizabeth Sensenstein, (812) 349-7314, esensenstein@co.monroe.in.us, as soon as possible, but no later than forty-eight (48) hours before the scheduled event. Individuals requiring special language services should, if possible, contact the Monroe County Title VI Coordinator at least seventy-two (72) hours prior to the date on which the services will be needed. The meeting is open to the public."

1. CALL TO ORDER BY COMMISSIONER THOMAS

2. COMMISSIONERS' PUBLIC STATEMENT READ BY COMMISSIONER JONES

3. DEPARTMENT UPDATES

Health – Michael Kuzemka

Purdue Extension – Ody Ekwonwa

4. PUBLIC COMMENT- For items NOT on the agenda (limited to 3 minutes per speaker)

5. APPROVAL OF MINUTES

May 01, 2024

6. APPROVAL OF CLAIMS DOCKET

Accounts Payable – May 15, 2024

Payroll – May 17, 2024

7. REPORTS

None

8. NEW BUSINESS

A. DOSSETT CONSULTING SERVICES AGREEMENT

Fund Name: County General

Fund Number: 100

Amount: \$28,500

Presenter: Brianne Gregory

In previous years, Dossett Consulting LLC has created Monroe County's Cost Allocation Plan. This plan identifies the various costs incurred by the County to support and administer Federal and State programs. This plan contains a determination of the allowable costs of providing each supporting service. The consultant also assists in preparing the claims to the State for recovery of funds due to the County from the Federal and State governments.

Dossett Consulting LLC has provided two service options choices in the contract:

1-Year: \$10,000.00 (2023 for use in 2025)

3-Year: \$28,500.00 (2023 for use in 2025, 2024 for use in 2026, 2025 for use in 2027)

The Auditor's Office suggests that Commissioners approve the three-year plan, as it is \$500.00 cheaper per year. Section four of the agreement also allows for termination of the agreement for any reason upon thirty days prior written notice.

B. 2023 EMERGENCY MANAGEMENT PERFORMANCE SALARY GRANT

Fund Name: EMPG Salary 97.042

Fund Number: 8188

Grant Amount: Up to \$55,000

Presenter: Justin Baker

The Monroe County Emergency Management Office has been awarded the 2023 Emergency Management Performance Salary Grant. The award letter has been signed and accepted. This grant is the annual salary reimbursement grant that is offered by the Indiana Department of Homeland Security. The Emergency Management Office is seeking approval of the grant from the County Commissioners. The award amount can be up to \$55,000.00, depending on salaries earned in 2023. This award will reimburse the county for 50% of the Emergency Management Department staff's salary.

C. MATRIX INTEGRATION AGREEMENT FOR HEALTH BUILDING ACCESS GATE RE-WIRE

Fund Name: Cumulative Capital

Fund Number: 1138

Amount: \$295

Presenter: Greg Crohn

The underground communications wiring that allows the entry gate at the Health building to communicate with the access controls software has failed. This has resulted in our inability to add/remove users from access or remotely control the gate with the access program. This request is to

approve the quote provided by Matrix Integrations to run new communications wiring from the switch closet located on the ground floor of the building to the gate controller located on the NE exterior.

D. SPIRIT LLC d/b/a SUPERSOLUTIONS

Fund Name: LIT Special Purpose

Fund Number: 1114

Amount: \$3,400

Presenter: Sara Jamieson

YSB has a need for quarterly deep cleans within Binkley House Emergency Shelter in order to maintain our DCS licensure and inspection standards. We currently have ongoing weekly cleanings done by Century Services/ASI, but they are very limited in their scope and only in administration areas. DCS/ISHD is now requiring more in depth cleaning services than our staff or Century Services can provide.

E. SOFT TOUCH MOVING AND STORAGE AGREEMENT FOR SURVEYOR OFFICE MOVE

Fund Name (s): 2016 GO Bond Capital Projects and 2016 GO Bond B Capital

Fund Number(S): 4807 and 4808

Amount: Not to exceed \$2,100

Presenter: Richard Crider

This request is to approve the estimate submitted by Soft Touch Moving and Storage in an amount not to exceed \$2,100.00 to move the Surveyor's Office files, supplies, and equipment from the former office in the attic of the Health Building to the new office at Showers.

F. SUNSET HILL FENCE CO. AGREEMENT FOR THE HIGHWAY DEPARTMENT

Fund Name: Cumulative Capital

Fund Number: 1138

Amount: \$1,092.74

Presenter: Richard Crider

This request is to accept the proposal submitted by Sunset Hill Fence Co. in the amount of \$1,092.74 to install an emergency response access system on the entrance gate at the Monroe County Highway Department. In the event that there was no power to the gate, this device will allow the Fire Department to disengage the brake allowing it to be opened manually from the outside.

G. AMERICAN ELEVATOR, INC. AGREEMENT FOR MONROE COUNTY CONVENTION CENTER

Fund Name: ARPA

Fund Number: 8950

Amount: \$147,500

Presenter: Richard Crider

This request is to accept the Monroe County Convention Center freight elevator modernization bid proposal submitted by American Elevator, Inc in the amount of \$147,500.00.

H. DISCUSSION OF MONROE COUNTY CLINIC VENDOR RFP PROCESS

Presenter: Elizabeth Sensenstein and/or Sarah Michaels

I. AFFILIATION AGREEMENT WITH THE TRUSTEES OF INDIANA UNIVERSITY

Presenter: Molly Turner-King

Various Monroe County Government offices serve as placement sites for Indiana University students to provide those students with hands on experiences in the student's field of study. The attached agreement outlines the responsibility of the University and the County as a placement site. The agreement is drafted so that any student within one of the programs listed within Exhibit A can be placed at any of the departments listed within Exhibit B. Approving this draft template will allow the University and departments to arrange for the efficient placement of students without having to have each individual agreement approved by the Commissioners.

J. 2024 BLOOMINGTON ECONOMIC DEVELOPMENT CORPORATION MOU

Fund Name: County General

Fund Number: 1000

Amount: \$30,000

Presenter: Angie Purdie and/or Jennifer Pearl

The Monroe County Board of Commissioners and the Monroe County Council wish to support the activities of the local Economic Development Corporation. BEDC provides the community and the county with an inventory of land and buildings suitable for employment, ensuring proper infrastructure, zoning and other needs are in place. They also provide ongoing outreach for business attraction, expansion, and retention. All important to the continued viability of our community and its workforce.

The Monroe County Council has already appropriated the requested \$30,000 in their budget for 2024.

K. INDOT CHANGE ORDER #1 FOR FULLERTON PIKE PH III

Presenter: Lisa Ridge

This change order will allow for Thermal Integrity Profiling TIP to be utilized for nondestructive testing on the drilled shafts for acceptance by the engineer. The contractor has proposed this method of testing in lieu of CSL Crosshole Sonic Logging. This type of testing will allow quantifiable results in a faster time frame. This is basically testing the integrity of the concrete. There is a zero dollar change order.

9. APPOINTMENTS

10. ANNOUNCEMENTS

11. ADJOURNMENT

6. **PUBLIC COMMENT- For items NOT on the agenda (limited to 3 minutes per speaker)** 10:13 am
None
-

7. **APPROVAL OF MINUTES** 10:13 am
April 24, 2024

Githens made a motion to approve. Jones seconded.
No public comments.
Thomas called for a voice vote.
Motion carried 3-0.

8. **APPROVAL OF CLAIMS DOCKET** 10:14 am
Accounts Payable – May 01, 2024
Payroll – May 03, 2024

Githens made a motion to approve. Jones seconded.
No public comments.
Thomas called for a voice vote.
Motion carried 3-0.

9. **REPORTS** 10:16 am
None
-

10. **NEW BUSINESS**

- A. **2025 APPLICATION FOR 5311/5339 ASSISTANCE FOR RURAL AREAS GRANT AND APPROVAL OF RESOLUTION 2024-19** 10:16 am
Fund Name: County General
Fund Number: 1000
Amount: \$80,000 (upon Council appropriation)
Presenter: Angie Purdie

The Monroe County Board of Commissioners are the applicant for the Federal/State Rural assistance grant funds as provided by INDOT; however, the application is completed by Area 10 / Rural Transit. This is a Federal pass through grant.

Authorizing Resolution 2024-19 approves a subcontract with Area 10 / Rural Transit for the provision of the transit service in accordance with the grant.

Rural Transit is requesting A minimum of \$80,000 from Monroe County Government as match dollars for operating costs in the 2025 budget. The match amount is subject to council appropriation.

Githens made a motion to approve. Jones seconded.
Public Comments:
Chris Myers, Area Ten/Rural Transit Director
Chris Emge, Bloomington Chamber of Commerce Director

Thomas called for a voice vote.
Motion carried 3-0.

B. RATIFY BIO-ONE NW INDIANAPOLIS FOR HAZARDOUS MATERIAL REMOVAL AT THOMSON PROPERTY

10:25 am

Fund Name: Cumulative Capital

Fund Number: 1138

Amount: Not to exceed \$42,000

Presenter: Angie Purdie

This request is ratifying the agreement with Bio-One Indianapolis in an amount not to exceed \$42,000.00 for removal and proper disposal of hazardous materials and general garbage in multiple locations at Thomson Park. The estimated cleanup time is 7 to 12 days at \$3,500.00 per day.

Any personal property found at this site will be removed and can be claimed at the Monroe County Highway Garage, 5900 West Foster Curry Drive for up to one week after project completion.

Githens made a motion to approve. Jones seconded.
No public comments.
Thomas called for a voice vote.
Motion carried 3-0.

C. RECOMMENDATION TO AWARD HARRELL-FISH, INC. BID FOR HVAC UPGRADES AT THE MONROE COUNTY CONVENTION CENTER

10:27 am

Fund Name: ARPA

Fund Number: 8950

Amount: \$505,309

Presenter: Angie Purdie

This request is to accept Bid package #2 in the proposal submitted by HFI in the amount of \$505,309.00 to replace the cooling tower, circulation pumps, system controls and controls upgrade, plus, installation of a new HVAC split system in the elevator mechanical room and a temporary cooling system to be installed at the Monroe County Convention Center.

Githens made a motion to approve. Jones seconded.
No public comments.
Thomas called for a voice vote.
Motion carried 3-0.

D. EFFECT TV STREAMING/TELEVISION IMPRESSION FOR EARLY VOTING COMMERCIAL

10:28 am

Fund Name: County General

Fund Number: 1000

Amount: \$6,000 (covers both Primary/General elections)

Presenter: Kylie Moreland

This agreement will allow Effect TV to run streaming and television impressions for Early Voting commercials for both the Primary and General Elections.

Githens made a motion to approve. Jones seconded.
No public comments.

Thomas made a motion to continue this item until a future meeting.
Thomas called for a voice vote.
Motion carried 3-0.

E. PARTNERSHIP MOU'S WITH MONROE COUNTY PARKS AND RECREATION, MONROE COUNTY EMERGENCY MANAGEMENT, AND MONROE COUNTY HUMANE ASSOCIATION 10:38 am
Presenter: Molly Turner-King

The Monroe County Parks & Recreation Board approved the MOU on 04-17-24. The MOU is meant to facilitate cooperation among the partners listed. This partnership covers the need for services & facilities among the partners during a natural disaster or an animal related emergency. The collaboration will lead to an increase in animal related educational opportunities & special events.

Githens made a motion to approve. Jones seconded.
No public comments.
Thomas called for a voice vote.
Motion carried 3-0.

F. INDIANA DEPARTMENT OF HEALTH GRANT FOR HIV PREVENTION 10:42 am
Fund Name: Harm Reduction
Fund Number: 8153
Grant Amount: \$31,000
Presenter: Lori Kelley

The Health Department has been awarded a grant in the amount of \$31,000.00, for the grant period of January 1, 2024 to July 31, 2024. This funding covers personnel expenses for the Harm Reduction Specialist.

The program requirements include a continuance of 2023 activities for the period of 2024, which includes outreach testing services to 80% of people at high risk for HIV and HCV and PrEP education, screening, and navigation services.

Githens made a motion to approve. Jones seconded.
No public comments.
Thomas called for a voice vote.
Motion carried 3-0.

G. INDIANA FAMILY HEALTH COUNCIL SUB-RECIPIENT AGREEMENT FOR TITLE XX/TANF GRANT 10:43 am
Fund Name: TANF
Fund Number: 8150
Grant Amount: \$112,078
Presenter: Lori Kelley

The Health Department has received a sub-recipient Title XX/TANF agreement in the amount of \$112,078.00. The contract period is 10/1/2023-9/30/2024. This funding supports the Futures Family Planning Clinic.

Grant requirements include, but are not limited to, providing services to a minimum of 720 unduplicated patients based on the contract period, 40% of whom will receive a minimum of 1 HIV test, 80% of those who are women under the age of 25 will be tested for Chlamydia, and 50% of those with a positive

pregnancy test will be tested for syphilis. Additional requirements include increasing the number of adolescents served by 3%, increase the number of telehealth visits by 2%, and provide outreach and education opportunities in the community a minimum of 2 times each quarter.

Githens made a motion to approve. Jones seconded.

No public comments.

Thomas called for a voice vote.

Motion carried 3-0.

H. LIMELIGHT RECOVERY, LLC AGREEMENT

10:45 am

Fund Name: Local Public Health Services

Fund Number: 1161

Amount: \$5,000

Presenter: Lori Kelley

The Health Department is requesting approval of a contract agreement with Limelight Recovery to address the core public health service area of trauma and injury prevention. The state required KPI requires local health departments that opt-in to Health First Indiana funding to engage partners in the coordination of harm reduction for substance use. The Board of Health voted to recommend this agreement on April 18, 2024.

Limelight Recovery has submitted all required application materials and are committed to providing the reporting metrics required by the Health Department, which includes number of individuals served, number of events/sessions conducted, and zip codes of individuals served.

This partnership agreement serves as a pilot project to assess how future partnering could expand or provide further positive outcomes.

Githens made a motion to approve. Jones seconded.

No public comments.

Thomas called for a voice vote.

Motion carried 3-0.

I. MOTOROLA SOLUTIONS AGREEMENT FOR REPLACEMENT OF JAIL MODULE SPILLMAN PROGRAM MIGRATION

Fund Name: Cumulative Capital

Fund Number: 1138

Amount: \$7,787.87

Presenter: Greg Crohn

The sever that houses the Spillman Jail module is past end of life and must be replaced. Professional services from Motorola will be required to migrate the Spillman module over to the new server. This request is to approve the quote provided from Motorola to provide that service. Lead time is approximately 90 days.

Githens made a motion to approve. Jones seconded.

No public comments.

Thomas called for a voice vote.

Motion carried 3-0.

J. SJCA, INC. ON-CALL AGREEMENT

10:49 am

Fund Name: Cumulative Bridge

Fund Number: 1135

Amount: Hourly/as needed

Presenter: Lisa Ridge (Virtual)

The Department has engineering firms with on-call agreements for various engineering needs in the Department. The Department requests to include SJCA, INC. as a resource on an as needed basis.

Githens made a motion to approve. Jones seconded.

No public comments.

Thomas called for a voice vote.

Motion carried 3-0.

K. AMETHYST HOUSE OPIOID SETTLEMENT GRANT AGREEMENT 2024

10:51 am

Fund Name: Opioid Settlement

Fund Number: 9164

Amount: \$93,000

Presenter: Angie Purdie

The County Council has already approved the appropriation and in 2023, the Board of Commissioners approve the concept, this formalizes those communications.

Amethyst House agrees to use \$93,000 of Opioid Settlement funds as follows:

- \$30,000 support of Part time physician (1 year) to provide consultations, provide physicals for residents when needed, and to review admissions, potential residential applicants, and Medication Assisted Treatment (MAT) clients.
- \$60,000 support of a full-time master's level clinician for 1 year. Salary and benefits. The person to work with residents and outpatient clients.
- \$3,000 support for Clinical training for trauma informed care.

Githens made a motion to approve. Jones seconded.

No public comments.

Thomas called for a voice vote.

Motion carried 3-0.

L. RATIFY ADVANCED CORRECTIONAL HEALTH CONTRACT AMENDMENT #3

10:55 am

Fund Name: County General

Fund Number: 1000

Amount: Not to exceed \$1,682,678/per year

Presenter: Phil Parker

Advanced Correctional Healthcare ("ACH") provides medical services at the Monroe County Correctional center pursuant to an agreement that was renewed into by Monroe County in 2022. The attached amendment extends the services provided by ACH to include the following:

- 1) a qualified mental health professional for 120 hours per week. This is an increase from the current 8-hours per week.
- 2) a discharge planner for 40 hours per week. This is a newly added service.
- 3) an addictions professional (substance abuse counselor and/or substance use disorder evaluator) for 40 hours per week. This is a newly added service.

The County agrees to pay an amount not to exceed \$1,682,678 per year to ACH under this agreement unless approved in the same manner as this agreement. The increased monthly payments for these additional services shall commence upon approval of this agreement and in the month that the services commence.

Githens made a motion to approve. Jones seconded.

No public comments.

Thomas called for a voice vote.

Motion carried 3-0.

11. APPOINTMENTS

10:57 am

None

12. ANNOUNCEMENTS

10:57 am

2024 Primary Early Voting Hours at Election Operations 302 S. Walnut Street are as follows:

April 9 th – 12 th	8:00 am to 6:00 pm
April 15 th -19 th	8:00 am to 6:00 pm
April 22 nd – 26 th	8:00 am to 6:00 pm
April 27 th	9:00 am to 4:00 pm
April 29 th -May 3 rd	8:00 am to 6:00 pm
May 6 th	8:00 am to Noon

Free COVID-19 testing available at the Monroe County Health Department, 119 W. 7th Street as well as the Monroe County Public Health Clinic located at 333 E. Miller Drive.

Accepting applications for all boards and commissions. Go to www.co.monroe.in.us for more information or to fill out application.

The Commissioners have virtual office hours via Teams each month for anyone wanting to speak with a commissioner. Please go to the calendar at www.co.monroe.in.us for dates and times.

Monroe County Commissioners' Blood Drive will be held at [Ivy Tech, Shreve Hall, 200 Daniels Way, Bloomington, IN](#) on the following dates:

Thursday, May 9, 1 pm – 6 pm

Friday, May 10, 10 am – 2 pm

Wednesday, June 12, 1 pm – 6 pm

Friday, June 14, 10 am – 3 pm

Residents can sign up for the [Monroe County Alert Notification System](#) for all weather and health related emergencies and updates. To sign up visit www.co.monroe.in.us.

Monroe County Commissioners and Monroe County Council have extended the Assistance Fund for county residents who need assistance in paying rent or utilities. Contact your local Township Trustee for further information.

Rural Housing Repair Program now accepting application from low and moderate income Monroe County homeowners. Contact your local Township Trustee for further information.

