



CITY OF SOUTH BEND

BOARD OF PUBLIC WORKS

March 24, 2026

Mr. Matt Anderson
CMTA
9225 Priority Wat West Drive, Suite 130
Indianapolis, IN 46240
manderson@cmta.com

RE: Guaranteed Energy Savings Contract

Dear Mr. Anderson:

At its March 24, 2026 meeting, the Board of Public Works approved the above referenced contract for installation of solar energy generation and batter storage at the MLK Dream Center, Project No. 125-008B in the amount of \$369,318.

Enclosed please find a copy of the amendment for your records.

Sincerely,

/s/ Hillary Horvath

Hillary Horvath, Clerk



INTER-OFFICE MEMORANDUM

DEPARTMENT OF PUBLIC WORKS

TO: Board of Public Works
FROM: Lidya Abreha, Project Engineer
SUBJECT: Guaranteed Energy Savings Contract with CMTA for MLK Dream Center Solar
DATE: 3/17/2026

The Department of Engineering and Department of Sustainability has been negotiating a Guaranteed Energy Savings Contract with CMTA for the installation of a solar array and battery storage. The total cost of the contract for installation is \$369,318. CMTA will be responsible for Measurement and Verification Service for the guarantee period with additional annual fee as shown in Exhibit F.

Scope

- Solar array – 100.28 kWDC
- Energy Storage System (ESS) – 58.2 kWh

Timeline

- Solar coordination, material procurement: through May 2026
- Solar construction: May – July 2026

The M/WBE goals have been set by the Office of Diversity & Inclusion. MBE is 1.1% & WBE is 4.3%.

Thank you for your consideration of this request.

Please call with your questions at extension 5961.

Enc. Guaranteed Energy Savings Contract

GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACT

City of South Bend

MLK Dream Center Solar & Energy Storage System



CMTA

A **LEGENCE** Company

Executive Summary

City of South Bend
215 S Dr Martin Luther King Blvd.
Attn: Jordan Gathers
Re: Guaranteed Energy Savings Contract

Mr. Jordan Gathers,

CMTA is pleased to provide you with this proposal and contract for a guaranteed energy savings performance project for City of South Bend. The project highlights include:

1. One solar photovoltaic (PV) array to offset energy consumption at the MLK Dream Center, with a total production power of 100.28 kW DC.
2. One energy storage system (ESS) to mitigate demand charges at the MLK Dream Center, for a total installed capacity of 58.2 kWh.

Exhibit D provides additional information on the scope of work included in the project. These upgrades are offered for a price of \$369,318 and with guaranteed utility and operation cost savings of \$5,865 in the first year following construction. CMTA guarantees the savings over the 20-year term and should the project not achieve the savings identified, CMTA will reimburse City of South Bend the shortfall on an annual basis per terms of the contract. CMTA is honored for the opportunity to work with City of South Bend on this exciting project. We look forward to working with the administration, board, and staff. Please let me know if you have any questions.

Sincerely,



Matt Anderson
Solar Project Manager

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AIA® Document A141® – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the Twenty-Fourth day of March in the year Two Thousand Twenty-Six
(In words, indicate day, month and year.)

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

City of South Bend
215 S Dr Martin Luther King Blvd.
South Bend, IN 46601
Telephone Number: (574) 233-0311

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

CMTA, Inc.
9519 Civic Way, Suite 100
Prospect, KY 40059

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

MLK Dream Center
1522 Linden Street
South Bend, IN 46601

The Owner and Qualified Provider agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

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L PROJECT PLAN AND SPECIFICATIONS LIST

M WARRANTY AND TITLE

N DISTRICT ENERGY POLICY

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

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

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

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

§ 1.1.3 The Project's physical characteristics:

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

Project includes a roof mount solar array and battery energy storage system at the MLK Dream Center as detailed in the Contract Exhibits.

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

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

Not applicable.

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

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

Owner intends to pursue the Investment Tax Credit (ITC) as laid out in Section 48 of the US tax code. Therefore, all design and construction milestones for the Design-Builder's services as laid out in Section 1.1.7 in this contract were selected with the ITC in mind and are related to the Owner's intent to pursue this incentive. Any future changes to the design and construction milestone dates will take into account the ITC and will be agreed upon by both the Owner and the Design-Builder. Design-Builder is solely responsible for meeting the design and construction milestones and will not be responsible for submitting or applying for such incentive programs.