TOWNSHIP TRUSTEE New Trustee	Phone	email
Bean Blossom- Ronald Hutson	812.935.7174	beanblossomtrustee19@gmail.com
Benton - Michelle Bright	812.339.6593	trustee@bentontownship53.in.gov
Bloomington – Efrat Rosser	812.336.4976	bloomingtontownship@in.gov
Clear Creek - Thelma Jefferies	812.824.7225	thelma@bluemarble.net
Indian Creek - Chris Reynolds	812.824.4981	indiancreektownship@gmail.com
Perry - Dan Combs	812.336.3713	trustee@perrytownship.info
Polk –Scott Smith	812.837.9446	polktownshiptrustee@gmail.com
Richland - Marty Stephens	812.876.2509	rttfrontdesk@bluemarble.net
Salt Creek - Joan Hall	812.837.9140	jcareyhall@gmail.com
Van Buren - Rita Barrow	812.825.4490	rbarrow@vanburentownship.org
Washington – Mary VanDeventer	812.325.1708	mvandeventertrustee@gmail.com

13. ADJOURNMENT

11:02 am

The summary minutes of the May 01, 2024, Board of Commissioners' meeting were approved on May 15, 2024.

MONROE COUNTY COMMISSIONERS

"Aye"

"Nay"

Julie Thomas, President

Julie Thomas, President

Penny Githens, Vice President

Penny Githens, Vice President

Lee Jones, Member

Lee Jones, Member

ATTEST:

Brianne Gregory, Auditor
Monroe County, Indiana

Date

We, the Monroe County Board of Commissioners, were shocked by the recent detention and arrest of scores of Indiana University students, faculty, and staffers during what was a peaceful protest regarding the Israel– Hamas war in Gaza.

Not only was this heavy-handed response entirely disproportionate, but the 11th-hour change to IU's assembly policy lacked transparency and is itself antithetical to all that Indiana University has, historically, supported—namely academic freedom and the freedoms granted to each of us in the Constitution of the United States.

To suggest that IU's policy changes were made in the name of public safety—while simultaneously inviting Indiana State Police officers clad in full riot gear to intervene—is both disingenuous and downright Orwellian. Indiana University's Dunn Meadow has seen many decades' worth of peaceful protests under the previous, longstanding assembly rules. By swiftly revising those rules with breathtakingly little public input or oversight, IU administrators must surely intend to have a chilling effect on free speech and peaceful assembly on campus. This is simply unacceptable.

We urge Indiana University administrators to revert to the 1969 Dunn Meadow policy, to drop any criminal and campus disciplinary charges against the protesters swept up in the recent action, and to allow subsequently barred protesting students to return to campus.

###



PROCLAMATION

IN RECOGNITION OF

NATIONAL CORRECTIONAL OFFICERS & EMPLOYEES WEEK

- WHEREAS:** Correctional employees protect public safety by supervising and rehabilitating those convicted of crimes in state and local correctional facilities, fulfilling the demands of the dangerous and often thankless job, night and day, every day of the year; and
- WHEREAS:** Correctional staff are professionals functioning in a myriad of valuable roles, including custody, offender medical and mental health care, education, the treatment of substance use disorders, religious services, transitional services, and a variety of other occupations; and
- WHEREAS:** The highest degree of professionalism is developed and advanced through continual skills improvement and specialized training throughout the year; and
- WHEREAS:** This vital work is performed by correctional staff who dedicate themselves to serve the citizens of this great state; and
- WHEREAS:** Indiana correctional employees have worked toward the development of one of the best correctional systems in the nation.

NOW THEREFORE, BE IT RESOLVED, that the Monroe County Board of Commissioners, do hereby recognize the week of May 5– 11, 2024 as

NATIONAL CORRECTIONAL OFFICERS & EMPLOYEES WEEK IN MONROE COUNTY

PROCLAIMED THIS FIRST DAY OF MAY, TWO THOUSAND AND TWENTY-FOUR

THE MONROE COUNTY BOARD OF COMMISSIONERS

JULIE L. THOMAS

PENNY GITHENS

LEE JONES



MONROE COUNTY BOARD OF COMMISSIONERS'
WORK SESSION AGENDA
May 1, 2024
Nat U. Hill Meeting Room - 3rd Floor, Courthouse and Teams Connection

No meeting this date



Monroe County Board of Commissioners Agenda Request Form

Date to be heard 05/15/24

Formal ☒

Work session ☐

Department Auditor

Title to appear on Agenda: Agreement to Provide Professional Consulting Services - Dossett Consulting

Vendor # 002705

Executive Summary:

In previous years, Dossett Consulting LLC has created Monroe County's Cost Allocation Plan. This plan identifies the various costs incurred by the County to support and administer Federal and State programs. This plan contains a determination of the allowable costs of providing each supporting service. The consultant also assists in preparing the claims to the State for recovery of funds due to the County from the Federal and State governments.

Dossett Consulting LLC has provided two service options choices in the contract:

1-Year: \$10,000.00 (2023 for use in 2025)

3-Year: \$28,500.00 (2023 for use in 2025, 2024 for use in 2026, 2025 for use in 2027)

The Auditor's Office suggests that Commissioners approve the three-year plan, as it is \$500.00 cheaper per year. Section four of the agreement also allows for termination of the agreement for any reason upon thirty days prior written notice.

Fund Name(s):

General Fund

Fund Number(s):

1000

Amount(s)

\$28,500.00

Presenter: Brianne Gregory

Speaker(s) for Zoom purposes:

Name(s)

Brianne Gregory

Phone Number(s)

(the speaker phone numbers will be removed from the document prior to posting)

Attorney who reviewed: Cockerill, Jeff

Monroe County Board of Commissioners Agenda Request - Grant

REQUIRED

Federal Agency	US Department of Health & Human Se	Federal Program	Title IV-D
CFDA#	93.563	Federal Award Number and Year (or other ID)	
Pass Through Entity:	Indiana Department of Child Servic		
Request completed by:	Carley Woodruff/Brianne Gregory		

This document is to be submitted no later than the Friday at noon prior to the requested meeting date.

Each agenda request and all necessary documents to the Auditor's Office (Anita Freeman) at: afreeman@co.monroe.in.us AND to the Commissioner's Office e-mail: commrequests@co.monroe.in.us

AGREEMENT TO PROVIDE PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT is entered into by and between Dossett Consulting, LLC., (hereinafter "Consultant"), and Monroe County, Indiana (hereinafter "Client"). The parties hereto, in consideration of mutual promises and covenants, agree as follows:

- (1) Scope of Services. Consultant shall perform in a professional manner the services as detailed in Exhibit A., consisting of one (1) page and that is incorporated and made part of this agreement.
 - (2) Term. This Agreement shall commence on _____ day of _____, 2024 ("effective date") and be in full force and effect for the term as stated in Exhibit B.
 - (3) Compensation. Client shall pay Consultant a fee for services rendered as set forth in Exhibit B, incorporated herein by reference as if fully set forth as part of this Agreement.
 - (4) Termination. Client or Consultant may terminate this Agreement for any reason upon thirty (30) days prior written notice to Consultant or Client. Client shall reimburse Consultant for all reasonable costs incurred by Consultant due to such early termination.
- Upon termination for whatever reason and regardless of the nature of the default (if any), Client agrees to pay Consultant in full for all goods and/or services provided to, and accepted by, Client under this Agreement, or any amendment thereto, as of the effective date of the Agreement. In no event shall the making of any payment to Consultant constitute or be construed as a waiver by Client or shall in no way impair or prejudice any right or remedy available to Client.
- (5) Services and Materials to be Furnished by Client. Consultant shall provide guidance to Client in determining the data required. The Client acknowledges and agrees that Consultant shall be entitled to rely upon the accuracy and completeness of the data it provided by the Client to perform the Services. Client shall provide all such data in a timely manner sufficient to allow Consultant to provide the Services. Consultant shall have no liability to Client whatsoever if Client provides incomplete or inaccurate data or provides data in an untimely manner.
 - (6) Records and Inspections. Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for three (3) years after the completion of the Services. During such period, Client shall have the right to examine and audit the records and to make transcripts therefrom. Client shall provide thirty (30) days written notice of its intent to inspect or audit any such records and shall conduct such inspection or audit only during Consultant's normal business hours. Any Client's

employee, consultant, subcontractor, or agent who may have access to such records shall execute a non-disclosure agreement prior to being granted such access.

(7) Copyright for Consultant's Proprietary Software. To the extent that the service and/or deliverables provided by Consultant are generated by Consultant's proprietary software, nothing contained herein is intended nor shall it be construed to require Consultant to provide such software to Client. Client agrees that all ownership, including copyright, patents, or other intellectual property rights to the software, lie with Consultant. Nothing herein shall be construed to entitle Client to any pre-existing Contractor materials.

(8) Insurance. Consultant shall maintain customary general liability insurance in the amounts of \$1,000,000 per occurrence / \$2,000,000 annual aggregate, worker's compensation insurance including employer's liability in the amount of \$1,000,000, automobile liability insurance in the amount of \$1,000,000, and professional liability insurance in the amount of \$1,000,000.

(9) Limitation of Liability. Client agrees that Consultant's total liability to Client for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed the value of the contract.

Any claim by Client against Consultant relating to this Agreement must be made in writing and presented to Consultant within 1 year after the date on which Consultant completes performance of the services specified in this Agreement.

(10) Consultant Liability if Audited. Consultant will assume all financial and statistical information provided to Consultant by Client employees or representatives is accurate and complete. Consultant shall, upon notice of audit, make work papers and other records available to the auditors.

(11) Notices. Any notices, bills, invoices, or reports required by this Agreement shall be sufficient if sent by the parties in the United States mail, postage paid to the address noted below:

To County:

Monroe County
Auditors Office
100 West Kirkwood Ave, Suite 209
Bloomington, IN 47403

To Consultant:

Dossett Consulting, LLC.
9775 Crosspoint Blvd., Suite 117
Indianapolis, IN 46256

Such notice shall be deemed delivered five (5) days after deposit in the U.S. mailbox.

(12) Changes. The terms of this Agreement may be changed via a mutually executed written instrument. Any amendment to this agreement must be approved in the same manner as this agreement.

(13) Antidiscrimination. Pursuant to IC 22-9-1-10 the Consultant agrees that neither Consultant or its sub-contractors shall discriminate against any employee or applicant for employment to be employed in the performance of this contract, with respect to his\her hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicants' race, religion, gender, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of this contract.

(14) Non-discrimination. Consultant is aware of Client's policy prohibiting harassment of any kind. If Consultant becomes aware of any harassment, Consultant shall immediately report harassment to the Monroe County Legal Department. In the performance of work under this Agreement, it is agreed that Consultant, any of its subcontractors, or any person acting on their behalf shall not, in any manner, discriminate against or intimidate any employee or job applicant with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of their race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, disability, housing status, or status as a veteran – or discriminate by reason of such factors, against any citizen of the State of Indiana who is qualified and available to perform the work.

(15) Miscellaneous.

a. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to third persons.

b. The parties intend that Consultant, in performing the services specified in this Agreement shall act as an independent contractor and shall have full control of the work and the manner in which it is performed. Consultant and Consultant's employees are not to be considered agents or employees of Client for any purpose. Consultant and Consultant's employees will comply with IC 22-5-1.7 see Exhibit C., consisting of one (1) page and shall be incorporated as part of this agreement.

c. Should any part, term, portion, section, or provision of this Agreement be decided finally to be in conflict with law or otherwise be unenforceable or ineffectual, the remaining parts, terms, portions, sections, or provisions shall be deemed severable and shall remain in full force and effect.

d. The titles of the sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

e. This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or

otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

f. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, earthquakes, acts of God, war, governmental action, labor conditions, material shortages or any other cause which is beyond the reasonable control of such party.

g. Each individual signing this Agreement certifies that (i) he or she is authorized to sign this Agreement on behalf of his or her respective organization, (ii) such organization has obtained all necessary approvals to enter into this Agreement, including but not limited to the approval of its governing board, and (iii) when executed, this Agreement is a valid and enforceable obligation of such organization.

h. Per the terms of the contract disclosure requirements of IC 36-1-21-5 and the County ordinance of the same. The Consultant hereby certifies it is not a relative of any elected official of the Monroe County Government.

i. The Consultant certifies that at the time of entering into this contract neither the Consultant nor any of its principals or employees engages in investment activities with the nation state of Iran, as said activities are defined in IC 5-22-16.5-8.

(16) Governing Law. This agreement shall be governed in accordance with the laws of the State of Indiana. The venue for any litigation resulting from or related to this agreement shall be Monroe County, Indiana.

IN WITNESS WHEREOF, the Client and the Consultant have executed this Agreement as of this date written on the first page.

Monroe County, Indiana

By: _____
(Board of Commissioners)

By: _____
(Board of Commissioners)

By: _____
(Board of Commissioners)

ATTEST:

By: _____
(County Auditor)

Dossett Consulting, LLC.

By: _____

Jeff Dossett, Owner

EXHIBIT A Term and Scope of Services

Consultant provided two (2) options related to the Fiscal Year Scope of Services performance of the duties identified in Exhibit B of this agreement. The appropriate County official should place a check mark next to and initial the chosen contract period.

Consultant represents that it has, or will secure at its own expense, all personnel required in the performance of services under this Agreement. All of the services required hereunder will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified to perform the services described herein. Consultant shall commence, carry on, and complete the services with all practicable dispatch, in a sound, economical, and efficient manner, in accordance with the provisions herein and all applicable laws. Consultant and Consultant's employees will comply with IC 22-5-1.7 see Exhibit C.

Consultant will subcontract with MGT of America Consulting, LLC., at Consultant's expense, to utilize the subcontractor's proprietary cost allocation software for the output of the final cost allocation plans. Client agrees that all ownership, including copyright, patents, or other intellectual property rights to the MGT of America Consulting, LLC. software, remains with MGT of America Consulting, LLC.

The Consultant shall perform the following services:

- A. Development of a central services cost allocation plan, which identifies the various costs incurred by the County to support and administer Federal and State programs. This plan will contain a determination of the allowable costs of providing each supporting service, such as purchasing, legal counsel, disbursement processing, etc.
- B. Negotiation of the complete cost allocation plan with the representatives of the federal cognizant agency or its designee if required.

- C. Assistance in preparing the claims to the State for recovery of funds due the County from the Federal and State of Indiana governments. Consultant will also monitor the progress of claims through the State to ensure the County receives recoveries due it. Said Monitoring is accomplished when the State provides Consultant with a "Remittance Notice" which details reimbursement amounts to each participating County. Consultant will review "Remittance Notice" to verify amount claimed was basis for State remittance.
- D. Consultant shall defend Client under audit for a period of three (3) years without cost to the Client.

EXHIBIT B Compensation

Multi-Year Option

Please check and initial your choice of contract:

_____ For services provided as set forth in Exhibit A, the Client agrees to pay Consultant a sum not to exceed **\$10,000.00 (Ten Thousand Dollars)** for one cost allocation plan for year-end financial data for 2023 for use in 2025 and associated services required herein. The Consultant agrees to complete the project and all services as further provided herein for said sum.

_____ (initials)

OR

X For services provided as set forth in Exhibit A, the Client agrees to pay Consultant a sum not to exceed **\$28,500.00 (Twenty Eight Thousand Five Hundred Dollars)** for three cost allocation plans at a cost of \$9,500.00 each for year-end financial data for 2023 for use in 2025; year-end financial data for 2024 for use in 2026; year-end financial data for 2025 for use in 2027 and associated services required herein. The Consultant agrees to complete the project and all services as further provided herein for said sum.

BMG (initials)

Consultant will render to Client one invoice per cost plan completed upon delivery of the final report of each cost plan to the Client for the fees specified herein, with payment due by Sixty (60) days after each submission.



Monroe County Board of Commissioners Agenda Request Form

Date to be heard

Formal

Work session

Department

Title to appear on Agenda:

Vendor #

Executive Summary:

Fund Name(s):

Fund Number(s):

Amount(s)

Presenter:

Speaker(s) for Zoom purposes:

Name(s)

Phone Number(s)

(the speaker phone numbers will be removed from the document prior to posting)

Attorney who reviewed:

Monroe County Board of Commissioners Agenda Request - Grant

REQUIRED

Federal Agency

Federal Program

CFDA#

Federal Award Number and Year (or other ID)

Pass Through Entity:

Request completed by:

This document is to be submitted no later than the Friday at noon prior to the requested meeting date.

Each agenda request and all necessary documents to the Auditor's Office (Anita Freeman) at: afreeman@co.monroe.in.us AND to the Commissioner's Office e-mail: commrequests@co.monroe.in.us

**SUBRECIPIENT GRANT AGREEMENT
FEDERAL FISCAL YEAR 2023
EMERGENCY MANAGEMENT PERFORMANCE GRANT PROGRAM**

Contract #000000000000000000080831

This Grant Agreement (the "Grant Agreement"), entered into by and between the **Indiana Department of Homeland Security** (the "State") and Monroe County (the "Subrecipient"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Purpose of this Grant Agreement; Funding Source. The State has been designated by the U.S. Department of Homeland Security Federal Emergency Management Agency ("FEMA") as the Recipient to receive, administer, and disburse Emergency Management Performance Grant Program ("EMPG") funds to local governments for preparing for all hazards, as authorized by Section 662 of the *Post Katrina Emergency Management Reform Act of 2006* (6 USC § 762) and the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (42 USC § 5121 *et seq.*), by providing a system of emergency preparedness for the protection of life and property in the United States from all hazards and to vest responsibility for emergency preparedness jointly in the Federal Government, states, and their political subdivisions.

The purpose of this Grant Agreement is to enable the State, pursuant to its authority under IC § 10-19-3-3, to make a subaward to the Subrecipient for the allowable costs/budget of this project (the "Project") and for the allowable project goals as described in the Subrecipient's grant application ("Grant Application"), of this Grant Agreement, both of which are electronically filed and saved online using the State's grant management system and identified by the Subrecipient, project number and grant program and year. The Project and Grant Application are fully incorporated into this Grant Agreement by reference.

The funds received by the Subrecipient shall be used exclusively in accordance with the provisions contained in this Grant Agreement. The funds received by the Subrecipient pursuant to this Grant Agreement shall be used only to implement the Project or provide the services in conformance with this Grant Agreement and for no other purpose.

SPECIAL CONDITIONS: None

FUNDING SOURCE:

Federal Funds Program Name per Assistance Listings Number (ALN):

Emergency Management Performance Grant

ALN #97.042

Federal Fiscal Year: 2023

Federal Award Identification Number: EMC-2023-EP-00006

Date Funds were Accepted by the State: October 1, 2023

2. Amount of Subaward. The Subrecipient is awarded funding in the amount specified below:

Type of EMPG Project which the Subrecipient is awarded:	Award Amount
Salary Reimbursement (includes base-salary and fringe benefits as outlined in the Subrecipient's Project and Grant Application)	\$55,000.00
Total remuneration under this Grant Agreement is not to exceed:	\$55,000.00

3. Term. The term of this Grant Agreement is October 1, 2023 through September 30, 2024.

Note, the federal performance period for the FFY 2023 EMPG is October 1, 2022, through September 30, 2025. However, the reimbursement time period for the Subrecipient's Project under this Grant Agreement is NOT the same as the Federal performance period.