§ 1.1.6 The Owner's budget for the Work to be provided by the Qualified Provider is set forth below:
(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

Refer to the stipulated sum provisions of this contract

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

.1 Design phase milestone dates:

Not applicable

.2 Submission of Qualified Provider Proposal:

Not applicable

.3 Phased completion dates:

Not applicable

.4 Substantial Completion date:

December 31, 2026

.5 Other milestone dates:

Not applicable

§ 1.1.8 The Owner requires the Qualified Provider to retain the following Architect, Consultants and Contractors at the Qualified Provider's cost:
(List name, legal status, address and other information.)

.1 Architect

Not applicable.

.2 Consultants

Not applicable.

.3 Contractors

Not applicable.

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

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

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

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

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§ 1.1.12 If the Owner and Qualified Provider intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™–2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

Jordan Gathers, Executive Director of Venues, Parks, & Arts
215 S Dr Martin Luther King Blvd.
South Bend, IN 46601
Telephone Number: (574) 235-5601

§ 1.2.2 The persons or entities, in addition to the Owner’s representative, who are required to review the Qualified Provider’s Submittals are as follows:
(List name, address and other information.)

Telephone Number: (317) 881-0241

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

Not applicable.

§ 1.2.4 The Qualified Provider identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Matthew Anderson, Solar Project Manager
9519 Civic Way, Ste 100
Prospect, KY 40059
410-980-2191

§ 1.2.5 Neither the Owner’s nor the Qualified Provider’s representative shall be changed without ten days’ written notice to the other party.

§ 1.3 Binding Dispute Resolution

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

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

- Arbitration pursuant to Section 14.4
- Litigation in a court of competent jurisdiction
- Other: (Specify)

§ 1.4 Definitions

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

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

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

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

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Qualified Provider, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

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

§ 1.4.7 Owner. 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 term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 Qualified Provider. The Qualified Provider 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 Qualified Provider shall be a person or business experienced in the design, implementation, and installation of energy, water and wastewater conservation measures and is determined to be qualified by the Owner. The Qualified Provider shall be responsible for and shall provide the Owner with the following information regarding guaranteed energy, water, and wastewater savings contract: Project design and specifications, construction management, construction, commissioning, on-going services as require, measurement and verification of savings for guaranteed energy, water, and wastewater savings contracts, and annual reconciliation statements. The term "Qualified Provider" means the Qualified Provider or the Qualified Provider's authorized representative.

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

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

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

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

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

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

§ 1.4.15 **Contract Sum.** The Contract Sum is the amount to be paid to the Qualified Provider for performance of the Work after execution of the Contract Amendment, as identified in Article A.1 of the Contract Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Contract Amendment

§ 2.1.1 (Not Applicable)

(Paragraphs deleted)

§ 2.1.2 (Not applicable)

(Table deleted)

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Contract Amendment

§ 2.1.3.1 (Not applicable)

(Paragraphs deleted)

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

(Paragraphs deleted)

For the Qualified Provider's performance of the Work after execution of the Contract Amendment, the Owner shall pay to the Qualified Provider the Contract Sum in current funds as agreed in the Contract Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE QUALIFIED PROVIDER CONTRACT

§ 3.1 General

§ 3.1.1 The Qualified Provider shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

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

§ 3.1.3 The Qualified Provider shall perform the Work in accordance with the Contract Documents. The Qualified Provider shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents by the activities, tests, inspections or approvals of the Owner.

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

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

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

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

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

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

§ 3.1.8 Progress Reports

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

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner; .9 Cumulative total of the Cost of the Work to

(Paragraphs deleted)

date; .10 Additional information as agreed to by the Owner and Qualified Provider.

(Paragraphs deleted)

§ 3.1.9 Qualified Provider's Schedules

(Paragraphs deleted)

§ 3.1.9.1 The Qualified Provider, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Qualified Provider shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

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

§ 3.1.11 Qualified Provider's Submittals

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

§ 3.1.11.2 By providing Submittals the Qualified Provider represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related

thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.

§ 3.1.11.3 The Qualified Provider shall perform no portion of the Work for which the Contract Documents require Submittals until the Owner has approved the respective Submittal.

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

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

§ 3.1.12 **Warranty.** The Qualified Provider warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Qualified Provider 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 or otherwise expressly permitted by the Contract Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Qualified Provider's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Qualified Provider, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Qualified Provider shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 **Royalties, Patents and Copyrights**

§ 3.1.13.1 The Qualified Provider shall pay all royalties and license fees.

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

§ 3.1.14 **Indemnification**

§ 3.1.14.1 To the fullest extent permitted by law, the Qualified Provider shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Qualified Provider, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

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

§ 3.1.15 Contingent Assignment of Agreements

- § 3.1.15.1 Each agreement for a portion of the Work is assigned by the Qualified Provider to the Owner, provided that
- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Qualified Provider and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
 - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Qualified Provider's rights and obligations under the agreement.

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

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

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

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE

(Paragraphs deleted)

CONTRACT AMENDMENT (Not applicable)

(Paragraphs deleted)

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE CONTRACT AMENDMENT

§ 5.1 Construction Documents

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

§ 5.2 Construction

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

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

§ 5.2.3 The Qualified Provider shall supervise and direct the Work, using the Qualified Provider's best skill and attention. The Qualified Provider shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

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

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Contract Documents, the Qualified Provider 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.

- .1 The Qualified Provider may use water, gas, and electricity from the building for Work of facility alterations, system modifications, or system replacements. Temporary wiring, piping, and hoses required to complete the Work shall be provided and paid for by the Qualified Provider.

§ 5.3.2 When a material or system is specified in the Contract Documents, the Qualified Provider may make substitutions only in accordance with Article 6.

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

§ 5.4 Taxes

The Qualified Provider shall pay sales, consumer, use and similar taxes, for the Work provided by the Qualified Provider, that are legally enacted when the Contract Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Contract Documents, the Qualified Provider shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Qualified Provider 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.

§ 5.5.3 Concealed or Unknown Conditions. The Qualified Provider is responsible for completing the project regardless of concealed or unknown conditions. No Change Orders will be allowed for concealed or unknown conditions.

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

(Paragraphs deleted)

Adjustments in Contract Sum for these days are not allowed.

(Paragraphs deleted)

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Qualified Provider shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Qualified Provider shall not be required to contract with anyone to whom the Qualified Provider has made reasonable and timely objection.

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

§ 5.7.3 Except for those persons or entities already identified or required in the Contract Amendment, the Qualified Provider, as soon as practicable after execution of the Contract Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design)

proposed for each principal portion of the Work. The Owner may reply within 14 days to the Qualified Provider in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Qualified Provider, the Qualified Provider shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity 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 person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Qualified Provider has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

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

§ 5.9 Use of Site

The Qualified Provider 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.

§ 5.10 Cutting and Patching

The Qualified Provider shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Qualified Provider shall not unreasonably withhold from the Owner or a separate contractor the Qualified Provider's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

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

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

§ 5.12 Access to Work

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

§ 5.13 Construction by Owner or by Separate Contractors

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

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces.

§ 5.13.1.2 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 Qualified Provider, who shall cooperate with them. The Qualified Provider shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Qualified Provider shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Qualified Provider, separate contractors and the Owner until subsequently revised.

§ 5.13.1.3 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 separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Qualified Provider under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Qualified Provider 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 Qualified Provider's construction and operations with theirs as required by the Contract Documents.

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

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

§ 5.14.4 The Qualified Provider shall promptly remedy damage the Qualified Provider wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Qualified Provider has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 No Change Orders will be allowed for any found conditions or other items that are found, discovered, or identified while the Qualified Provider is performing the Scope of Work included in the project, with the single exception of Hazardous Materials per section 10.3 of this contract. The Qualified Provider is responsible for providing the finished project and the associated energy and operational savings at no increase in Contract Amount. The only Change Orders that may be allowed are (1) requests from the Owner for additional scope that is clearly not included in this Contract, such as additional equipment replacements, additional buildings, etc. and (2) for Hazardous Materials per section 10.3 of this contract.