Due to the nature of Salary Reimbursement projects, the activities that can be reimbursed must take place during a standard calendar year (January 1 through December 31). The compliance period for this award is January 1, 2023, through December 31, 2023.

Unless otherwise provided herein, the term may be extended upon the written agreement of the parties and as permitted by state or federal laws governing the use of these grant funds.

4. Representations and Warranties of the Subrecipient.

- A. The Subrecipient expressly represents and warrants to the State that it is statutorily eligible to receive these Grant funds and that the information set forth in its Grant Application is true, complete, and accurate. The Subrecipient expressly agrees to promptly repay all funds paid to it under this Grant Agreement should it be determined either that it was ineligible to receive the funds, or it made any material misrepresentation on its Grant Application.
- B. The Subrecipient certifies by entering into this Grant Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Grant Agreement by any federal or state department or agency. The term "principal" for purposes of this Grant Agreement is defined as an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Subrecipient.
- C. The Subrecipient certifies by entering into this Grant Agreement that it currently has and shall maintain an active registration within the Federal System for Awards Management (SAM) that includes the Subrecipient's current information at all times throughout the duration of this Grant Agreement, including amendments of this Grant Agreement, unless the Subrecipient is exempted under 2 CFR § 25.110.
- D. The Subrecipient certifies that funds awarded under this Grant Agreement do not replace (supplant) funds that have been budgeted for the same purpose through non-Federal sources.

5. Implementation of and Reporting on the Project.

- A. The Subrecipient shall implement and complete the Project in accordance with the plans and specifications contained in its Project and Grant Application, which are on file with the State and incorporated by reference. The Subrecipient shall be solely responsible for the proper implementation of the approved Project. "Project Completion" includes, but is not limited to, ordering, accepting delivery, installing equipment and full completion of performance of any service agreements or contracts, by December 31, 2023.
 - 1) Since the Subrecipient is receiving an award for a Salary Reimbursement Project, the Subrecipient is required to upload documentation demonstrating compliance with training and HSEEP exercise requirements, as well as supporting documentation indicating salary expenditures and fringe benefit expenditures. **This information must be submitted to the State through the Indiana grants management system, IntelliGrants, after January 1, 2024. If a Subrecipient is unable to produce the required supporting documentation, then the Subrecipient will not receive the reimbursement for salary expenditure.**
- B. In the event the Subrecipient wants to adjust, modify, or otherwise alter the Subrecipient's Project or Grant Application, then the Subrecipient must first request approval from the State for such

changes. **Requests must be submitted as a grant adjustment notice to the State. The Subrecipient shall not proceed to make any purchases that are outside the scope of Subrecipient's Project or Grant Application without first receiving approval from the State regarding the Subrecipient's modification request. Approval shall be determined by the State's sole discretion.** Any purchases made by the Subrecipient that are not authorized by FEMA allowability guidelines, the Subrecipient's Project, Grant Application, or the State, will not be reimbursed under this Grant Agreement. If the Subrecipient incurs a financial obligation prior to approval of the State, then the Subrecipient will either not be paid for that expenditure or, if the State advanced funds to the Subrecipient, then the Subrecipient shall be required to reimburse the State for the amount of funds that were not approved.

- C. The Subrecipient shall submit to the State written progress reports until the completion of the Project. These reports shall be submitted on a quarterly basis and shall contain such detail of progress or performance on the Project as is requested by the State. When applicable, the State shall then submit those reports to FEMA.
- D. The Subrecipient shall comply with the document titled "Indiana Department of Homeland Security, Comprehensive Training & Exercise Guidance, Volume II, February 21, 2017" available at: <https://www.in.gov/dhs/files/2017-IDHS-Comprehensive-Training-Exercise-Grant-Guidance.pdf>. (These requirements include, but are not limited to, the State's requirement that the Homeland Security Exercise and Evaluation Program ("HSEEP") Methodology be used for all training and exercise design, planning, conduct, and for the after action/improvement process, and, if it is available, that all training and exercises must be scheduled on the U.S. DHS National Exercise Schedule ("NEXS") System to include all required information as listed on the NEXS System.)

6. Requirements Applicable to Property/Equipment Purchased Using Grant Funds. For all tangible, nonexpendable, personal property having a useful life of more than one year and a per unit cost of more than \$500 acquired in whole or in part with funds provided under this Grant Agreement, the Subrecipient must comply with the following requirements for a period of three (3) years beginning on the acquisition date:

- A. Maintain records that include the following:
 - 1) A description of the property;
 - 2) Manufacturer's model number;
 - 3) Manufacturer's serial number or other identification number;
 - 4) Vendor or other source of the property;
 - 5) Identification of the title holder of the property;
 - 6) Acquisition date;
 - 7) State Contract number of the Agreement which provided the funding;
 - 8) Cost of the property;
 - 9) Physical location of the property;
 - 10) If the property was assigned to an individual, the name and title of the individual to whom the property was assigned;
 - 11) Use of the property;
 - 12) Condition of the property; and
 - 13) The ultimate disposition of the property, including the date of disposal how and to what entity property was disposed, and sale price of the property.
- B. Conducting a Physical Equipment Inventory. At least once every year, the Subrecipient shall take a physical inventory of the property and the result reconciled with the property records. Any differences between quantities determined by the physical inspection and those in the accounting records shall be investigated to determine the cause of the difference. The Subrecipient shall, in connection with the inventory, verify the existence, current utilization, current location, and continued need for the property. The Subrecipient shall maintain this inventory information.

- C. **Implementing Safeguards to Prevent Loss, Damage or Theft of Equipment.** A control system shall be developed and implemented to ensure adequate safeguards to prevent loss, damage, or theft of the property. The Subrecipient must submit a description of its control system either in its Grant Application or when otherwise requested by the State. Any loss, damage, or theft shall be investigated and fully documented and made a part of the official project records. A copy of such documentation shall be promptly submitted to the State.
- D. Adequate maintenance procedures shall be developed and implemented to keep the property in good condition.
- E. The Subrecipient shall not dispose of any property acquired in whole or in part with funds provided under this Grant Agreement, except in accordance with any applicable state and local laws, rules and regulations.
- F. The Subrecipient agrees to the following:
 - 1) The equipment and any required support personnel shall be made available to the State of Indiana if requested for training purposes or as part of a state incident response.
 - 2) The property shall be made available to other jurisdictions within the Homeland Security District as a district asset. The use of the property shall be addressed through existing inter-jurisdictional mutual aid, district mutual aid or equipment-specific use agreements.
 - 3) Personal use of the equipment is not permitted.
 - 4) The Subrecipient shall, when practicable, mark any and all equipment purchased with this award with the following text: "Purchased with funds provided by the U.S. Department of Homeland Security".
- G. If a Subrecipient fails to comply with any part of this provision, the Subrecipient may be required to repay to the State some or all of the funds provided to the Subrecipient under this Grant Agreement for the purchase of the property. In addition, such a failure to comply may jeopardize the Subrecipient's ability to obtain future grants from the State.
- H. **Federal Requirement Pertaining to Equipment Disposition.** When original or replacement equipment acquired by the Subrecipient under this Grant Agreement is no longer needed for the original project or program or for the other activities currently or previously supported by US DHS/FEMA, the Subrecipient must request instructions from US DHS/FEMA to make proper disposition of the equipment pursuant to 2 CFR 200.313.
- I. These requirements are on-going and survive the expiration or termination of this Grant Agreement and will remain in effect until the property is disposed of in accordance with this Grant Agreement.

7. Payment of Claims.

- A. If advance payment of all or a portion of the Grant funds is permitted by statute or regulation, and the State agrees to provide such advance payment, advance payment shall be made only upon submission of a completed expenditure report setting out the intended purposes of those funds. The expenditure report required shall be designated by the State and submitted in a manner as prescribed by the State. After such funds have been expended by the Subrecipient, the Subrecipient shall provide the State with a reconciliation of those expenditures. Otherwise, all payments shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures. As required by IC § 4-13-2-14.8, all payments will be by the direct deposit by electronic funds transfer to the financial institution designated by the Subrecipient in writing unless a specific waiver has been obtained from the Indiana Auditor of State.

- B. Requests for payment will be processed only upon submission of a completed expenditure report detailing any expenditure amount and description and must be submitted with accompanying supporting documentation as designated by the State. These reports must be submitted with the budget expenditure report detailing disbursements of state, local and/or private funds by project budget line items. An expenditure report showing an expense that is submitted without supportive documentation will be returned to the Subrecipient and not processed for payment. Failure to comply with the provisions of this Grant Agreement may result in the denial of a claim for payment.
- C. The State may require evidence furnished by the Subrecipient that substantial progress has been made toward completion of the Project prior to making the first payment under this Grant Agreement. All payments are subject to the State's determination that the Subrecipient's performance to date conforms with the Project as approved, notwithstanding any other provision of this Grant Agreement.
- D. A quarterly expenditure report shall be submitted to the State within fifteen (15) days following the end of the quarter in which work on or for the Project was performed. The State has the discretion, and reserves the right, to NOT pay any claims submitted later than twenty (20) calendar days following the end of the quarter in which the services were provided.
- E. All FINAL (those submitted after the end of the term) expenditure reports must be submitted to the State within thirty (30) calendar days after the end of the term. Payment for claims submitted after that time may, at the discretion of the State, be denied.
- F. **If grant award funds have been advanced to the Subrecipient and any amount of those advanced funds are unexpended at the time that the final expenditure is submitted to the State after December 31, 2023, then any advanced unexpended Grant funds shall be returned by the Subrecipient to the State.**
- G. Reimbursement of any expenditure is not a final State decision about whether the expenditure comports with allowability guidelines and such reimbursement by the State is not a waiver of any violation by the Subrecipient of the terms of this Grant Agreement. Allowability of an expenditure is determined by the governing state and federal statutes, laws, and guidance associated with this Grant.
- H. If the State discovers or determines that the Subrecipient is or was not eligible to receive any or all of the funds for which reimbursement is or was requested, the State will notify the Subrecipient in writing and state the reasons for such determination. The Subrecipient shall return any such excess amounts to the State within thirty (30) days after the Subrecipient receives written notice of this determination. If payment within thirty (30) days would cause the Subrecipient undue financial hardship, then the Subrecipient must notify the State in writing and submit a proposed repayment schedule. The State may accept, reject, or modify the proposed repayment schedule.
- I. Notwithstanding any other provision of this Grant Agreement, the State may elect to not pay the Subrecipient the final ten percent (10%) of the Subrecipient's award amount until the State has verified that the Project has been completed in accordance with this Grant Agreement.

8. Project Monitoring by the State. The State may conduct on-site or off-site monitoring reviews of the Project during the term of this Grant Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The Subrecipient shall extend its full cooperation and give full access to the Project site and to relevant documentation to the State or its authorized designees for the purpose of determining, among other things:

- A. whether Project activities are consistent with those set forth in the Subrecipient's Grant Application and the terms and conditions of the Grant Agreement;

- B. the actual expenditure of state, local and/or private funds expended to date on the Project is in conformity with the budget presented in the Subrecipient's Grant Application and that unpaid costs have been properly accrued;
- C. that the Subrecipient is making timely progress with the Project, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in this Grant Agreement and are fully and accurately reflected in Project reports submitted to the State.

The Subrecipient will take all necessary actions to correct or cure any problematic findings identified by the State during its monitoring and evaluation.

9. Compliance with Audit and Reporting Requirements; Maintenance of Records.

- A. The Subrecipient shall submit to an audit of funds paid through this Grant Agreement and shall make all books, accounting records and other documents available at all reasonable times during the term of this Grant Agreement and for a period of three (3) years after final payment for inspection by the State or its authorized designee. Copies shall be furnished to the State at no cost.
- B. The Subrecipient is a "subrecipient" of federal grant funds under 2 CFR 200.330 and shall arrange for a financial and compliance audit that complies with 2 CFR 200.500 *et seq.* if required by applicable provisions of 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements). The administrative and audit requirements and cost principles under 2 CFR § 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, as adopted at 2 CFR § 3002 are applicable to this Grant Agreement. **The Subrecipient must notify the State if the Subrecipient expends \$750,000 or more of federal funds within one fiscal year, which will indicate that the Subrecipient must undergo a single-audit for that fiscal year** in compliance with the applicable provisions of 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements) and the Subrecipient shall arrange for a financial and compliance audit that complies with 2 CFR 200.500 *et seq.*
- C. If the Subrecipient is a non-governmental unit, the Subrecipient shall file the Form E-1 annual financial report required by IC § 5-11-1-4. The E-1 entity annual financial report will be used to determine audit requirements applicable to non-governmental units under IC § 5-11-1-9. Audits required under this section must comply with the State Board of Accounts *Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources*, <https://www.in.gov/sboa/files/guidelines-examination-entities-receiving-financial-assistance-government-sources.pdf>. Guidelines for filing the annual report are included in **Exhibit B** (Guidelines for Non-governmental Entities).

10. Compliance with Laws.

- A. The Subrecipient shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Grant Agreement shall be reviewed by the State and the Subrecipient to determine whether the provisions of this Grant Agreement require formal modification.
- B. The Subrecipient and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, *et seq.*, IC § 4-2-7, *et seq.* and the regulations promulgated thereunder. **If the Subrecipient has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special**

state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Grant, the Subrecipient shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Grant Agreement. If the Subrecipient is not familiar with these ethical requirements, the Subrecipient should refer any questions to the Indiana State Ethics Commission or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Subrecipient or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Grant Agreement immediately upon notice to the Subrecipient. In addition, the Subrecipient may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

- C. The Subrecipient certifies by entering into this Grant Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Subrecipient agrees that any payments currently due to the State may be withheld from payments due to the Subrecipient. Additionally, payments may be withheld, delayed, or denied and/or this Grant Agreement suspended until the Subrecipient is current in its payments and has submitted proof of such payment to the State.
- D. The Subrecipient warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Subrecipient agrees that the State may suspend funding for the Project. If a valid dispute exists as to the Subrecipient's liability or guilt in any action initiated by the State or its agencies, and the State decides to suspend funding to the Subrecipient, the Subrecipient may submit, in writing, a request for review to the Indiana Department of Administration ("IDOA"). A determination by IDOA shall be binding on the parties. Any disbursements that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest.
- E. The Subrecipient warrants that the Subrecipient and any contractors performing work in connection with the Project shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Grant Agreement and grounds for immediate termination and denial of grant opportunities with the State.
- F. The Subrecipient affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- G. As required by IC § 5-22-3-7:
 - 1) The Subrecipient and any principals of the Subrecipient certify that:
 - (A) the Subrecipient, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC § 24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC § 24-5-12 [Telephone Solicitations]; or
 - (iii) IC § 24-5-14 [Regulation of Automatic Dialing Machines];
 in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and
 - (B) the Subrecipient will not violate the terms of IC § 24-4.7 for the duration of this Grant Agreement, even if IC § 24-4.7 is preempted by federal law.
 - 2) The Subrecipient and any principals of the Subrecipient certify that an affiliate or principal of the Subrecipient and any agent acting on behalf of the Subrecipient or on behalf of an affiliate or principal of the Subrecipient, except for de minimis and nonsystematic violations,
 - (A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC § 24-4.7 for the duration of this Grant Agreement even if IC § 24-4.7 is preempted by federal law.

11. Debarment and Suspension.

- A. The Subrecipient certifies by entering into this Grant Agreement that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Grant Agreement by any federal agency or by any department, agency or political subdivision of the State.
- B. The Subrecipient certifies that it has verified the suspension and debarment status for all subcontractors receiving funds under this Grant Agreement and shall be solely responsible for any recoupments or penalties that might arise from non-compliance. The Subrecipient shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Grant Agreement.

12. Drug-Free Workplace Certification. As required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana, the Subrecipient hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Subrecipient will give written notice to the State within ten (10) days after receiving actual notice that the Subrecipient, or an employee of the Subrecipient in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of grant payments, termination of the Grant Agreement and/or debarment of grant opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total amount set forth in this Grant Agreement is in excess of \$25,000.00, the Subrecipient certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Subrecipient's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Subrecipient's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will: (1) abide by the terms of the statement; and (2) notify the Subrecipient of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

13. Employment Eligibility Verification. As required by IC § 22-5-1.7, the Subrecipient hereby swears or affirms under the penalties of perjury that:

- A. The Subrecipient has enrolled and is participating in the E-Verify program;
- B. The Subrecipient has provided documentation to the State that it has enrolled and is participating in the E-Verify program;
- C. The Subrecipient does not knowingly employ an unauthorized alien;
- D. The Subrecipient shall require its contractors who perform work under this Grant Agreement to certify to the Subrecipient that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Subrecipient shall maintain this certification throughout the duration of the term of a contract with a contractor.

The State may terminate for default if the Subrecipient fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

This clause is not applicable if the Subrecipient is a state agency, political subdivision, including local school corporations and charter schools, a state educational institution, or a self-employed person that does not employ any employees.

14. Funding Cancellation. As required by Financial Management Circular 3.3 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Grant Agreement, it shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

15. Governing Law. This Grant Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

16. Information Technology Accessibility Standards. Any information technology related products or services purchased, used or maintained through this Grant Agreement must be compatible with the principles and goals contained in the Electronic and Information Technology Accessibility Standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. §794d), as amended.

17. Insurance. The Subrecipient shall maintain insurance with coverages and in such amount as may be required by the State or as provided in its Grant Application.

18. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Subrecipient covenants that it shall not discriminate against any employee or applicant for employment relating to this Grant with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, the Subrecipient certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Subrecipient understands that the State is a recipient of federal funds, and therefore, where applicable, the Subrecipient and any subcontractors shall comply with requisite affirmative action

requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

19. Notice to Parties. Whenever any notice, statement or other communication is required under this Grant, it will be sent by E-mail or first-class U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

Grants Management Director
attn.: EMPG Coordinator
Indiana Department of Homeland Security
302 West Washington Street, Room E208
Indianapolis, Indiana 46204
E-mail: grants@dhs.in.gov
Subject line should identify the grant program, year, and Subrecipient's name

B. Notices to the Subrecipient shall be sent to:

Justin Baker
5850 Foster Curry Drive
Bloomington, IN 47403

As required by IC § 4-13-2-14.8, payments to the Subrecipient shall be made via electronic funds transfer in accordance with instructions filed by the Subrecipient with the Indiana Auditor of State.

20. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Grant Agreement shall be resolved by giving precedence in the following order: (1) requirements imposed by applicable federal or state law, including **Exhibit A** and those identified in paragraph 28, below, (2) this Grant Agreement, (3) requirements imposed by the federal Notice of Funding Opportunity ("NOFO") associated with this grant program (4) requirements imposed by the State of Indiana NOFO associated with this grant program (5) Exhibits prepared by the State, (6) Award Letter provided to the Subrecipient, including any special conditions imposed therein, and (7) the Subrecipient's Grant Application on file with the State. All of the foregoing are incorporated fully herein by reference.

21. Public Record. The Subrecipient acknowledges that the State will not treat this Grant Agreement as containing confidential information and will post this Grant Agreement on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Grant shall not be considered an act of the State.