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

§ 6.1.3 A Change Order shall be based upon agreement between the Owner and Qualified Provider. The Owner may issue a Change Directive without agreement by the Qualified Provider.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Qualified Provider stating their agreement upon all of the following:

- .1 The change in the Work;

- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Contract Amendment, the adjustment in the Qualified Provider's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

(Paragraphs deleted)

§ 6.3 (Not applicable)

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Qualified Provider's schedule agreed to by the Owner. The Owner shall furnish to the Qualified Provider, within 15 days after receipt of a written request, information necessary and relevant for the Qualified Provider to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

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

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

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

§ 7.2.4 The Owner shall cooperate with the Qualified Provider in securing building and other permits, licenses and inspections.

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

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

§ 7.2.7 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner shall communicate through the Qualified Provider with persons or entities employed or retained by the Qualified Provider.

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

(Paragraphs deleted)

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Contract Documents, all of which remain the

responsibility of the Qualified Provider as required by the Contract Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Qualified Provider of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Contract Documents, the Owner shall notify the Qualified Provider of any non-conformance with the Contract Documents the Owner discovers.

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

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

§ 7.6 The Owner has the authority to reject Work that does not conform to the Contract Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Qualified Provider, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 7.8 Owner's Right to Stop Work

If the Qualified Provider fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Qualified Provider 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 Qualified Provider or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Qualified Provider defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Qualified Provider the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Qualified Provider are not sufficient to cover such amounts, the Qualified Provider shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

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

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

§ 8.1.3 The Qualified Provider shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Qualified Provider is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Qualified Provider's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

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

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

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Contract Amendment.

§ 9.2 Schedule of Values

The Qualified Provider, prior to the first Application for Payment after execution of the Contract Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Qualified Provider's Applications for Payment.

§ 9.3 Applications for Payment

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

§ 9.3.1.1 (Not applicable)

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably 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 Qualified Provider 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 Qualified Provider warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Qualified Provider 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 Qualified Provider's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Qualified Provider, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

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

§ 9.5 Decisions to Withhold Certification

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

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

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

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Qualified Provider and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Qualified Provider to whom the Qualified Provider failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

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

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

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

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

§ 9.6.5 Qualified Provider payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Qualified Provider, within the time required by the Contract Documents, then the Qualified Provider may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Qualified Provider's reasonable costs of shut-down, 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. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

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

§ 9.8.3 Upon receipt of the Qualified Provider's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Qualified Provider'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 Qualified Provider shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Qualified Provider shall then submit a request for another inspection by the Owner to determine Substantial Completion.

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

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Qualified Provider will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Qualified Provider for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Qualified Provider 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.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Qualified Provider to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the 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 Qualified Provider, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Qualified Provider 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 Qualified Provider considers a portion substantially complete, the Qualified Provider shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Qualified Provider 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 Qualified Provider.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Qualified Provider 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 Qualified Provider's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Qualified Provider submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Qualified Provider knows of no substantial 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) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Qualified Provider, refuses to furnish a release or waiver required by the Owner, the Qualified Provider may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Qualified Provider shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

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

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Qualified Provider 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 Qualified Provider shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .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 Qualified Provider or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Qualified Provider; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Qualified Provider 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 Qualified Provider 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 notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 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 Qualified Provider shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Qualified Provider 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 Qualified Provider, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Qualified Provider is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Qualified Provider. The foregoing obligations of the Qualified Provider are in addition to the Qualified Provider's obligations under Section 3.1.14.

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

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

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

§ 10.3 Hazardous Materials

§ 10.3.1 The Qualified Provider is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Qualified Provider 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 Qualified Provider, the Qualified Provider shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

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

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

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

§ 10.3.5 The Qualified Provider shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Qualified Provider brings to the site and negligently handles, or (2) where the Qualified Provider 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 Qualified Provider, the Qualified Provider 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 indemnify the Qualified Provider for all cost and expense thereby incurred.

§ 10.4 Emergencies

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

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Qualified Provider has covered to determine if the Work has been performed in accordance with the Contract Documents. If such Work is in accordance with the Contract Documents, the Owner and Qualified Provider shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering

and correcting the Work shall be at the Qualified Provider's expense and the Qualified Provider shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

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

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Qualified Provider's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found not to be in accordance with the requirements of the Contract Documents, the Qualified Provider shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Qualified Provider a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Qualified Provider and give the Qualified Provider an opportunity to make the correction, the Owner waives the rights to require correction by the Qualified Provider and to make a claim for breach of warranty. If the Qualified Provider fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

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

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

§ 11.2.3 The Qualified Provider 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 Qualified Provider nor accepted by the Owner.