22. Termination for Breach.

- A. Failure to complete the Project and expend State, local and/or private funds in accordance with this Grant Agreement may be considered a material breach, and shall entitle the State to suspend grant payments, and to suspend the Subrecipient's participation in State grant programs until such time as all material breaches are cured to the State's satisfaction.
- B. The expenditure of State or federal funds other than in conformance with the Project and associated budget may be deemed a breach. The Subrecipient explicitly covenants that it shall promptly repay to the State all funds not spent in conformance with this Grant Agreement.

23. Termination for Convenience. Unless prohibited by a statute or regulation relating to the award of the Grant, this Grant Agreement may be terminated, in whole or in part, by the State or FEMA whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination shall be effected by delivery to the Subrecipient of a written Termination Notice, specifying the extent to which such termination becomes effective. The Subrecipient shall be compensated for completion of the

Project properly done prior to the effective date of termination. The State will not be liable for work on the Project performed after the effective date of termination. In no case shall total payment made to the Subrecipient exceed the original grant.

24. Travel. No expenses for travel will be reimbursed unless specifically authorized by this Grant Agreement.

25. Remedies Not Impaired. No delay or omission of the State in exercising any right or remedy available under this Grant Agreement impairs any such right or remedy or constitutes a waiver of any default or any acquiescence thereto.

26. Severability. The invalidity of any section, subsection, clause or provision of this Grant Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Grant Agreement.

27. Survival. Any expiration or termination of this Grant Agreement shall not affect the ongoing provisions of this Grant Agreement or the ongoing requirements of the guidance documents, laws and regulations, or other requirements referenced in this Grant Agreement that will survive the expiration or termination in accordance with their terms.

28. Federal and State Third-Party Contract Provisions. This Grant involves the payment of federal funds. The Subrecipient and, if applicable, its contractors shall comply with the federal provisions within this paragraph and all the federal provisions contained in Exhibit A.

- A. When applicable, Subrecipient shall follow 2 CFR 200.318 General procurement standards through 2 CFR 200.326 to ensure that procurements conform with applicable Federal and State law. Such requirements include:
 - 1) Subrecipient shall document all procurement practices and maintain records of procurement actions taken (for instance, maintain copies of all bids, proposals, quotes, cost/price analysis, basis for selection decisions, purchase orders, and contracts) throughout the Term and as related to the Project.
 - 2) Subrecipient's procurement procedures must avoid acquisition of unnecessary or duplicative items.
 - 3) All procurement transactions must be conducted in a manner providing full and open competition and should avoid restrictive language. See 2 CFR 200.319 for further requirements and guidance.
 - 4) Subrecipient shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. See 2 CFR 200.321.

Affirmative steps include: Placing qualified small businesses, small minority-disadvantaged businesses, and small businesses which are women owned, veteran-owned, disabled veteran-owned or located in a HUBZone on solicitation lists and ensuring such groups are solicited whenever they are potential procurement sources; Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by such groups; and/or establishing delivery schedules, where the requirement permits, which encouraged participation by such groups as appropriate.

- B. The Subrecipient, if using federal funds to pay for emergency management personnel, shall require all EMPG program funded personnel to ensure and maintain adoption and implementation of the National Incident Management System ("NIMS"). Please see the following link for more information on NIMS: https://www.fema.gov/sites/default/files/documents/FEMA_2021-Preparedness-Grants-Manual_02-19-2021.pdf.

29. Provision Applicable to Grants with tax-funded State Educational Institutions: "Separateness" of the Parties. The State acknowledges and agrees that because of the unique nature of State Educational Institutions, the duties and responsibilities of the State Educational Institution in these Standard Conditions for Grants are specific to the department or unit of the State Educational Institution. The existence or status of any one contract or grant between the State and the State Educational Institution shall have no impact on the execution or performance of any other contract or grant and shall not form the basis for termination of any other contract or grant by either party.

30. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in the 2022 *SCM Template*) in any way except as follows:

- A. Paragraph 1, Purpose of this Grant Agreement; Funding Source, has been modified.
- B. Paragraph 2, Amount of Subaward, has been added.
- C. Paragraph 3, Term, has been modified.
- D. Paragraph 4, Representations and Warranties of the Subrecipient, has been modified.
- E. Paragraph 5, Implementation of and Reporting on the Project, has been modified.
- F. Paragraph 6, Requirements Applicable to Property/Equipment Purchased Using Grant Funds, has been added.
- G. Paragraph 7, Payment of Claims, has been modified.
- H. Paragraph 8, Project Monitoring by the State, has been modified.
- I. Paragraph 9, Compliance with Audit and Reporting Requirements; Maintenance of Records, has been modified.
- J. Paragraph 11, Debarment and Suspension, has been modified.
- K. Paragraph 13, Employment Eligibility Verification, has been modified.
- L. Paragraph 16, Information Technology Accessibility Standards, has been modified.
- M. Paragraph 20, Order of Precedence; Incorporation by Reference, has been modified.
- N. Paragraph 22, Termination for Breach, has been modified.
- O. Paragraph 23, Termination for Convenience, has been modified.
- P. Paragraph 25, Remedies Not Impaired, has been added.
- Q. Paragraph 26, Severability, has been added.
- R. Paragraph 27, Survival, has been added.
- S. Paragraph 28, Federal and State Third-Party Contract Provisions, has been modified.

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Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Subrecipient, or that the undersigned is the properly authorized representative, agent, member or officer of the Subrecipient. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Subrecipient, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Grant Agreement other than that which appears upon the face hereof. Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Grant Agreement, the Subrecipient attests to compliance with the disclosure requirements in IC § 4-2-6-10.5.

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Grant Agreement by accessing the State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Grant Agreement to the State of Indiana. I understand that my signing and submitting this Grant Agreement in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Grant Agreement and this affirmation. I understand and agree that by electronically signing and submitting this Grant Agreement in this fashion I am affirming to the truth of the information contained therein. I understand that this Grant Agreement will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:

<https://secure.in.gov/apps/idoa/contractsearch/>

In Witness Whereof, the Subrecipient and the State have, through their duly authorized representatives, entered into this Grant Agreement. The parties, having read and understood the foregoing terms of this Grant Agreement, do by their respective signatures dated below agree to the terms thereof.

Monroe County

Indiana Department of Homeland Security

By: \s1\

By: \s2\

Title: \t President- Julie Thomas

Title: \t2\

Date: \d1\

Date: \d2\

Electronically Approved by: Department of Administration By: _____ (for) Rebecca Holwerda, Commissioner	
Electronically Approved by: State Budget Agency By: _____ (for) Zachary Q. Jackson, Director	Electronically Approved as to Form and Legality by: Office of the Attorney General By: _____ (for) Theodore E Rokita, Attorney General

EXHIBIT A - Federal Requirements

The Subrecipient agrees to comply with all of the following requirements as listed below.

1. Subrecipient Acknowledgments, Assurances, Disclosures, and Practices. All Subrecipients and any contractors, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing United States Department of Homeland Security ("DHS") access to records, accounts, documents, information, facilities, and staff. In particular,

- A. The Subrecipient must cooperate with any DHS compliance reviews or compliance investigations conducted by DHS.
- B. The Subrecipient must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities or personnel.
- C. The Subrecipient must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports. The State may do this on your behalf.
- D. The Subrecipient must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law, or detailed in program guidance.
- E. The Subrecipient must disclose, in a timely manner and as required by 2 CFR Part 200.113, in writing to the State all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this subaward. Failure to make required disclosures can result in any of the remedies described in § 200.339 (Remedies for Noncompliance), including suspension or debarment. (See also 2 CFR § 180 and 31 USC § 3321).
- F. The Subrecipient shall not use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of the State and FEMA.
- G. The Subrecipient shall not use the federal award to sue the federal government or any other government entity.
- H. The Subrecipient shall not use the funds as matching funds for any other State or federal award.
- I. The Subrecipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts as required by 2 CFR § 200.318(c)(1). No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the Subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, the Subrecipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Subrecipient.

- J. The Subrecipient shall comply with the federal Procurement Standards established under 2 CFR § 200, Subpart D, 2 CFR §§ 200.317 through 200.326 and adopted by DHS as 2 CFR Part 3002.

- K. As required by 2 CFR § 200.327, in addition to all other provisions required by DHS and the State, all contracts (a legal instrument used to purchase property or services needed to carry out the Project) made by the Subrecipient using funds provided under this Grant Agreement must comply with Appendix II of Part 200 "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards."
- L. Subrecipients must comply with all Federal, state and local laws prior to the start of any construction activity. Failure to obtain all appropriate Federal, state and local permits and clearances may jeopardize Federal funding. If ground disturbing activities occur during construction, Subrecipients must immediately notify the State and continue to monitor the ground disturbance. If any potential archeological resources are discovered, the Subrecipient will immediately cease construction in that area and notify the State and FEMA.

The United States has the right to seek judicial enforcement of these obligations.

2. **DHS Standard Terms and Conditions.** FEMA requires compliance with the DHS Standard Terms and Conditions which is published and maintained on the Homeland Security website: <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>. Unless otherwise stated, the Subrecipient shall comply with the most current DHS Standard Terms and Conditions published at the time the Subrecipient received its award. Though not exhaustive, the Subrecipient shall comply with the following DHS conditions:

A. Acknowledgment of Federal Funding from DHS.

All Subrecipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

B. Acceptance of Post Award Changes.

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, Subrecipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate the Subrecipient's acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ask-gmd@fema.dhs.gov if you have any questions.

C. Activities Conducted Abroad.

All Subrecipients must ensure that project activities performed outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

D. Age Discrimination Act of 1975.

All Subrecipients must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94-135 (1975) (codified as amended at Title 42, US Code, § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.

E. Americans with Disabilities Act of 1990.

All Subrecipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. 101-336 (1990) (codified as amended at 42 USC §§ 12101-12213), which prohibits Subrecipients from discriminating on the basis of disability in the operation of public entities,

public and private transportation systems, places of public accommodation, and certain testing entities.

F. Applicability of DHS Standard Terms and Conditions to Tribes.

The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to subrecipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

G. Assurances, Administrative Requirements, Cost Principles, Representations and Certifications.

DHS financial assistance Subrecipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non-Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FOA) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the DHS FOA if you have any questions.

DHS financial assistance Subrecipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200, and adopted by DHS at 2 C.F.R. Part 3002.

By accepting this Grant Agreement, Subrecipients and their executives, as defined in 2 C.F.R. section 170.315, certify that their policies are in accordance with OMB's guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.

H. Best Practices for Collection and Use of Personally Identifiable Information.

All Subrecipients who collect personally identifiable information ("PII") are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Subrecipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and the Privacy Template as useful resources respectively. If the Subrecipient is unable to locate the listed resources, the Subrecipient should contact the State for assistance.

I. Civil Rights Act of 1964, Title VI.

All Subrecipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 USC § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. DHS implementing regulations for the Act are found at 6 CFR Part 21 and 44 CFR Part 7.

J. Civil Rights Act of 1968.

All Subrecipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, as amended through Pub. L. 113-4, which prohibits Subrecipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 USC § 3601 et

seq.), as implemented by the U.S. Department of Housing and Urban Development at 24 CFR Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (See 24 CFR Part 100, Subpart D).

K. Copyright.

All Subrecipients must affix the applicable copyright notices of 17 USC §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including federal award number) to any work first produced under Federal financial assistance awards.

L. Debarment and Suspension.

All Subrecipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

M. Disposition of Equipment Acquired Under the Federal Award.

For purposes of original or replacement equipment acquired under this award by a non-state recipient or non-state subrecipients, when that equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, you must request instruction from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. Section 200.313. State recipients and state subrecipients must follow the disposition requirements in accordance with state laws and procedures.

N. Drug-Free Workplace Regulations.

Subrecipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the Subrecipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 USC §§ 8101-8106).

O. Duplication of Benefits.

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude Subrecipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations or federal financial assistance award terms and conditions; or for other reasons.

P. Education Amendments of 1972 (Equal Opportunity in Education Act), Title IX.

All Subrecipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. 92-318 (1972) (codified as amended at 20 USC § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance. DHS implementing regulations are codified at 6 CFR Part 17 and 44 CFR Part 19.

Q. E.O. 14074 – Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety.

Recipient State, Tribal, local, or territorial law enforcement agencies must comply with the requirements of section 12(c) of E.O. 14074. Recipient State, Tribal, local, or territorial law enforcement agencies are also encouraged to adopt and enforce policies consistent with E.O. 14074 to support safe and effective policing.

R. Energy Policy and Conservation Act.

All Subrecipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. 94-163 (1975) (codified as amended at 42 USC § 6201 et seq.) which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

S. False Claims Act and Program Fraud Civil Remedies.

All Subrecipients must comply with the requirements of the False Claims Act, 31 USC §§ 3729-3733, which prohibit the submission of false or fraudulent claims for payment to the federal government. (See 31 USC §§ 3801-3812, which details the administrative remedies for false claims and statements made.)

T. Federal Debt Status.

All Subrecipients are required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

U. Federal Leadership on Reducing Text Messaging while Driving.

All Subrecipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.

V. Fly America Act of 1974.

All Subrecipients must comply with Preference for US Flag Air Carriers: (air carriers holding certificates under 49 USC) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 USC § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

W. Hotel and Motel Fire Safety Act of 1990.

All Subrecipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC §2225a.

X. Indirect Cost Rate.

2 C.F.R. Section 200.211(b)(15) requires the terms of the award to include the indirect cost rate for the federal award. If applicable, the indirect cost rate for this award is stated in the budget documents or other materials approved by FEMA and included in the award file.

Y. John S. McCain National Defense Authorization Act of Fiscal Year 2019.

All Subrecipients and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute – as it applies to DHS Subrecipients and their contractors and subcontractors – prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

Z. Limited English Proficiency (Civil Rights Act of 1964), Title VI.

All Subrecipients must comply with the Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that Subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

AA. Lobbying Prohibitions.

Subrecipients must comply with 31 USC § 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the Subrecipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

BB. National Environmental Policy Act.

Subrecipients must comply with the requirements of the National Environmental Policy Act of 1969, (NEPA) Pub. L. 91-190 (1970) codified as amended at 42 USC § 4321 et seq.) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require Subrecipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

CC. Nondiscrimination in Matters Pertaining to Faith-Based Organizations.

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. All Subrecipients must comply with the equal treatment policies and requirements contained in 6 CFR Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

DD. Non-supplanting Requirement.

Subrecipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

EE. Notice of Funding Opportunity Requirements.

All of the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity ("NOFO") for this program are incorporated here by reference in the award terms and conditions. Subrecipients must comply with any such applicable requirements set forth in the program NOFO.

FF. Patent and Intellectual Property Rights.

Unless otherwise provided by law, Subrecipients are subject to the Bayh-Dole Act, 35 USC § 200 et seq. All Subrecipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 CFR Part 401 and the standard patent rights clause located at 37 CFR § 401.14.

GG. Prior Approval for Modification of Approved Budget.

Before making any change to the FEMA approved budget for this award, you must request prior written approval from FEMA where required by 2 C.F.R. Section 200.308.

For purposes of non-construction projects, FEMA is utilizing its discretion to impose an additional restriction under 2 C.F.R. Section 200.308(f) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the Federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget FEMA last approved.

For purposes of awards that support both construction and non-construction work, FEMA is utilizing its discretion under 2 C.F.R. Section 200.308(h)(5) to require the Subrecipient to obtain prior written approval from FEMA before making any fund or budget transfers between the two types of work.

You must report any deviations from your FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

HH. Procurement of Recovered Materials.

Subrecipients must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act, 42 USC § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

II. Rehabilitation Act of 1973.

All Subrecipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973) (codified as amended at 29 USC § 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

JJ. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of the Subrecipient's currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the Subrecipient must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and

Performance Matters located at 2 C.F.R. Part 200 Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

KK. Reporting Subawards and Executive Compensation.

Subrecipients, if applicable, are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

LL. Required Use of American Iron, Steel, Manufactured Products, and Construction Materials.

Subrecipients must comply with the "Build America, Buy America" provisions of the Infrastructure Investment and Jobs Act and Executive Order 14005. Subrecipients of an award of federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) all construction materials are manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

When necessary, Subrecipients may apply for, and the agency may grant, a waiver from these requirements. Information on the process for requesting a waiver from these requirements is on the website below.

- (a) When the federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:
 - (1) applying the domestic content procurement preference would be inconsistent with the public interest;
 - (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
 - (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at "Buy America" Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov.

The awarding Component may provide specific instructions to Subrecipients of awards from infrastructure programs that are subject to the "Build America, Buy America" provisions. Subrecipient should refer to the Notice of Funding Opportunity for further information on the Buy America preference and waiver process.

MM. SAFECOM.

All Subrecipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

NN. Terrorist Financing.

All Subrecipients must comply with E.O. 13224 and US law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Subrecipients are legally responsible to ensure compliance with the Order and laws.

OO. Trafficking Victims Protection Act of 2000 (TVPA).

All Subrecipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 USC § 7104. The award term is located at 2 CFR § 175.15, the full text of which is incorporated by reference.

PP. Universal Identifier and System of Award Management.

Requirements for System for Award Management and Unique Entity Identifier Subrecipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 CFR Part 25, Appendix A, the full text of which is incorporated by reference. A Subrecipient is ineligible to a subaward from the State unless the Subrecipient has provide its unique entity identifier to the State.

QQ. USA Patriot Act of 2001.

All Subrecipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 USC §§ 175–175c.

RR. Use of DHS Seal, Logo, and Flags.

All Subrecipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

SS. Whistleblower Protection Act.

Subrecipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 USC § 2409, 41 USC § 4712 and 10 USC § 2324, 41 USC §§ 4304 and 4310.

TT. Environmental Planning and Historic Preservation (EHP) Review.

DHS/FEMA funded activities that may require an Environmental Planning and Historic Preservation (EHP) review are subject to the FEMA EHP review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires the Subrecipient to comply with all federal, state, and local laws.

DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP review process, as mandated by: the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and any other applicable laws and executive orders. General guidance for FEMA's EHP process is available on the DHS/FEMA Website. Specific Subrecipient guidance on how to submit information for EHP review depends on the individual grant program and Subrecipients should contact their grant Program Officer to be put into contact with EHP staff responsible for assisting their specific grant program. The EHP review process must be completed before funds are released to carry out the proposed project; otherwise, DHS/FEMA may not be able to fund the project due to noncompliance with EHP laws, executive orders, regulations, and policies.

If ground disturbing activities occur during construction, the Subrecipient will monitor ground disturbance, and if any potential archeological resources are discovered, the Subrecipient will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

EXHIBIT B - Annual Financial Report for Non-governmental Entities

Guidelines for filing the annual financial report:

- 1) Filing an annual financial report called an Entity Annual Report (E-1) is required by IC § 5-11-1-4. This is done through Gateway which is an on-line electronic submission process.
 - a. There is no filing fee to do this.
 - b. This is in addition to the similarly titled Business Entity Report required by the Indiana Secretary of State.
 - c. The E-1 electronical submission site is found at <https://gateway.ifonline.org/login.aspx>
 - d. The Gateway User Guide is found at <https://gateway.ifonline.org/userguides/E1guide>
 - e. The State Board of Accounts may request documentation to support the information presented on the E-1.
 - f. Login credentials for filing the E-1 and-additional information can be obtained using the notforprofit@sboa.in.gov email address.
- 2) A tutorial on completing Form E-1 online is available at https://www.youtube.com/watch?time_continue=87&v=nPpgtPcdUcs.
- 3) Based on the level of government financial assistance received, an audit may be required by IC § 5-11-1-9.