§ 11.2.4 The Qualified Provider shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Qualified Provider's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Qualified Provider has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Qualified Provider 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 Qualified Provider's liability with respect to the Qualified Provider's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the 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 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Qualified Provider, including those in electronic form, are Instruments of Service. The Qualified Provider, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their

respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Qualified Provider and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Qualified Provider and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Qualified Provider grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Contract Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Qualified Provider rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

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

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Contract Amendment

§ 13.1.1 (Not applicable)

§ 13.2 Termination or Suspension Following Execution of the Contract Amendment

§ 13.2.1 Termination by the Qualified Provider

(Paragraphs deleted)

§ 13.2.1.1 The Qualified Provider may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Qualified Provider, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Qualified Provider, 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 Owner has not issued a Certificate for Payment and has not notified the Qualified Provider of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Qualified Provider promptly, upon the Qualified Provider's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Qualified Provider may terminate the Contract if, through no act or fault of the Qualified Provider, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Qualified Provider, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Qualified Provider may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Qualified Provider or any other persons or entities performing portions of the Work under contract with the Qualified Provider 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 Qualified Provider may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Qualified Provider

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

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Qualified Provider and the Qualified Provider's surety, if any, seven days' written notice, terminate employment of the Qualified Provider and may, subject to any prior rights of the surety:

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

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Qualified Provider shall not be entitled to receive further payment until the Work is finished.

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

§ 13.2.3 Suspension by the Owner for Convenience

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

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

§ 13.2.4 Termination by the Owner for Convenience

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

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Qualified Provider shall

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

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Qualified Provider shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Qualified Provider arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

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

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Qualified Provider must be initiated by written notice to the other party 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.

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

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Qualified Provider shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Qualified Provider intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Qualified Provider intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Qualified Provider's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

§ 14.1.7 Claims for Consequential Damages

The Qualified Provider 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 Qualified Provider for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Qualified Provider initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

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

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

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

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

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

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

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

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

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

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

§ 14.4.4 Consolidation or Joinder

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

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

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

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

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

§ 15.2 Successors and Assigns

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

§ 15.2.2 The Owner may, without consent of the Qualified Provider, 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 Qualified Provider shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Qualified Provider, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Qualified Provider, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Qualified Provider, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Qualified Provider, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

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

§ 15.4 Rights and Remedies

§ 15.4.1 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.

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

§ 15.5 Tests and Inspections

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

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

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

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Qualified Provider and promptly delivered to the Owner.

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

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

§ 15.6 Confidential Information

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

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

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

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the 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.

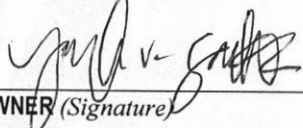
§ 15.8.2 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

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

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Qualified Provider
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 Exhibit C, Scope of Services and Energy Conservation
- .5 Exhibit D, Energy Savings Guarantee
- .6 Exhibit E, Annual Reconciliation Statement
- .7 Exhibit F, Support Services
- .8 Exhibit G, Sample AIA Application for Payment
- .9 Exhibit H, Project Plans and Specifications List
- .10 Exhibit I, Warranty and Title

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



OWNER (Signature)
Jordan Gathers, Executive Director of Venues,
Parks, & Arts

(Printed name and title)

QUALIFIED PROVIDER (Signature)
Matthew Anderson, Solar Project Manager

(Printed name and title)

**CITY OF SOUTH BEND, INDIANA
BOARD OF PUBLIC WORKS**




Elizabeth A. Maradik, President




Murray L. Miller, Member




Abigail E. Magas, Member



Joseph R. Molnar, Vice President



Breana N. Micou, Member



Attest: Candy Bermudez, Acting Clerk

Date: March 24, 2026

Init.

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

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

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PAGE 1

AGREEMENT made as of the Twenty-Fourth day of March in the year Two Thousand Twenty-Six

...

City of South Bend
215 S Dr Martin Luther King Blvd.
South Bend, IN 46601
Telephone Number: (574) 233-0311

and the ~~Design Builder~~:Qualified Provider:

...

CMTA, Inc.
9519 Civic Way, Suite 100
Prospect, KY 40059

...

MLK Dream Center
1522 Linden Street
South Bend, IN 46601

The Owner and ~~Design Builder~~:Qualified Provider agree as follows.

PAGE 2

3 **GENERAL REQUIREMENTS OF THE WORK OF THE ~~DESIGN-BUILD~~ GUARANTEED ENERGY SAVINGS CONTRACT**

4 **WORK PRIOR TO EXECUTION OF THE ~~DESIGN-BUILD~~ CONTRACT AMENDMENT**

5 **WORK FOLLOWING EXECUTION OF THE ~~DESIGN-BUILD~~ CONTRACT AMENDMENT**

...

A **~~DESIGN-BUILD~~ CONTRACT AMENDMENT**

...

C **~~SUSTAINABLE PROJECTS~~ NOT USED**

D **SCOPE OF SERVICES AND ENERGY CONSERVATION MEASURES**

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User Notes:

(1631801195)

- E UTILITY BASELINE DATA
- F ENERGY SAVINGS GUARANTEE
- G ANNUAL RECONCILIATION STATEMENT EXAMPLE
- H SUPPORT SERVICES
- I ANTICIPATED PROGRESS AND PAYMENT SCHEDULE
- J SAMPLE AIA APPLICATION FOR PAYMENT
- K SCHEDULE OF VALUES
- L PROJECT PLAN AND SPECIFICATIONS LIST
- M WARRANTY AND TITLE
- N DISTRICT ENERGY POLICY

PAGE 3

Project includes a roof mount solar array and battery energy storage system at the MLK Dream Center as detailed in the Contract Exhibits.

...

Not applicable.

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

...

Owner intends to pursue the Investment Tax Credit (ITC) as laid out in Section 48 of the US tax code. Therefore, all design and construction milestones for the Design-Builder's services as laid out in Section 1.1.7 in this contract were selected with the ITC in mind and are related to the Owner's intent to pursue this incentive. Any future changes to the design and construction milestone dates will take into account the ITC and will be agreed upon by both the Owner and the Design-Builder. Design-Builder is solely responsible for meeting the design and construction milestones and will not be responsible for submitting or applying for such incentive programs.

§ 1.1.6 The Owner's budget for the Work to be provided by the ~~Design-Builder~~ Qualified Provider is set forth below:
PAGE 4

Refer to the stipulated sum provisions of this contract

...

Not applicable

.2 Submission of ~~Design-Builder~~ Qualified Provider Proposal:

Not applicable

...

Not applicable

...

December 31, 2026

...

Not applicable

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

...

Not applicable.

...

Not applicable.

...

Not applicable.

...

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

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

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

§ 1.1.12 If the ~~Design-Builder and Contractor-Owner and Qualified Provider~~ intend to transmit Instruments of Service or any other information or documentation in digital form, ~~or utilize building information modeling, they shall endeavor to establish written protocols governing the development, use, transmission, reliance, and exchange of digital data, including they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.~~

PAGE 5

Jordan Gathers, Executive Director of Venues, Parks, & Arts
215 S Dr Martin Luther King Blvd.
South Bend, IN 46601
Telephone Number: (574) 235-5601

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

...

Telephone Number: (317) 881-0241

...

Not applicable.

§ 1.2.4 The ~~Design-Build-Contract~~ Qualified Provider identifies the following representative in accordance with Section 3.1.2:

...

Matthew Anderson, Solar Project Manager
9519 Civic Way, Ste 100
Prospect, KY 40059
410-980-2191

§ 1.2.5 Neither the Owner's nor the ~~Design-Build-Contract~~ Qualified Provider's representative shall be changed without ten days' written notice to the other party.

...

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

[] Arbitration pursuant to Section 14.4

...