Monroe County Board of Commissioners Agenda Request Form

Date to be heard 05/15/24

Formal ☒

Work session ☐

Department Technical Services

Title to appear on Agenda: Matrix Integration agreement for Health
Building Access Gate re-wire

Vendor # 003244

Executive Summary:

The under ground communications wiring that allows the entry gate at the Health building to communicate with the access controls software has failed. This has resulted in our inability to add/remove users from access or remotely control the gate with the access program.

This request is to approve the quote provided by Matrix Integrations to run new communications wiring from the switch closet located on the ground floor of the building to the gate controller located on the N.E exterior.

Fund Name(s):

Cumulative Capital

Fund Number(s):

1138

Amount(s)

\$295.00

Presenter: Greg Crohn

Speaker(s) for Zoom purposes:

Name(s)

Greg Crohn

Phone Number(s)

(the speaker phone numbers will be removed from the document prior to posting)

Attorney who reviewed:

**Sales Office**

Mariah Obermeier
Ph: 812-481-5014
Fax:
mobermeier@matrixintegration.com

Corporate Office

417 Main St.
Jasper, IN 47546
Ph: (812) 634-1550

QUOTE

Quote #	Date
AAAQ156896	04/25/24
Terms	Shipping
Net 30	Drop Ship-Ground

Quote To:

Monroe County Government
Att: Greg Crohn
119 West 7th Street
Bloomington, IN 47404
Ph: (812) 349-2835

Ship To:

Monroe County Government
Att: Greg Crohn
119 West 7th Street
Bloomington, IN 47404
Ph: (812) 349-2835

Bill To:

Monroe County Government
Att: Accounts Payable Goss
501 N Morton Street, Ste 200
Bloomington, IN 47404
Ph: (812) 349-2139

Description		Qty	Price	Ext. Price
Health Building Cable Run				
1) Matrix - Cat6 Drop Bundle		1	\$142.00	\$142.00
Includes:				
Up to 295' Cat6 PVC or Plenum Cable as needed				
1 - Cat6 Modular Jack Insert				
1 - Face Plate				
1 - Caddy Adapter				
1 - WireXpert Test Fee				
1 - 5' Cat6 Patch cord (Blue)				
Miscellaneous Materials				
Notes & Assumptions:				
- Labor is quoted during normal business hours defined as 8am-5pm, Mon-Fri, excluding holidays.				
- Client shall provide unrestricted access to building/facility during normal business hours.				
- Quoted Cat6 cable is either PVC or Plenum-rated, type CMP as defined by the National Electric Code (when required).				
- Assumes installation within a standard office-type or academic-type environment with accessible ceilings, IE; acoustical ceiling(s) and accessible (fishable) wall cavities.				
- Assumes installation can be completed, in part, with a 6-foot step ladder.				
- Pricing is valid for up to 10 cable runs (drops) within same office or building space.				
Exclusions:				
- Excludes: core drilling of floors, walls and/or ceilings; equipment rental; conduit, surface raceway, wire duct, fire wall sleeves; electrical materials & labor; permits, permit fees, inspections and/or inspection fees; relocation of furniture, desks, credenzas, shelving, file cabinets, pictures, white boards, etc.; device patch cords; removal, demo, disposal and/or recycling of any existing or abandoned cabling.				
2) Matrix - Professional Services - Flat Rate		1	\$153.00	\$153.00

**Sales Office**

Mariah Obermeier
Ph: 812-481-5014
Fax:
mobermeier@matrixintegration.com

Corporate Office

417 Main St.
Jasper, IN 47546
Ph: (812) 634-1550

QUOTE

Quote #	Date
AAAQ156896	04/25/24
Terms	Shipping
Net 30	Drop Ship-Ground

Quote To:

Monroe County Government
Att: Greg Crohn
119 West 7th Street
Bloomington, IN 47404
Ph: (812) 349-2835

Ship To:

Monroe County Government
Att: Greg Crohn
119 West 7th Street
Bloomington, IN 47404
Ph: (812) 349-2835

Bill To:

Monroe County Government
Att: Accounts Payable Goss
501 N Morton Street, Ste 200
Bloomington, IN 47404
Ph: (812) 349-2139

Description**Qty****Price****Ext. Price**

Accepted by

Date accepted

PO# : _____

SubTotal \$295.00

Sales Tax \$0.00

Shipping \$0.00

Total \$295.00

- All client accepted quotes are subject to credit approval prior to processing the order.
- This quote may not include all applicable taxes, credit card fees, or freight.
- Hardware prices are subject to change based on manufacturer pricing and availability unless stated otherwise.
- Matrix Integration reserves the right to adjust the professional services labor price if this quote is not accepted within 30 days.
- Matrix Integration reserves the right to cancel orders arising from errors, inaccuracies, or omissions.
- Materials will be invoiced as received by the Client and/or Matrix Integration.
- Labor will be progress billed if the project extends beyond 30 days.
- Ask your Account Manager about available financing options.
- To place an order please email the approved quote to mobermeier@matrixintegration.com, or fax to (812) 481-5060.



Monroe County Board of Commissioners Agenda Request Form

Date to be heard 05/15/24

Formal ☒

Work session ☐

Department Youth Services

Title to appear on Agenda: Spirit, LLC d/b/a Supersolutions agreement for YSB Quarterly Cleaning Contract Signing

Vendor # 8473

Executive Summary:

YSB has a need for quarterly deep cleans within Binkley House Emergency Shelter in order to maintain our DCS licenser and inspection standards. We currently have ongoing weekly cleanings done by Century Services/ASI but they are very limited in their scope and only in administration areas. DCS/ISHD is now requiring more in depth cleaning services than our staff or Century Services can provide. \$800 quarterly clean, \$200 annual carpet clean4= \$3,400

Fund Name(s):

LIT - Special Purpose

Fund Number(s):

1114

Amount(s)

\$3400

Presenter: Sara Jamieson

Speaker(s) for Zoom purposes:

Name(s)

Phone Number(s)

(the speaker phone numbers will be removed from the document prior to posting)

Attorney who reviewed: Turner-King, Molly

SPIRIT LLC DBA SUPERSOLUTIONS

PO BOX 8764

Bloomington, IN 47407 US

+1 8662585432

admin@supersolutionsindiana.com

**ADDRESS**

Sara Jamieson
Youth Services Bureau of
Monroe County - Sara
Jamieson
615 S. Adams St.
Bloomington, IN 47403
USA

SHIP TO

Sara Jamieson
Youth Services Bureau of
Monroe County - Sara
Jamieson
615 S. Adams St.
Bloomington, IN 47403
USA

Estimate SPIRIT-24002**DATE 04/16/2024**

DATE	ACTIVITY	QTY	RATE	AMOUNT
	Janitorial Service Deep Cleaning - Fee per service - Quarterly	0	800.00	0.00
	- Cleaning all windows in shelter and staff office (12+) (inside only) - Deep clean of 4 bathrooms - Dusting vents through bedrooms and bathrooms - Dusting off tops of barriers, bookshelves etc (would need to use a ladder) - Wiping off kitchen appliances and walls - Wiping down dining room chairs - Cleaning baseboard trim in activity area, dining area and living room - Wiping down walls in bedrooms/activity area			
	Janitorial Service Once a Year	0	200.00	0.00
	- Cleaning upholstery for shelter furniture: 4 chairs, 3 couches, 3 loveseats - Carpet cleaning in activity area and living room			

Terms:	SUBTOTAL	0.00
Payment is expected upon completion of the service.	TAX	0.00

Thank you very much for the opportunity!

TOTAL	\$0.00
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Accepted By

Accepted Date

AGREEMENT FOR SERVICES

This Agreement is made between Spirit LLC dba Supersolutions ("Contractor") and the Board of Commissioners of Monroe County, ("Commissioners") on behalf of the Monroe County Youth Services Bureau ("YSB"). The Contractor and the Commissioners mutually agree as follows:

The terms of this Agreement enlist Contractor to provide quarterly deep cleaning and annual janitorial services at the Binkley House Youth Shelter located at 615 South Adams Street, Bloomington Indiana 47403. The following terms apply:

1. SCOPE OF PROJECT.

- a. Commissioners wish to retain the professional services of Contractor at the rates as set forth in "Exhibit A," (consisting of one (1) page), which is incorporated herein and made part of this Agreement. "Exhibit A" further outlines the services to be performed both on a quarterly basis and on an annual basis.

2. **PRICE.** The total accumulated amount paid to Contractor under this Agreement shall not exceed three thousand four hundred dollars (\$3,400.00) , without further written approval by Monroe County in the same manner that this Agreement was approved. Contractor shall submit an invoice for services rendered in accordance with Section 3 of this Agreement..

1. **INVOICES.** Contractor shall submit invoices, including the time and dates worked, and a detailed description of the work performed. Invoices must be submitted to Victoria Thevenow, YSB Director via email at vthevenow@co.monroe.in.us and/or via U.S. mail at 615 South Adams Street, Bloomington Indiana 47403. YSB will render payment for services in a timely manner. Both parties herein recognize that payment is contingent on approval and appropriation of the Monroe County Council and subject to the Monroe County claims process.

3. **TERM.** The term of this Agreement shall be from the date executed by both parties, below, and shall terminate on December 31, 2025.

4. MODIFICATION AND TERMINATION.

- a. This Agreement may only be modified mutually, in writing referencing this Agreement, and signed by both parties. Any modification must be approved in the same manner as this Agreement.
- b. This Agreement may be terminated, at any time, by either party, upon thirty (30) days written notice. If Agreement is terminated by YSB, YSB shall pay any expenses incurred and non-refundable.
- c. Notices of modification and/or termination should be tendered in accordance with section 8 of this Agreement.

5. **NOTICE.** Whenever any notice, statement or other communication is required under this Agreement, it shall be sent via regular US mail and/or emailed to the following addresses, unless otherwise specifically advised. directed as follows:

YSB

Victoria Thevenow
YSB Director
615 South Adams Street
Bloomington, Indiana 47403
vthevenow@co.monroe.in.us

CONTRACTOR

Spirit LLC dba Supersolutions
PO Box 8764
Bloomington, Indiana 47407
admin@supersolutionsindiana.com

6. **ADA, REHABILITATION ACT AND TITLE VI COMPLIANCE.** Acceptance of this Agreement is evidence there is intent to comply with the Americans with Disabilities Act of 1990, Rehabilitation Act of 1973, and Title VI of the 1964 Civil Rights Act.
7. **COMPLIANCE WITH LAW.** Contractor shall comply with all State of Indiana and Monroe County applicable laws and regulations. Contractor shall indemnify and save harmless Monroe County for any fines or expenses of any nature which it might incur from Contractor's noncompliance. Contractor will comply with IC 22-5-1.7 et seq. Specifically including the following:
 - Contractor to enroll in and verify the work eligibility status of all newly hired employees of the Contractor through the E-Verify program.
 - Contractor is not required to verify the work eligibility status of all newly hired employees of the Contractor through the E-Verify program, if the E-Verify program no longer exists.
 - Contractor must sign an affidavit affirming that Contractor does not knowingly employ an unauthorized alien.
8. **NON-DISCRIMINATION.** In the performance of work under this Agreement, it is agreed that Contractor, any of its subcontractors, or any person acting on their behalf shall not, in any manner, discriminate against or intimidate any employee or job applicant with respect to his hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of his race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, disability, housing status, or status as a veteran – or discriminate by reason of such factors, against any citizen of the State of Indiana who is qualified and available to perform the work.

Contractor shall comply with all federal, state, and local laws and regulations. Contractor has been made aware of Monroe County's policy on non-discrimination and agrees to comply with the policy. In addition, Contractor has been made aware of the Monroe County's policy prohibiting harassment in all regards, including, but not limited to, employment practices. Contractor agrees to make the Commissioners aware of any conduct which may violate any County policy including, but not limited to, the policies prohibiting discrimination and harassment.

9. **INDEPENDENT CONTRACTOR.** It is understood and agreed that Contractor executes this Agreement as an independent contractor and shall not be considered an employee or agent of the Board for any purpose. Contractor shall have exclusive control over the means,

methods, and details of fulfilling its obligations under this Agreement. Contractor shall pay all taxes, withholdings and contributions required by Social Security (FICA) laws, Indiana and federal income tax laws, and Indiana unemployment insurance laws.

10. **INDEMNITY.** Contractor assumes all risks and responsibilities for accident, injuries, or damages to person(s) or property related to performance pursuant to this Agreement and agrees to indemnify and save harmless Monroe County Government from all claims, costs, or suits of whatever nature, including attorneys' fees, related to performance of the Project, except such claims, costs or suits arising out of the negligence of the County Government or its employees.
11. **WORKER'S COMPENSATION.** Contractor shall purchase and maintain a policy of Worker's Compensation Insurance as required by the laws of the State of Indiana and furnish a certificate of such insurance to the Commissioners before commencement of work on the project. Alternatively, if the Contractor obtains a Worker's Compensation Clearance certificate, Contractor shall provide a copy of such to Commissioners in lieu of a certificate of insurance. Failure to provide either a certificate of insurance or a certificate of clearance may be regarded by the Commissioners as material breach of this Agreement and may result in its cancellation without further cause. It shall be in the Commissioner's sole discretion whether there is a material breach under this paragraph and whether the breach should result in cancellation of this Agreement.
12. **LIABILITY INSURANCE.** Contractor shall purchase and maintain comprehensive general liability insurance in amounts of at least one (1) million per occurrence, and two (2) million dollars aggregate, and furnish proof of such insurance to the Commissioners before commencement of work on the project. Failure to provide this certificate may be regarded by the Commissioners, in its, sole discretion, as a material breach of this Agreement, and may result in its cancellation without further cause. It shall be in the Commissioner's sole discretion whether there is a material breach under this paragraph and whether the breach should result in cancellation of this Agreement.
13. **CAPTIONS.** The captions of the Agreement are for convenience only, and do not in any way limit or amplify its terms.
14. **GOVERNING LAW.** This agreement shall be governed in accordance with the laws of the State of Indiana. The venue for any litigation resulting from or related to this Agreement shall be Monroe County, Indiana.
15. **SEVERABILITY.** The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not

prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

16. **ENTIRETY OF AGREEMENT.** This Agreement, consisting of four (4) pages constitutes the entire agreement between the parties. Parties agree that any terms and conditions not contained or outlined within this Agreement are inapplicable.

IN WITNESS WHEREOF, Contractor and Monroe County have executed this Agreement as dated below in two counterparts, each of which shall be deemed an original.

Contractor

Date

APPROVED BY THE MONROE COUNTY BOARD OF COMMISSIONERS
this _____ day of _____, 2023, pursuant to Monroe County Code Chapter 266-5.

MONROE COUNTY BOARD OF COMMISSIONERS

"AYES"

"NAYS"

Julie Thomas, President

Julie Thomas, President

Penny Githens, Vice President

Penny Githens, Vice President

Lee Jones, Commissioner

Lee Jones, Commissioner

ATTEST:

Brienne Gregory, Auditor



Monroe County Board of Commissioners Agenda Request Form

Date to be heard 05/15/24

Formal ☒

Work session ☐

Department Commissioners

Title to appear on Agenda: Soft Touch Moving and Storage to move
Surveyor's Office File and Supply
Monroe County Government Center
at Showers

Vendor # 010533

Executive Summary:

This request is to approve the estimate submitted by Soft Touch Moving and Storage in an amount not to exceed \$2,100.00 to move the Surveyor's Office files, supplies, and equipment from the former office in the attic of the Health Building to the new office at Showers.

Fund Name(s):

2016 GO Bond Capital Projects
2016 GO Bond B Capital

Fund Number(s):

4807
4808

Amount(s)

\$2,100.00

Presenter: Richard Crider

Speaker(s) for Zoom purposes:

Name(s)

Richard Crider

Phone Number(s)

(the speaker phone numbers will be removed from the document prior to posting)

Attorney who reviewed: Cockerill, Jeff

ADDENDUM TO Soft Touch Moving and Storage AGREEMENT

1. **Worker's Compensation.** Soft Touch Moving and Storage ("Contractor") shall purchase and maintain a policy of Worker's Compensation Insurance as required by the laws of the State of Indiana and furnish a certificate of such insurance to the Board before commencement of work on the Project. Failure to provide this certificate may be regarded by the Board as material breach of this Agreement and may result in its cancellation without further cause.
2. **Liability Insurance.** Contractor shall purchase and maintain comprehensive general liability insurance in amounts of at least 1 million per occurrence, and 2 million dollars aggregate, and furnish proof of such insurance to the Board before commencement of work on the Project. Failure to provide this certificate may be regarded by the Board as a material breach of this Agreement and may result in its cancellation without further cause.
3. **Indemnity.** Contractor assumes all risks and responsibilities for accident, injuries or damages to person or property related to performance of the Project and agrees to indemnify and save harmless the Board from all claims, costs, or suits of whatever nature, including attorneys' fees, related to performance of the Project, except such claims, costs or suits arising out of the fault of the Board or its employees.
4. **Non-discrimination.** In the performance of work under this contract, it is agreed that Contractor, any of its subcontractors, or any person acting on their behalf shall not, in any manner, discriminate against or intimidate any employee or job applicant with respect to his, hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of his race, religion, color, sex, disability, national origin or ancestry – or discriminate by reason of such factors, against any citizen of the State of Indiana who is qualified and available to perform the work.

It is further agreed that a penalty may be deducted from the contract in the sum of five dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of this provision. If a second or subsequent violation occurs, this contract may be terminated, and all monies due or to become due hereunder may be forfeited. It is further agreed that a breach of this covenant may be considered a material breach of the contract.

5. **Compliance with Law.** Contractor shall, at its own expense, obtain all licenses and permits which may be necessary to complete the Project. Contractor shall comply with all applicable laws and regulations and indemnify and save harmless the Board for any fines or expenses of any nature which it might incur from Contractor's noncompliance, including laws and regulations enforced by the State Fire Marshal, State Building Commissioner, Department of Fire Prevention and Building Safety, State Department of Health, O.S.H.A., state and local building codes and the Americans with Disabilities Act. Contractor will comply with IC 22-5-1.7-3. Specifically including the following:
 - Contractor to enroll in and verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program.
 - Contractor is not required to verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program if the E-Verify program no longer exists.

- Contractor must sign an affidavit affirming that Contractor does not knowingly employ an unauthorized alien.

6. **Independent Contractor.** It is understood and agreed that Contractor executes this Agreement as an independent contractor and shall not be considered an employee or agent of the Board for any purpose. Contractor shall have exclusive control over the means, methods, and details of fulfilling its obligations under this Agreement. Contractor shall pay all taxes, withholdings and contributions required by Social Security (FICA) laws, Indiana and federal income tax laws, and Indiana unemployment insurance laws.
7. **Captions.** The captions of the Agreement are for convenience only, and do not in any way limit or amplify its terms.
8. **Governing Law.** This agreement shall be governed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, Contractor and Board have executed this Addendum as dated below in two counterparts, each of which shall be deemed an original.

Soft Touch Moving and Storage
“Contractor”

Board of Commissioners of Monroe County
“Board”

by _____

Date _____

ATTEST: May 15, 2024

Brianne Gregory, Auditor

Estimate For Services

Estimate: 3138
MC: 331362-C, IMCA: 28884-A1
DOT: 707793
Invoice: 58138-0
Service Date: 05-13-2024



SOFT TOUCH
- MOVING -

**SOFT TOUCH MOVING & STORAGE -
BLOOMINGTON**

3150 S WALNUT ST.
BLOOMINGTON, INDIANA 47401
TEL: (812) 333-4755

<http://www.softtouchmovingandstorage.com/>

Richard Crider

Richard: (812) 325-9824 m rcriders@co.monroe.in.us;

LOGISTICS - RESIDENTIAL MOVE

ORIGIN	119 WEST 7TH STREET BLOOMINGTON, INDIANA 47404 TYPE: OFFICE BUILDING [Less than 50 Feet] FLOOR: 1, 2 STAIRS	STOPS	NO EXTRA STOPS.	DESTIN	501 NORTH MORTON STREET BLOOMINGTON, INDIANA 47404 TYPE: OFFICE BUILDING [Less than 50 Feet] FLOOR: 1, 2 STAIRS
Quote Date: 05-01-2024		Service Date: 05-13-2024		Bid: Phone	
				Estimate: #3138	
				Booking: N/A	
				Arrival Time: N/A	

Referred By: Friends/Family

Estimated By: Eric Lashley | 05-01-24

Booked By: N/A

0	2000	300	Office	7
SqFt	Weight lbs	CuFt	Move Size	Miles
TOTAL ESTIMATED BOXES/TOTES: 100				

PRICING

Trucks:	1
Crew Size:	3
Hourly Rate:	\$ 225.00
Minimum Hours:	2.0
Est Hours:	8:30
Moving Hours:	8:00
Travel Time :	0:30
Travel Fee	\$ 112.50
Moving Fee	\$ 1800.00
Discount:	-\$ 0.00
Truck Charge :	\$ 100.00

TOTAL EST PRICE \$ 2012.50

EST PRICE RANGE: \$1900 - \$2100

All jobs require a credit card on file to reserve your date with a \$100.00 deposit fully refundable as long as you cancel or reschedule within one week (5 business days) of the move date. By signing you agree and understand that all quotes unless otherwise noted are an estimate only, not a guaranteed price or flat rate. I have read and understand all attachments that were sent with my estimate. LET'S GET MOVING!

Click to Sign

Estimate :

This estimate is based on the information you provide, and on the assumption that your house or business is packed and ready to move upon arrival, unless packing services are noted above. Estimates are given to inform you of approximate costs and allow us to schedule movers appropriately. Actual charges reflect the time and labor for your move, plus boxes, packing supplies, travel time, fuel, and any other extra charges as noted on your estimate. Billing begins when the movers arrive to your location and ends when they finish the move, plus the travel time which is the time to get to and from your locations. The estimate above reflects



Monroe County Board of Commissioners Agenda Request Form

Date to be heard 05/15/24

Formal ☒

Work session ☐

Department Commissioners

Title to appear on Agenda: Sunset Hill Fence Co. agreement to install a Fire Department Access Box at the Monroe County Highway Department

Vendor # 007488

Executive Summary:

This request is to accept the proposal submitted by Sunset Hill Fence Co. in the amount of \$1,092.74 to install a emergency response access system on the entrance gate at the Monroe County Highway Department.

In the event that there was no power to the gate, this device will allow the Fire Department to disengage the brake allowing it to be opened manually from the outside.

Fund Name(s):

Cumulative Capital

Fund Number(s):

1138

Amount(s)

\$1,092.74

Presenter: Richard Crider

Speaker(s) for Zoom purposes:

Name(s)

Richard Crider

Phone Number(s)

(the speaker phone numbers will be removed from the document prior to posting)

Attorney who reviewed:

ADDENDUM TO Sunset Hill Fence Co. AGREEMENT

1. **Worker's Compensation.** Sunset Hill Fence Co. ("Contractor") shall purchase and maintain a policy of Worker's Compensation Insurance as required by the laws of the State of Indiana and furnish a certificate of such insurance to the Board before commencement of work on the Project. Failure to provide this certificate may be regarded by the Board as material breach of this Agreement and may result in its cancellation without further cause.
2. **Liability Insurance.** Contractor shall purchase and maintain comprehensive general liability insurance in amounts of at least 1 million per occurrence, and 2 million dollars aggregate, and furnish proof of such insurance to the Board before commencement of work on the Project. Failure to provide this certificate may be regarded by the Board as a material breach of this Agreement and may result in its cancellation without further cause.
3. **Indemnity.** Contractor assumes all risks and responsibilities for accident, injuries or damages to person or property related to performance of the Project and agrees to indemnify and save harmless the Board from all claims, costs, or suits of whatever nature, including attorneys' fees, related to performance of the Project, except such claims, costs or suits arising out of the fault of the Board or its employees.
4. **Non-discrimination.** In the performance of work under this contract, it is agreed that Contractor, any of its subcontractors, or any person acting on their behalf shall not, in any manner, discriminate against or intimidate any employee or job applicant with respect to his, hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of his race, religion, color, sex, disability, national origin or ancestry – or discriminate by reason of such factors, against any citizen of the State of Indiana who is qualified and available to perform the work.

It is further agreed that a penalty may be deducted from the contract in the sum of five dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of this provision. If a second or subsequent violation occurs, this contract may be terminated, and all monies due or to become due hereunder may be forfeited. It is further agreed that a breach of this covenant may be considered a material breach of the contract.

5. **Compliance with Law.** Contractor shall, at its own expense, obtain all licenses and permits which may be necessary to complete the Project. Contractor shall comply with all applicable laws and regulations and indemnify and save harmless the Board for any fines or expenses of any nature which it might incur from Contractor's noncompliance, including laws and regulations enforced by the State Fire Marshal, State Building Commissioner, Department of Fire Prevention and Building Safety, State Department of Health, O.S.H.A., state and local building codes and the Americans with Disabilities Act. Contractor will comply with IC 22-5-1.7-3. Specifically including the following:
 - Contractor to enroll in and verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program.
 - Contractor is not required to verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program if the E-Verify program no longer exists.
 - Contractor must sign an affidavit affirming that Contractor does not knowingly employ an unauthorized alien.

6. **Independent Contractor.** It is understood and agreed that Contractor executes this Agreement as an independent contractor and shall not be considered an employee or agent of the Board for any purpose. Contractor shall have exclusive control over the means, methods, and details of fulfilling its obligations under this Agreement. Contractor shall pay all taxes, withholdings and contributions required by Social Security (FICA) laws, Indiana and federal income tax laws, and Indiana unemployment insurance laws.
7. **Captions.** The captions of the Agreement are for convenience only, and do not in any way limit or amplify its terms.
8. **Governing Law.** This agreement shall be governed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, Contractor and Board have executed this Addendum as dated below in two counterparts, each of which shall be deemed an original.

Sunset Hill Fence Co.
“Contractor”

Board of Commissioners of Monroe County
“Board”

by

Date _____

ATTEST: May 15, 2024

Brienne Gregory, Auditor

Sunset Hill Fence Co.

FENCING SUPPLIES

(812) 332-2547

1440 West Bloomfield Road
Bloomington, Indiana 47403

May 08, 2024

Monroe County Highway Garage
rcrider@co.monroe.in.us

RE: Estiamte

Install fire access box on entrance gate.

Install fire access box on a gooseneck stand, set in concrete.

Install disconnect cable and all hardware provide Knox Pad Lock
(Fire Dept will have key).

Labor and Material \$1,092.74

Any questions please let us know.

Thank You,
Tony Sowder,
Estimator/Owner
sunsethillfenceco@gmail.com



FireAccess

Fire Access Stations



The American Access Systems, Inc line of **FireAccess** stations offers a selection of two different post mount models. Both models feature heavy metal, powder coated enclosures. The faceplates on model #'s 15-013 and 15-014 are painted a bright red for easy identification by the fire department. All **FireAccess** stations are stand alone units, allowing the convenience of installation wherever it may be required.

Model # 15-013 is designed to be used with a Knox Lock key switch (not included). Model #15-014 is a simple micro switch that activates a relay when the padlock holding the panel closed is removed.



American Access Systems, Inc.

YOUR PARTNER IN ACCESS CONTROL



Monroe County Board of Commissioners Agenda Request Form

Date to be heard Formal ☒ Work session ☐ Department

Title to appear on Agenda:

Vendor #

Executive Summary:

This request is to accept the Monroe County Convention Center freight elevator modernization bid proposal submitted by American Elevator, Inc in the amount of \$147,500.00.

Fund Name(s):

Fund Number(s):

Amount(s)

Presenter:

Speaker(s) for Zoom purposes:

Name(s)

Phone Number(s)

(the speaker phone numbers will be removed from the document prior to posting)

Attorney who reviewed:



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Monroe County Cooling Tower and Elevator
Bloomington, IN

THE OWNER:

(Name, legal status and address)

Monroe County
100 W. Kirkwood Ave., 3rd Floor
Bloomington, IN 47404

THE ARCHITECT:

(Name, legal status and address)

RQAW Corporation
8770 North Street, Suite 110
Fishers, IN 46038

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 enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

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

§ 1.2.1.1 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 of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

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

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

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

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

§ 2.3 Information and Services Required of the Owner

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

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

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

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

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

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

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

§ 3.3 Supervision and Construction Procedures

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

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

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

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

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

§ 3.6 Taxes

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

§ 3.7 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.

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

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

§ 3.7.4 Concealed or Unknown Conditions

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

§ 3.7.5 If, in the course of the Work, the Contractor 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 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;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent

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

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

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

§ 3.10 Contractor's Construction and Submittal Schedules

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

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

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

§ 3.11 Documents and Samples at the Site

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

delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

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

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

§ 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 Architect.

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

§ 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.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

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

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

§ 4.2.4 Communications

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

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

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 Mutual Responsibility

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

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

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

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

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

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

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

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

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

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

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

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

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

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

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

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

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

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

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

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

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

§ 9.6 Progress Payments

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

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

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

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

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

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

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

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

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

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

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

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

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

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

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to 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.

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall 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 (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

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

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act

or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

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

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

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

§ 11.3 Waivers of Subrogation

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

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

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

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

§11.5 Adjustment and Settlement of Insured Loss

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

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 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 notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 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 that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

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

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

§ 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 notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 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 notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 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 the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

§ 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

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

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

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

§ 15.2 Initial Decision

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

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

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

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

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

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

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

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

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

§ 15.3 Mediation

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

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

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

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

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

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

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 14:20:30 ET on 04/23/2024 under Order No. 2114449187 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)



AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 24th day of April in the year 2024
(In words, indicate day, month and year.)

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

Monroe County Board of Commissioners
100 W. Kirkwood Ave., 3rd Floor
Bloomington, IN 47404

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

American Elevator, Inc.
2030 E 600 S
Anderson, IN 46017
765-374-0429

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

Monroe County Cooling Tower and Elevator
302 S. College Ave.
Bloomington, IN 47403

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

RQAW Corporation
8770 North Street, Suite 110
Fishers, IN 46038

The Owner and Contractor agree as follows.

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

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. 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.

TABLE OF ARTICLES

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

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- ☐ The date of this Agreement.
- ☐ A date set forth in a notice to proceed issued by the Owner.
- ☒ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)
April 24, 2024

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

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

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

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

Init.

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

[**X**] By the following date: August 30, 2024

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

Portion of Work

Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Hundred Forty Seven Thousand Five Hundred Dollars (\$ 147,500), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

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

Item

Price

None

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

Item

Price

Conditions for Acceptance

N/A

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item

Price

N/A

§ 4.4 Unit prices, if any:

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

Item

Units and Limitations

Price per Unit (\$0.00)

N/A

§ 4.5 Liquidated damages, if any:

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

N/A

§ 4.6 Other:

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

N/A

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

The first day of each month

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 28th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than twenty eight (28) days after the Architect receives the Application for Payment.

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

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

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

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

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

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 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.)

10%

Init.

§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

After 50% completion of the project, no further retainage will be required.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage upon Substantial Completion.)

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

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

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

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

§ 5.3 Interest

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

0 %

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, ~~unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.~~
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

A201–2017.

§ 6.2 Binding Dispute Resolution

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

(Check the appropriate box.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017

☒ Litigation in a court of competent jurisdiction in Monroe County

☐ Other *(Specify)*

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

ARTICLE 7 TERMINATION OR SUSPENSION

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

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

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

N/A

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

§ 8.2 The Owner’s representative:

(Name, address, email address, and other information)

Richard Crider, rcriders@co.monroe.in.us
Jeff Cockerill, jcockerill@co.monroe.in.us
Monroe County Cooling Tower and Elevator
302 S. College Avenue
Bloomington, IN 47403

§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

Darrin Middendorf
American Elevator, Inc.
2030 E. 600 S
Anderson, IN 46017

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

Init.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

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

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

Yes, rcrider@co.monroe.in.us and jcockerill@co.monroe.in.us

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 ~~AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~
~~*(Insert the date of the E203–2013 incorporated into this Agreement.)*~~

- .5 Drawings

Number	Title	Date
<u>G100</u>	<u>Cover Sheet</u>	<u>2/1/2024</u>
<u>M001</u>	<u>Mechanical Symbols, Abbreviations, & General Notes</u>	<u>2/1/2024</u>

- .6 Specifications

Section	Title	Date	Pages
<u>See Exhibit B</u>			

- .7 Addenda, if any:

Number	Date	Pages
<u>1</u>	<u>4/9/2024</u>	<u>1</u>

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .8 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

Init.

☐ ~~AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204 2017 incorporated into this Agreement.)~~

☐ ~~The Sustainability Plan:~~

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

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

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

Exhibit B, List of Specifications provided February 2, 2024

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

OWNER (Signature)

(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 11:34:18 ET on 04/30/2024 under Order No. 2114449187 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)



AIA® Document A101® – 2017 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 24th day of April in the year 2024
(In words, indicate day, month and year.)

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

Monroe County Cooling Tower and Elevator
Bloomington, IN

THE OWNER:
(Name, legal status and address)

Monroe County
100 W. Kirkwood Ave., 3rd Floor
Bloomington, IN 47404

THE CONTRACTOR:
(Name, legal status and address)

American Elevator, Inc.
20230 E 600 S
Anderson, IN 46017

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

This document is intended to be used in conjunction with AIA Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

TABLE OF ARTICLES

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

ARTICLE A.1 GENERAL

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

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

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

§ A.2.2 Liability Insurance

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

Init.

§ A.2.3 Required Property Insurance

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

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

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

Causes of Loss

Sub-Limit

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

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

Coverage

Sub-Limit

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

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

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

§ A.2.3.3 Insurance for Existing Structures

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

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

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

- ☐ **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- ☐ **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- ☐ **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- ☐ **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- ☐ **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- ☐ **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- ☐ **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

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

[] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[] **§ A.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

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

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

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

§ A.3.2 Contractor's Required Insurance Coverage

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

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

General Liability

§ A.3.2.2 Commercial General Liability

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

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;

- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

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

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

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

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

§ A.3.2.5 Workers' Compensation at statutory limits.

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

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

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

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

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

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

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

§ A.3.3 Contractor's Other Insurance Coverage

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

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

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

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

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

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

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

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

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

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

- [] § A.3.3.2.6 Other Insurance

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

Coverage**Limits****§ A.3.4 Performance Bond and Payment Bond**

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

(Specify type and penal sum of bonds.)

Type**Penal Sum (\$0.00)**

Payment Bond

100% of Contract Sum

Performance Bond

100% of Contract Sum

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

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

N/A



Monroe County Board of Commissioners Agenda Request Form

Date to be heard

Formal ☒

Work session ☐

Department

Title to appear on Agenda:

Vendor #

Executive Summary:

Fund Name(s):

Fund Number(s):

Amount(s)

Presenter:

Speaker(s) for Zoom purposes:

Name(s)

Phone Number(s)

(the speaker phone numbers will be removed from the document prior to posting)

Attorney who reviewed:



Monroe County Board of Commissioners Agenda Request Form

Date to be heard

Formal ☐

Work session ☐

Department

Title to appear on Agenda:

Vendor #

Executive Summary:

Various Monroe County Government offices serve as placement sites for Indiana University students to provide those students with hands on experiences in the student's field of study. The attached agreement outlines the responsibility of the University and the County as a placement site. The agreement is drafted so that any student within one of the programs listed within Exhibit A can be placed at any of the departments listed within Exhibit B. Approving this draft template will allow the University and departments to arrange for the efficient placement of students without having to have each individual agreement approved by the Commissioners.

Fund Name(s):

Fund Number(s):

Amount(s)

Presenter:

Speaker(s) for Zoom purposes:

Name(s)

Phone Number(s)

(the speaker phone numbers will be removed from the document prior to posting)

Attorney who reviewed:

AFFILIATION AGREEMENT

BETWEEN

The Trustees of Indiana University

AND

Monroe County Government

This Agreement is by and between The Trustees of Indiana University ("University") and Monroe County Government ("Facility") located in Bloomington, IN.

WITNESSETH

Whereas, it is to the mutual benefit of the parties to provide clinical experience for students enrolled in certain programs of the University, the parties have agreed to the terms and provisions set forth below:

- I. **Purpose and Consideration**: The purpose of this Agreement shall be to provide experience to students enrolled in those programs listed in Exhibit A to this Agreement, which is made part of and incorporated into this Agreement. Student placement may be at any Monroe County facility listed in Exhibit B to this Agreement, which is made part of and incorporated into this Agreement. Consideration for this Agreement shall consist of the mutual promises contained herein, the parties agreeing that monetary compensation shall neither be expected nor received by either party.
- II. **Terms and Conditions**: Pursuant to the above-stated purpose, the parties agree as follows:
 - A. **Term and Termination**:
 1. **TERM**: The Term of this Agreement shall be for a period of four years, beginning on May 1, 2024.
 2. **TERMINATION**: Notwithstanding any other method of termination set forth elsewhere in the Agreement, this Agreement shall terminate:
 - a. by mutual consent of both parties; or
 - b. by either party upon ninety (90) days written notice to the other party.

In the case of early termination, any students currently participating in a clinical experience at Facility will be allowed to complete their experience.