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

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

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

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

§ 1.4.5 ~~Instruments of Service~~. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the ~~Design-Build-Contract~~ Qualified Provider, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 ~~Submittal~~. A Submittal is any submission to the Owner for review and approval demonstrating how the ~~Design-Build-Contract~~ Qualified Provider proposes to conform to the ~~Design-Build-Contract~~ Documents for those portions of the Work for which the ~~Design-Build-Contract~~ Documents require Submittals. Submittals include, but are not limited

to, shop drawings, product data, and samples. Submittals are not ~~Design-Build-Contract Documents~~ unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the ~~Design-Build-Contract Documents~~ as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 Design-Builder. ~~The Design-Builder~~ **Qualified Provider.** The Qualified Provider is the person or entity identified as such in the Agreement and is referred to throughout the ~~Design-Build-Contract Documents~~ as if singular in number. ~~The term "Design-Builder" means the Design-Builder or the Design-Builder's~~ The Qualified Provider shall be a person or business experienced in the design, implementation, and installation of energy, water and wastewater conservation measures and is determined to be qualified by the Owner. The Qualified Provider shall be responsible for and shall provide the Owner with the following information regarding guaranteed energy, water, and wastewater savings contract: Project design and specifications, construction management, construction, commissioning, on-going services as require, measurement and verification of savings for guaranteed energy, water, and wastewater savings contracts, and annual reconciliation statements. The term "Qualified Provider" means the Qualified Provider or the Qualified Provider's authorized representative.

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

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

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

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

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

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

...

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

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the ~~Design-Build Amendment~~ shall be made monthly. For the ~~Design-Builder's~~ performance of Work prior to the execution of the ~~Design-Build Amendment~~, the Owner shall compensate the ~~Design-Builder~~ as follows: **(Not Applicable)** *(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the ~~Design-Build Amendment~~, state the amount of the limit.)*

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

§ 2.1.2 (Not applicable)
Individual or Position

Rate

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Contract Amendment

~~§ 2.1.3.1~~ Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design Builder and the Design Builder's Architect, Consultants, and Contractors, as follows: **(Not applicable)**

- ~~.1~~ — Transportation and authorized out-of-town travel and subsistence;
- ~~.2~~ — Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- ~~.3~~ — Fees paid for securing approval of authorities having jurisdiction over the Project;
- ~~.4~~ — Printing, reproductions, plots, standard form documents;
- ~~.5~~ — Postage, handling and delivery;
- ~~.6~~ — Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- ~~.7~~ — Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- ~~.8~~ — All taxes levied on professional services and on reimbursable expenses; and
- ~~.9~~ — Other Project related expenditures, if authorized in advance by the Owner.

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

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

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

~~§ 2.1.4.1~~ Payments are due and payable upon presentation of the Design Builder's invoice. Amounts unpaid (~~—~~) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design Builder.

(Insert rate of monthly or annual interest agreed upon.)

~~—~~%

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

...

- ~~.8~~ Status report of Work rejected by the Owner; ~~.9~~ Status of Claims previously submitted in accordance with Article 14;
- ~~.10~~ Cumulative total of the Cost of the Work to date including the ~~Design-Builder's~~ compensation and Reimbursable Expenses, if any;
- ~~.11~~ Current Project cash flow and forecast reports; and
- ~~.12~~ date; ~~.10~~ Additional information as agreed to by the Owner and ~~Design-Builder-Qualified Provider~~.

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

- ~~.1~~ ~~Design-Builder's~~ work force report;
- ~~.2~~ ~~Equipment utilization report~~; and **§ 3.1.9 Qualified Provider's Schedules**
- ~~.3~~ Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 ~~Design-Builder's~~ Schedules

§ 3.1.9.1 The ~~Design-Builder~~, **§ 3.1.9.1** The ~~Qualified Provider~~, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the ~~Design-Build-Contract Documents~~, shall be

revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the ~~Design-Build-Contract~~ Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

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

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

§ 3.1.11 ~~Design-Builder's Submittals~~ § 3.1.11 **Qualified Provider's Submittals**

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

§ 3.1.11.2 By providing Submittals the ~~Design-Builder-Qualified Provider~~ represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the ~~Design-Build-Contract~~ Documents.

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

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

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

§ 3.1.12 **Warranty.** The ~~Design-Builder-Qualified Provider~~ warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the ~~Design-Build-Contract~~ Documents require or permit otherwise. The ~~Design-Builder-Qualified Provider~~ further warrants that the Work will conform to the requirements of the ~~Design-Build-Contract~~ Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the ~~Design-Build-Contract~~ Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The ~~Design-Builder's-Qualified~~

Provider's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, Qualified Provider, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder-Qualified Provider shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

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

...