- B. Revisions: This Agreement is subject to changes and revision as necessary and by agreement of the parties; provided, however, that any such change or revision must be agreed to in writing by both parties in order to be binding. Any revision must be approved in the same manner as this Agreement.
- C. Placement of Students: The University shall notify the Facility at least sixty (60) days prior to the beginning of each clinical experience of the number of students it desires to place at the Facility. The Facility shall have the right to accept or reject that number based on the current level of staffing in the appropriate discipline. Notification of placement should be made in accordance with "Section I" entitled as "Notice" of this Agreement.
- D. Discipline: While enrolled in a clinical experience at the Facility, students will be subject to all applicable policies of the Facility, including the dress code. The Facility may immediately remove from the premises any student who poses an immediate threat or danger to patients, staff, visitors of the premises or the public; in all other cases, students shall be dismissed from participation in the clinical experience only after the appropriate disciplinary policies and procedures of the University have been followed.
- E. University-Specific Responsibilities: The following duties shall be the specific responsibilities of the University:
1. Identify students for placement at the Facility in accordance with Section C of this Agreement.
 2. Maintain liaison with Facility for supervision of students at Facility for clinical experience.
 3. Establish a procedure for notifying the Facility if a student is unable for any reason to report for clinical training. Notice may be sent to the emails listed in "Section I" entitled as "Notice" of this Agreement.
 4. Establish professional liability and other insurance coverage as follows:
 - a. During the term of this Agreement, University agrees to provide evidence of general liability insurance, in amounts of at least one (1) million per occurrence, and two (2) million dollars aggregate, covering the acts or omissions of its faculty, employees and instructors during their participation in the Program. University agrees to furnish proof of such insurance to the Commissioners before commencement of work on the project. University agrees to provide notification to Facility if a lapse or

change in insurance coverage occurs during the term of the Agreement.

- b. If the student(s) are training in one of the health care provider professions listed in Ind. Code 34-18-2-14, as amended and as it may be amended from time to time, the University shall carry for each qualified student Professional Liability Insurance covering claims made, arising out of and within the scope of the educational/clinical activities engaged in by the student under the terms of this Agreement, with limits of not less than those prescribed for health care providers like the student as set forth in Ind. Code 34-18-4-1, as amended and as it may be amended from time to time. University's obligation under this paragraph shall be no greater than that provided for in its insurance coverage, which, for example, does not cover claims arising out of or related to intentional misconduct or gross negligence.
 - c. If the student(s) do not qualify for coverage by the University under 4(b) above, the University shall cause each such student to obtain and maintain in force Professional Liability Insurance covering all liability incurred by each student that arises out of and during the course of each such student's activities under the terms of this Agreement, with limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate.
 - d. The parties acknowledge that professional liability insurance may not be required for those students that will not have patient contact. Facility shall make the final determination whether professional liability insurance is necessary for a particular educational program.
- 5. Inform students that they are not to submit for publication any material relating to the clinical education experience without prior written approval from the University and the Facility.
 - 6. Distribute to students the Facility's pertinent policies and procedure, if such materials are provided by the Facility.
 - 7. Direct its students to comply with the policies and procedures of Facility, including those governing the use and disclosure of individually identifiable health information under federal law, specifically 45 CFR parts 160 and 164. Solely for the purpose of defining their role in relation to the use and disclosure of Facility's protected health information, such students are defined as members of the Facility's workforce, as that term is defined by 45 CFR 160.103, when engaged in activities pursuant to this Agreement. However, students are not and shall not be considered to be employees of the

Facility. In addition, University agrees that a student's breach of Facility's policies concerning confidentiality shall be grounds for student discipline by University, including dismissal from the educational program and/or removal from the Facility.

8. To instruct students that they are responsible:
 - a. To follow policies and procedures of the Facility throughout the affiliation.
 - b. To provide written evaluation of the Facility to both Facility and the University upon request.
 - c. To provide health records upon request by the Facility. Typical requests include proof of Immunization tests, including MMR, PPD and Hepatitis B and/or Hepatitis declination form.
 - d. To provide documentation to the Facility of personal health insurance in effect during the term of assignment.
 - e. To provide documentation of appropriate liability insurance as provided in Paragraph E.4(c), if applicable.
 - f. To obtain, if required by the Facility, a criminal background check that meets the Facility's requirements and to provide a copy of the results of the background check to the University and the Facility.

F. Facility-Specific Responsibilities: The following duties shall be the specific responsibilities of the Facility:

1. Provide an orientation for the purpose of familiarizing students with Facility's physical facilities, philosophy, policies, and procedures for providing care, and such other aspects of Facility's operations as are pertinent to the educational experience of the students.
2. Maintain a sufficient level of staff support to provide supervision of students and to carry out normal service functions without having students perform in lieu of staff. Notify the University if staffing falls below this level while students are present on scheduled affiliation.
3. Provide for the students a patient caseload that is appropriate to his/her needs and level of experience and proficiency and that is of sufficient size and variety to ensure the best educational experience possible.

4. Notify the University in writing of any changes within the Facility which would alter significantly the specified clinical education experiences for the students.
5. Retain complete responsibility for patient care, providing adequate supervision of students at all times.
6. Maintain a sufficient level of staff employees to carry out regular duties. Students will neither be expected nor permitted to perform services in lieu of staff employees.
7. Provide or obtain emergency medical treatment for students if needed for illness or injuries suffered during clinical experience. Such treatment shall be at the expense of the student treated.
8. Maintain all applicable accreditation requirements and certify such compliance to the University or other entity as requested by the University. The Facility shall also permit authorities responsible for accreditation of the University's curriculum to inspect the Facility's clinical facilities and services as necessary.

G. Mutual Responsibilities: The parties shall cooperate to fulfill the following mutual responsibilities:

1. The parties shall appoint two persons to be responsible for the Program. University shall appoint a program coordinator ("Clinical Education Coordinator") and the Facility shall appoint a program supervisor ("Clinical Education Supervisor"). Each party shall supply the other party with the name of this person along with the person's professional and academic credentials. Each party shall promptly notify the other in writing of any change of the person appointed. University will disclose information from a student's educational record, as appropriate, to personnel at Facility who have a legitimate need to know in accordance with the Family Educational Rights and Privacy Act. Facility agrees that its personnel will use such information only in furtherance of the Program, and that the information shall only be disclosed to third parties in accordance with the Family Educational Rights and Privacy Act.
2. Each party shall comply with all federal, state, and municipal laws, rules and regulations which are applicable to the performance of this Agreement.
3. Students shall be treated as trainees who have no expectation of receiving

compensation or future employment from the Facility or the University.

4. The parties agree to comply with Title VI and IX of the Federal Education Amendments of 1972, and Section 504 of the Federal Rehabilitation Act of 1973, Executive Order 11,246, and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students, because of age, color, disability, ethnicity, sex, gender identity, gender expression, genetic information, marital status, national origin, race, religion, sexual orientation, or veteran status.

Facility agrees that it is Facility's duty to investigate all complaints of sexual misconduct related to the clinical experience at Facility, to report to University receipt of any complaint involving a University student or employee and to cooperate with University on any appropriate measures the parties deem necessary.

5. No party shall use or mention in any publicity, advertising, promotional materials, or news release the name or service mark(s) of the other party without the prior written consent of that party.
6. It is understood and agreed that this Agreement is not intended and shall not be construed or deemed to create or confer any right or benefit to any person not a party hereto. The relationship between the University and the Facility shall be considered as one between independent contractors and not as a joint venture or partnership.
7. The parties agree to notify one another promptly of any claim made by or expected from a claimant against a party to this Agreement, which claim relates to the subject matter of this Agreement. The parties agree to cooperate to dispose of any such claim. Each party to this Agreement ("Indemnitor") agrees to indemnify and hold harmless the other party ("Indemnatee") (together with Indemnatee's successors, assigns, directors, officers, employees, and any other person for whom Indemnatee may be legally responsible) from and against any loss, cost, claim, or expense, including reasonable attorney fees, arising from any act of negligence or other breach of duty by Indemnitor, its successors, assigns, directors, officers, employees or agents; provided however, that University's obligation to hold Facility harmless shall be limited in substance by statutes designed to protect and limit the exposure and liability of the University as an instrumentality of the State of Indiana (e.g., actions and conditions as to which the University is immunized by the Indiana Medical Malpractice Act, the Indiana Tort Claims Act, dollar limits stated in such Acts, exemption from punitive damages, and

the continued ability to defeat a claim by reason of contributory negligence or fault of the claimant), so that the University's liability to hold harmless shall not exceed what might have been its liability to claimant if sued directly by claimant in Indiana and all appropriate defenses had been raised by the University. Facility acknowledges that students are not employees or agents of the University for purposes of this provision.

- H. Notice. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent via regular US mail and/or emailed to the following addresses, unless otherwise specifically advised.

UNIVERSITY

FACILITY

IU School of Social Work
Education/Social Work Bldg., ES 4138
902 W New York St
Indianapolis, IN 46202
Attn: Stephanie Lyons

Cc to Office of the VP and General
Counsel

- I. ADA, Rehabilitation Act and Title VI Compliance. Acceptance of this Agreement is evidence there is intent to comply with the Americans with Disabilities Act of 1990, Rehabilitation Act of 1973, and Title VI of the 1964 Civil Rights Act.”
- J. COMPLIANCE WITH LAW. University shall comply with all State of Indiana and Monroe County applicable laws and regulations.
- K. Non- Discrimination. University and student acknowledge that in the performance of work under this Agreement, it is agreed that University and student, any of its subcontractors, or any person acting on their behalf shall not, in any manner, discriminate against or intimidate any employee or job applicant with respect to his hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of his race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, disability, housing status, or status as a veteran – or discriminate by reason of such factors, against any citizen of the State of Indiana who is qualified and available to perform the work.
- L. University and student shall comply with all federal, state, and local laws and regulations. University and student has been made aware of Monroe County's policy on non-discrimination and agrees to comply with the policy. In addition, University

and student has been made aware of the Monroe County's policy prohibiting harassment in all regards, including, but not limited to, employment practices. University and student agrees to make the Facility aware of any conduct which may violate any County policy including, but not limited to, the policies prohibiting discrimination and harassment.

- M. Captions. The captions of the Agreement are for convenience only, and do not in any way limit or amplify its terms.
- N. Governing Law. This agreement shall be governed in accordance with the laws of the State of Indiana. The venue for any litigation resulting from or related to this Agreement shall be Monroe County, Indiana.
- O. Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.
- P. Entirety of Agreement . This Agreement, consisting of nine (9) pages constitutes the entire agreement between the parties. Parties agree that any terms and conditions not contained or outlined within this Agreement are inapplicable

[Remainder of page left blank intentionally. Signature Page Follows]

IN WITNESSES WHEREOF, the parties have by their duly authorized representative set forth their signature:

UNIVERSITY:

FACILITY:

BY: {{Sig_es_:signer3:signature}}
(Signature)

{{N_es_:signer3:fullname}}
(Printed name)

{{Ttl_es_:signer3:title}}
(Title)

{{Dte_es_:signer3:date}}
(Date)

BY: {{Sig_es_:signer1:signature}}
(Signature)

{{N_es_:signer1:fullname}}
(Printed Name)

{{Ttl_es_:signer1:title}}
(Title)

{{Dte_es_:signer1:date}}
(Date)

BY: {{Sig_es_:signer2:signature}}
(Signature)

{{N_es_:signer2:fullname}}
(Printed name)

{{Ttl_es_:signer2:title}}
(Title)

{{Dte_es_:signer2:date}}
(Date)

EXHIBIT A

Programs covered by this Agreement:

Accounting
Actuarial Science
Addiction Neuroscience
Advertising
Alcohol & Drug Abuse
American Sign Language
Anatomy
Anatomy & Cell Biology
Anesthesia Assistant
Applied Behavioral Sciences
Applied Computer Science
Applied Health Science
Applied Science
Applied Social & Organizational Psychology
Applied Sport Science
Art Therapy
Athletic Administration/Sports Management
Athletic Training
Audiology
Banking
Behavioral, Social & Community Health
Biochemistry
Biochemistry & Molecular Biology
Biocomputing
Bioethics
Bioinformatics
Biological Sciences
Biology
Biomechanics
Biomedical Engineering
Biometric Computing
Biostatistics
Biotechnology
Business
Business Administration
Business Analytics
Business Economics & Public Policy
Business Foundations

Business Management
Business of Medicine
Cellular & Integrative Physiology
Cellular, Molecular & Cancer Biology
Chemical Biology
Chemical Informatics
Chemical Physics
Chemistry
Clinical Laboratory Science
Clinical Counseling
Clinical Informatics
Clinical Laboratory Science
Clinical Psychological Science
Clinical Psychology
Coding Technology
Cognitive Science
Communication
Communication Studies
Community Health
Comparative & International Affairs
Computational Linguistics
Computer & Information Technology
Computer Engineering
Computer Graphics Technology
Computer Information Science
Computer Information Systems
Computer Science
Computer-based Graphic Arts
Computing Security
Conflict Analysis and Resolution
Corporate & Commercial Law
Counseling and Counselor Education
Counseling and Human Services
Counseling Psychology
Cybersecurity
Cybersecurity Law & Policy
Cybersecurity Management
Cybersecurity Risk Management
Cytotechnology
Data Science
Database & Data Mining
Decision Sciences

Decision Support Modeling
Dental Assisting
Dental Hygiene
Dental Materials
Dental Science
Dental Surgery
Diagnostic Sonography
Dietetics
Digital Media
Disaster Health Management
Diversity and Intercultural Competency
Dynamical Systems in Cognitive Science
E-Business
Economic Consulting
Economic Development
Economics
Electronic Media
Endodontics
Energy
English
Entrepreneurship
Entrepreneurship & Corporate Innovation
Entrepreneurship & Innovation
Environmental & Natural Resource
Management
Environmental & Sustainability Studies
Environmental Chemistry, Toxicology & Risk
Assessment
Environmental Health
Environmental Health Science
Environmental Management
Environmental Policy & Natural Resources
Management
Environmental Quality & Toxicology
Environmental Science
Environmental Sustainability
Environmental Systems Analysis & Modeling
Epidemiology
Ergonomics
Ethnography of Communication
Events Management
Evolution, Ecology & Behavior

Exercise Physiology
Exercise Science
Facilities Management
Family Health
Finance
Fitness and Wellness
Food Studies
Fundamentals of Data Analytics
Gender Studies
General Business
General Engineering
General Studies
Genetics
Geography
Geological Sciences
Gerontology
Gerontology & Health
Gerontology Studies
Global Business Achievement
Global Health Leadership
Global Human Diversity
Global Supply Chain Management
Graphic Design
Hazard Materials Management
Health & Rehabilitation Science
Health Administration
Health Behavior
Health Care Management
Health Communication
Health Data Science
Health Humanities
Health Informatics
Health Information Administration
Health Information Management
Health Information Security
Health Information Systems Architecture
Health Law
Health Management
Health Physics
Health Policy
Health Policy & Management
Health Promotion

Health Science
Health Services Management
Health Systems Management
Healthcare Documentation
Healthcare Engineering Technology
Management
Healthcare Management & Policy
Healthcare Operational Excellence
Hispanic Studies
History
History & Philosophy of Science
History & Philosophy of Science & Medicine
Histotechnology
Human Biology
Human Computer Interaction
Human Life Science
Human Performance
Human Recourses Development
Human Resources Management
Human Resources
Humanities
Industrial Organization Psychology
Informatics
Informatics for Public Health Professionals
Information Architecture
Information Assurance & Security
Information Privacy Law & Policy
Information Science
Information Systems
Information Technology
Information Technology Management
Integrated New Media Studies
Intellectual Property Law
Intelligent Systems Engineering
International Business Administration
International Development
International Management
International Studies
Journalism
Juridical Science
Kinesiology
Labor Studies

Laboratory Science
Language & Speech
Latin American Affairs
Law
Law & Democracy
Law & Public Policy
Leadership
Leadership in Health Systems
Leadership Studies
Legal Studies
Leisure Behavior
Liberal Studies
Linguistics
Logic, Language & Computing
Management
Management and Human Organization
Management Information Systems
Marketing
Mass Communication
Mathematics
Maxillo-Facial Prosthodontics
Media
Media & Public Affairs
Media Arts & Sciences
Medical & Molecular Genetics
Medical Biophysics
Medical Coding
Medical Coding Technology
Medical Humanities & Health Studies
Medical Imaging Technology
Medical Management
Medical Neuroscience
Medical Physics
Medical Science
Mental Health Counseling
Mental Health Counseling and Counselor
Education
Microbiology
Microbiology & Immunology
Modeling in Cognitive Science
Molecular Cellular & Developmental Biology
Motor Learning/Control

Music Therapy
Network Security
Network Technology
Neural Sciences
Neuroscience
New Media
New Venture & Business Development
Nonprofit Management
Nonprofit Management & Leadership
Nuclear Medicine Technology
Nursing
Nutrition & Dietetics
Nutrition Science
Occupational Therapy
Operations & Systems Management
Operations Management
Ophthalmic Technician
Optometric Technology/Opticianry
Optometry
Oral & Maxillofacial Surgery
Organizational Behavior
Organizational Communication
Organizational Leadership & Communication
Organizational Leadership & Supervision
Orthodontics
Outdoor Recreation
Outdoor Recreation, Parks, & Human Ecology
Paralegal Studies
Paramedic Science
Pathology
Pediatric Dentistry
Periodontics
Pharmacology
Philanthropic Studies
Philosophy
Philosophy/Computer Science
Philosophy/Political Science
Philosophy/Religious Studies
Physical Activity
Physical Therapy
Physician Assistant Studies
Physics

Physiology
Plant Sciences
Policy Analysis
Policy Studies
Political Science
Pre-Art Therapy
Pre-Dentistry
Pre-expressive Therapy
Pre-Law
Pre-Medicine
Pre-Occupational Therapy
Pre-Optometry
Pre-Pharmacy
Pre-Physical Therapy
Pre-Physician Assistant
Pre-Podiatry
Production/Operations Management
Professional Health Education
Professional Sales
Program Leadership & Evaluation
Prosthodontics
Psychology
Psychology of Business
Public & Nonprofit Management
Public Administration and Health
Management
Public Affairs
Public Health
Public Health Administration
Public Health Dental Hygiene
Public Policy
Public Policy Analysis
Public Relations
Public Safety
Public, Nonprofit, & Community Recreation
Race-Ethnic Studies
Radiation Therapy
Radiography
Radiological Sciences
Real Estate
Recreation
Recreation Administration

Recreational Therapy
Rehabilitation & Disability Studies
Religious Studies
Respiratory Therapy
Safety
Safety Management
School Counseling
School Psychology
Second Language Studies
Secure Computing
Social & Behavioral Science
Social Research & Health Medicines
Social Work
Sociology
Software Engineering
Speech & Hearing Sciences
Speech Communication
Statistical Science
Statistics
Strategic Analysis Accounting Information
Strategic Finance
Strategic Human Resources
Strategic Management
Strategic Management Consulting
Supervision
Supply Chain & Operations
Supply Chain Management
Sustainability & Sustainable Development
Sustainability Studies
Taxation
Technical Writing
Therapeutic Outdoor Recreation Programs
Tourism, Hospitality & Event Management
Toxicology
Urban Studies
Vision Science
Visual Communication Design
Web Programming
Women & Gender Studies
Writing
Youth Development

EXHIBIT B

Monroe County Departments include :

Assessor
Auditor
Aviation
Building
Clerk
Commissioner
Coroner
Council
Courts
Emergency Management
Employee Services
Extension
Health
Highway
Sheriff's Office and Jail
Legal
Parks and Recreation
Planning
Probation and Community Corrections
Prosecutor
Public Defender
Recorder
Technical Services
Veterans Affairs
Weights and Measures
Youth Service Bureau



Monroe County Board of Commissioners Agenda Request Form

Date to be heard

Formal ☒

Work session ☐

Department

Title to appear on Agenda:

Vendor #

Executive Summary:

The Monroe County Board of Commissioners and the Monroe County Council wish to support the activities of the local Economic Development Corporation. BEDC provides the community and the county with an inventory of land and buildings suitable for employment, ensuring proper infrastructure, zoning and other needs are in place. They also provide ongoing outreach for business attraction, expansion, and retention. All important to the continued viability of our community and it's workforce.

The Monroe County Council has already appropriated the requested \$30,000 in their budget for 2024.

Fund Name(s):

Fund Number(s):

Amount(s)

Presenter:

Speaker(s) for Zoom purposes:

Name(s)

Phone Number(s)

(the speaker phone numbers will be removed from the document prior to posting)

Attorney who reviewed:

AGREEMENT
between
MONROE COUNTY
and the
BLOOMINGTON ECONOMIC DEVELOPMENT CORPORATION

This agreement is entered into this ____ day of _____ 2024, by and between Monroe County Government (“County” or “Monroe County”) and the Bloomington Economic Development Corporation (“BEDC”).

WHEREAS, Monroe County has a significant interest in the retention, attraction, and development of high-quality, high-wage jobs in Monroe County; and

WHEREAS, Monroe County is an essential part of a regional economy, yet has interests and concerns that may be separate from other political entities in the region; and

WHEREAS, the BEDC seeks to serve as the catalyst for retention, development and attraction of quality jobs in Bloomington, Ellettsville, and across Monroe County;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **Term of Agreement.** This agreement shall become effective upon the date of execution by all parties and continue through 12/31/2024 unless terminated prior to that date pursuant to Section 8 or extended pursuant to Section 11 herein.

2. **Funding.** The County agrees to provide the BEDC \$30,000 per annum toward items listed in Section 3 and pursuant to the terms listed herein. The County’s funding contribution is subject to the appropriation and availability of funds. If funds for the County’s contribution are not forthcoming or are insufficient, through the failure of any entity—including the County—then the County shall have the right to terminate its contribution without penalty.

1. Business retention, expansion, and attraction (BREA) services:

a. Purpose: Grow quality employment across Monroe County, with an emphasis on developing key traded sector clusters (eg. life sciences, technology, advanced manufacturing, defense).

b. BEDC services: The BEDC provides BREA services to Monroe County through the BEDC Business Development Director and President who lead BREA efforts, supported by the Communications & Membership Director.

BREA services include:

- i. **Sites:** Maintain an inventory of land and buildings for employment growth across Monroe County. Ensure site readiness for employment growth on target sites by working with partners to ensure proper infrastructure, zoning, and other needs are in place. Develop materials (e.g. site

selection booklet, website, quarterly business reviews, other collateral) to promote these sites to employers and site selectors for target industries.

ii. **Business retention and expansion (BRE):**

1. **Retention and expansion:** Conduct ongoing outreach to local traded sector employers to (a) identify factors that help or hinder their ability to grow and sustain quality employment, (b) strategize on ways to address challenges, (c) connect them to sites and state and local resources to aid in employment growth, and (d) help them navigate local government processes to support their expansion, such as incentives or permitting.
2. **Retention:** Support traded sector companies and staff facing layoffs. Available BEDC support includes (a) connections to resources to support the company and impacted staff, (b) information on local employers that can hire affected staff, and (c) communications planning and outreach to ensure local stakeholders are apprised of changes due to layoffs.

iii. **Business attraction:** Ensure employers in our target sectors are aware of and select Monroe County for their locations and expansions. Raise awareness among site selectors of our top sites for employment growth. Document and promote potential attraction incentives that are available to prospects (eg. access to training and workforce, resources to support employment growth, state and local tax incentives, etc.)

iv. **Monroe County Airport support:** Regularly consult the Monroe County Airport on ways to develop airport property for business attraction purposes, with the goal of supporting local employment growth while building revenue for the airport. Submit airport properties for business attraction projects. Feature airport properties in site promotion materials.

v. **Bloomington Life Sciences Partnership (BLSP).**

1. **Purpose:** Support the local life sciences employment ecosystem
2. **Background and benefit to Monroe County:** approximately 8,000-10,000 individuals work in life sciences in Monroe County, which is a significant driver for tax revenue and employment
3. **Ongoing BEDC work:**
 - a. **Life science promotion:** Continue to promote local life science companies through promotional materials
 - b. **Student outreach:** Continue to co-organize an annual life science-related career event with the IU Kelley School of Business - Center for the Business of Life Sciences.
 - c. **Talent pipelines and workforce tours:** Continue work with Indiana University, Ivy Tech, and local life sciences companies to develop awareness and avenues for connecting with the future workforce.

- d. **Responding to market realities:** Continue to meet with support life sciences companies and their staff as described in BRE above (section 1b.ii).
- 4. **Technology cluster development and support for innovation**
 - a. **Purpose:** Prepare the local economy for the future by (1) developing advanced industries such as technology, (2) diversifying the local employment base, and (3) redeveloping former industrial sites.
 - b. **Benefit to Monroe County:** This benefits the larger Monroe County community and region by growing the tech employment cluster, which includes 40+ tech companies based within the county.
 - c. **Ongoing BEDC work:**
 - i. **Target tech industries** for business attraction, in areas that most complement community strengths and assets like microelectronics, AI/machine learning, robotics, software as a service, etc.
 - ii. **Bloomington Technology Partnership (BTP).** Continue management of the online Bloomington Technology Partnership (BTP) portal (bloomingtontech.com), which includes a tech job board.
 - iii. **Trades District Technology Center:** Help the development of the local tech industry by supporting the promotion of the Trades District among other sites for employment, which serves the broader Monroe County community.
- 2. **Additional activities benefitting Monroe County:** The BEDC continues the following activities that also benefit economic development in Monroe County:
 - a. **Monroe County promotion and information sharing:**
 - i. **Newsletters:** BEDC shares two weekly newsletters,
 - 1. Monroe County government meetings are highlighted each week in the “In Monroe County” newsletter and Monroe County press releases, bids RFPs and other announcements are shared through the News Around BTown newsletter.
 - ii. **Social media:** Monroe County government news related to economic development is also shared through the BEDC’s active social media channels.
 - iii. **Website:** Planned BEDC website updates in 2024 will also feature more data on Monroe County for economic development purposes, highlight Monroe County sites, and link back to County government resources.

b. Economic Vitality Project scorecard and strategies:

- i. Track the broader Monroe County community's economic vibrancy and help shape shared community strategies to achieve economic vitality.
- ii. The EVP steering committee currently includes 2 of 15 seats that are allocated to Monroe County representatives: Commissioner Penny Githens and Monroe County Councilor Geoff McKim.

4) Acknowledgement of County Support. Recognizing and acknowledging the County's membership in and support of the BEDC orally in formal meetings of the BEDC's membership and on print and web promotional materials through the following statement: The BEDC is a not-for-profit corporation dedicated to the retention, development, and attraction of quality jobs in Monroe County. The BEDC is funded through memberships from private industry, Monroe County, the City of Bloomington, Town of Ellettsville, Indiana University, and Ivy Tech Community College- Bloomington. Grant support is provided by the City of Bloomington and Monroe County.

5) Participation in the BEDC Executive Committee. Provide two ex officio appointments to the BEDC Executive Committee, one by the Monroe County Board of Commissioners and one by the Monroe County Council.

6) Deliverables. Prior to January 31, 2025, the BEDC will provide to the County a report regarding the status and accomplishments in each of the items listed in Section 3. Updates on BEDC outcomes are also posted in quarterly business reviews on the BEDC website at bloomingtonedc.com/news.

7) Supervision and Independent Contractor Status. The status of BEDC employees providing services pursuant to this Agreement as employees of the BEDC shall not be affected in any way by this Agreement. Said employees shall be subject solely to supervision by their BEDC supervisors. During the entire term of this Agreement, the BEDC shall be an independent contractor, and in no event shall any of its personnel, agents or subcontractors be construed to be, or represent themselves to be, employees of the County. The BEDC shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment and any other federal, state or local taxes required to be withheld from employees or payable on behalf of employees.

8) Indemnity. BEDC shall indemnify and hold harmless the County against all claims, actions, damages, liability and expenses, including reasonable attorneys' fees and court costs, which may occur as a result of acts or omissions by its officers, directors, agents, employees, successors and assigns, in the performance of this Agreement. The BEDC's indemnification of the County hereunder shall be limited to the amount of funds provided by the County to BEDC under this Agreement.

9) Records. Each party shall retain all records related to this Agreement for a period of

at least three years for the termination of this Agreement. Each party shall permit the other access to all records relating to this Agreement at all reasonable times for review and audit purposes.

10) Termination of Agreement. This agreement may be terminated in whole or in part by either party at any time for any reason by sending the other party written notice via certified mail, return receipt requested, at least thirty (30) days prior to the date of termination. Termination of the Agreement shall not affect any liabilities that accrued between the parties prior to the termination.

11) Nondiscrimination. As part of this Agreement, BEDC shall comply with County Ordinance _____ and all other federal, state and local laws and regulations regarding non-discrimination in all regards, including but not limited to employment practices.

12) Notice to Parties. Whenever any notice, statement or other communication shall be sent to the County or BEDC, it shall be sent to the person and address named below, unless otherwise advised in writing by a party:

Notice to the BEDC: Jennifer Pearl

President

Bloomington Economic Development Corporation

1720 N Kinser Pike, Suite 001

Bloomington, IN 47404

jpearl@bloomingtonedc.com

Cell: 812-320-1003

Notice to County: Jeff Cockerill

Legal Department

100W. Kirkwood Ave

Bloomington, IN 47404

13) Extension and Renewal of Agreement. This Agreement may be renewed, renegotiated or extended upon its expiration by mutual written consent of the parties.

14) Amendment and Modification. This Agreement may be amended at any time by mutual written and signed agreement of the authorized representatives of the parties, but may not be modified in any other manner, except as expressly provided by this Agreement.

15) Governing Laws. This agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

16) Severability. If any part of this Agreement is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation,

ordinance, order or rule and the remaining provisions of this agreement shall remain in full force and effect.

17) Waiver or Breach. The Waiver by either party or breach of any provision of this Agreement by the other party, shall not operate or be construed as a waiver of any subsequent breach by the parties. No waiver shall be valid unless it is in writing and signed by an authorized representative of the waiving party.

18) Attorney's Fees. If any action is brought to enforce this Agreement, the prevailing party shall be entitled to recover reasonable costs of enforcement, including court costs and attorney Fees.

19) Verification of New Employees' Immigration Status. BEDC shall comply with provisions in Indiana Code § 22-5-1.7-1 I (b) which requires the County to obtain the following from business entities that receive grants from the County which total more than \$1,000.00:

- A sworn affidavit that affirms that the BEDC has enrolled and is participating in the E-Verify program.
- A sworn affidavit that affirms that the BEDC does not knowingly employ an unauthorized alien.
- Documentation that the BEDC has enrolled and is participating in the E-Verify Program.

The required affidavit and supporting documentation is attached to this Agreement as Exhibit A.

20) Entire Agreement. The parties agree that this Agreement contains all of the agreements, representations, and conditions made between the parties. This Agreement may not be modified except by written agreement and signed by both parties.

In witness of acceptance of all conditions contained in this agreement, the parties execute this agreement on the date entered on the first page hereof.

MONROE COUNTY

BY: _____, County Commissioner

Date: _____

BLOOMINGTON ECONOMIC DEVELOPMENT CORPORATION

BY: _____ Jennifer Pearl, President

Date: _____

EXHIBIT A
E-Verify Affidavit

The undersigned, being duly sworn, hereby affirms and says that:

1. The undersigned is the President of the BEDC.
2. The company named herein that employs the undersigned:
 - has contracted with or is seeking to contract with Monroe County to provide services;
 - OR is a subcontractor on a contract to provide services to Monroe County.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United State Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein is enrolled in and participates in the E-Verify program.

Signature

Printed name

STATE OF INDIANA)) SS: COUNTY OF MONROE)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this ____ day of _____, 2024.

Notary Public

Printed name

My Commission Expires: _____

County of Residence: _____



Monroe County Board of Commissioners Agenda Request Form

Date to be heard

Formal ☒

Work session ☐

Department

Title to appear on Agenda:

Vendor #

Executive Summary:

The change order is to allow Thermal Integrity Profiling TIP be utilized for nondestructive testing on the drilled shafts for acceptance by the Engineer. The contractor has proposed this method of testing in lieu of CSL Crosshole Sonic Logging. Allowing this type of testing will allow quantifiable results in a faster time frame. This is basically testing the integrity of the concrete. There is a zero dollar change order.

Fund Name(s):

Fund Number(s):

Amount(s)

Presenter:

Speaker(s) for Zoom purposes:

Name(s)

Phone Number(s)

(the speaker phone numbers will be removed from the document prior to posting)

Attorney who reviewed:

Monroe County Board of Commissioners Agenda Request - Grant

REQUIRED

Federal Agency

INDOT

Federal Program

Transportation

CFDA#

20.205

Federal Award Number and Year (or other ID)

Pass Through Entity:

Des #1802977

Request completed by:

Lisa Ridge

This document is to be submitted no later than the Friday at noon prior to the requested meeting date.

Each agenda request and all necessary documents to the Auditor's Office (Anita Freeman) at: afreeman@co.monroe.in.us AND to the Commissioner's Office e-mail: commrequests@co.monroe.in.us

Contract No:R -41862

Change Order No.: 001

INDIANA Department of Transportation
Construction Change Order and Time Extension Summary

Page: 1

Contract Information

District:SEYMOUR DISTRICT

Contract No.: R -41862

AE:Wren, Rachel

Letting Date:01/18/2024

PE/S:Turley, Brian

Status:Pending

Change Order Information

Date Generated: 04/12/2024

Change Order No.: 001

Date Approved: 00/00/0000

EWA: N or Force Acct: N

Reason Code: STANDARDS/SPECS CHANGE, Spec Change Only

Description: Thermal Integrity Profiling TIP Testing

Original Contract Amount \$ 18,809,968.30

Current Change Order Amount \$ 0.00

Percent: 0.000 %

Total Previous Approved Changes \$ 0.00

Percent: 0.000 %

Total Change To-Date \$ 0.00

Percent: 0.000 %

Modified Contract Amount \$ 18,809,968.30

Time Extension Information

Date Initiated 00/00/0000

Date Completed 00/00/0000

Original Contract Time

SS Completion Date 00/00/0000 or SS Calendar/Work Days 0

SP Date 00/00/0000 or SP Days

(SS = Standard Specification, SP = Special Provision)

Time Element Description:

Current Time Extension

SS Days 0 SP Days 0 SP Days Value \$ 0.00

Previous Time Approved

SS Days by AE:_____ DCE:_____ SCE:_____ DDCM:_____

SS Days_____ SP Days Value \$ _____

Revised Contract Time

SS Completion Date 00/00/0000 or SS Calendar/Work Days 0

SS Date 00/00/0000 or SP Days 0

INDIANA Department of Transportation
Construction Change Order and Time Extension Summary

Review and Approval Information

Required Approval Authority AE: _____ DCE: _____ SCE: _____ * DDCM: _____ *
(\$ per Change Order) (- LE \$ 250K-) (- LE \$ 750K -) (-- LE \$ 2 M --) (-- GT \$ 2 M --)
(Days per Contract) (50 SS days) (100 SS days) (200 SS Days) (GT 200 SS days)

Verbal Approval Required? Y / N If Y, by _____ Date Issued _____

Total Change To-Date>5%? Y / N If Y , Copy to Program Budget Manager _____

Scope/Design Recommendation Y / N If Y, Referred to Project Manager(PM) _____
Required?

Date to PM _____ Date Returned _____

Approval Authority Concurs with PM? Y / N If Y, Concurrence by _____ Date _____

If N,Resolution: Approved _____ Disapproved _____

Resolved by _____ Date _____

LPA Signatures Required? Y / N If Y, Date to LPA _____ Date Returned _____

FHWA Signatures Required? Y / N If Y, Date to FHWA _____ Date Returned _____

* Field Engineer Recommendation (Required for SCE or DDCM Approval)

Field Engineer _____ Date _____

Comments: _____

Contract No:R -41862

INDIANA

Date:04/30/2024

Change Order No:001

Department of Transportation

Page: 3

Contract: R -41862
Project: State:1802977
Change Order Nbr: 001
Change Order Description: Thermal Integrity Profiling TIP Testing
Reason Code: STANDARDS/SPECS CHANGE, Spec Change Only

CLN	PCN	PLN	Item Code	Unit	Unit Price	CO Qty	Comment	Amount Change
Total Value for Change Order 001 = \$ 0.00								

Whereas, the Standard Specifications for this contract provides for such work to be performed, the following change is recommended.

General or Standard Change Order Explanation

The purpose of this change order is to allow Thermal Integrity Profiling TIP be utilized for nondestructive testing on the drilled shafts for acceptance by the Engineer. The contractor has proposed this method of testing in lieu of CSL Crosshole Sonic Logging. INDOT has allowed this change on many projects in the past. The designer of record along with the contractors testing consultant agree that results from TIP would be equivalent to the results from CSL. TIP testing will allow quantifiable results in a faster timeframe. The attached USP included with this change order will be incorporated into the contract. The Project Manager, Area Engineer and LPA were notified of this change. A contract time adjustment is not required for this change. This is a zero dollar change order.

Change Order Explanation for Specific Line Item

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It is the intent of the parties that this change order is full and complete compensation for the work describe above.

Notification and consent to this change order is hereby acknowledged.

Contractor: **Dwight Cline**
Digitally signed by Dwight Cline
DN: C=US, E=dwight@milestonetp.com,
O="Milestone Contractors", CN=Dwight Cline
Date: 2024.05.01 20:04:43-0400

Signed By: **Dwight Cline**

Date: **5/1/2024**

.....

NOTE: Other required State and FHWA signatures will be obtained electronically through the SiteManager system.

Contract No:R -41862
Change Order No:001

INDIANA
Department of Transportation

Date:04/30/2024
Page: 4

APPROVED FOR LOCAL PUBLIC AGENCY

(SIGNATURE)

(TITLE)

(DATE)


(SIGNATURE)

(TITLE)

(DATE)

SUBMITTED FOR CONSIDERATION

PE/S


Brian K. Turley

APPROVED FOR INDIANA DEPARTMENT OF TRANSPORTATION

Approval Level	Name of Approver	Date	Status
Project Engineer/Supervisor	Turley, Brian	00/00/0000	Action Pending