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder-Qualified Provider shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Qualified Provider, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

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

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder-Qualified Provider and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and

...

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's-Qualified Provider's rights and obligations under the agreement.

...

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

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

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

~~§ 4.1 General~~

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

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

~~§ 4.2 Evaluation of the Owner's Criteria~~

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

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

- ~~.1 — allocations of program functions, detailing each function and their square foot areas;~~
- ~~.2 — a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;~~
- ~~.3 — a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and~~ **CONTRACT AMENDMENT (Not applicable)**
- ~~.4 — the following:~~

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

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

~~§ 4.3 Preliminary Design~~

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

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

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

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

§ 4.4 Design-Builder's Proposal

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

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

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

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

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD CONTRACT AMENDMENT

§ 5.1 Construction Documents

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

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

...

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

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

~~§ 5.2.3~~ The Design-Builder-Qualified Provider shall supervise and direct the Work, using the Design-Builder's Qualified Provider's best skill and attention. The Design-Builder-Qualified Provider shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build-Contract Documents give other specific instructions concerning these matters.

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

...

§ 5.3.1 Unless otherwise provided in the ~~Design-Build-Contract Documents~~, the ~~Design-Builder-Qualified Provider~~ 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.

.1 The Qualified Provider may use water, gas, and electricity from the building for Work of facility alterations, system modifications, or system replacements. Temporary wiring, piping, and hoses required to complete the Work shall be provided and paid for by the Qualified Provider.

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

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

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The ~~Design-Builder-Qualified Provider~~ shall pay sales, consumer, use and similar taxes, for the Work provided by the ~~Design-Builder-Qualified Provider~~, that are legally enacted when the ~~Design-Build-Contract Amendment~~ is executed, whether or not yet effective or merely scheduled to go into effect.

...

§ 5.5.1 Unless otherwise provided in the ~~Design-Build-Contract Documents~~, the ~~Design-Builder-Qualified Provider~~ shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The ~~Design-Builder-Qualified Provider~~ 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.

§ 5.5.3 **Concealed or Unknown Conditions.** If the ~~Design-Builder~~ encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the ~~Design-Build Documents~~ or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the ~~Design-Build Documents~~, the ~~Design-Builder~~ shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the ~~Design-Builder's~~ cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the ~~Design-Build Documents~~ and that no change in the terms of the Contract is justified, the Owner shall promptly notify the ~~Design-Builder~~ in writing, stating the reasons. If the ~~Design-Builder~~ disputes the Owner's determination or recommendation, the ~~Design-Builder~~ may proceed as provided in Article 14. The Qualified Provider is responsible for completing the project regardless of concealed or unknown conditions. No Change Orders will be allowed for concealed or unknown conditions.

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

§ 5.6 Allowances

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

§ 5.6.2 ~~Unless otherwise provided in the Design-Build Documents, Adjustments in Contract Sum for these days are not allowed.~~

~~.1 — allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;~~

~~.2 — the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and~~

~~.3 — whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.~~

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

§ 5.7.1 ~~The Design-Builder-Qualified Provider shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder-Qualified Provider shall not be required to contract with anyone to whom the Design-Builder-Qualified Provider has made reasonable and timely objection.~~

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

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

§ 5.7.3.1 ~~If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder-Qualified Provider, the Qualified Provider shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity 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 person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder-Qualified Provider has acted promptly and responsively in submitting names as required.~~

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

...

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

...

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

...

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

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

...

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

...

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

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

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

§ 5.13.1.4 Unless otherwise provided in the ~~Design-Build Documents~~, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the ~~Design-Builder~~ under the Contract. ~~§ 5.13.1.3~~ 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 separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Qualified Provider under the Contract.

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

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

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

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

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

...

~~If a dispute arises among the Design-Builder-Qualified Provider, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.~~

...

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

~~§ 6.1.1 No Change Orders will be allowed for any found conditions or other items that are found, discovered, or identified while the Qualified Provider is performing the Scope of Work included in the project, with the single exception of Hazardous Materials per section 10.3 of this contract. The Qualified Provider is responsible for providing the finished project and the associated energy and operational savings at no increase in Contract Amount. The only Change Orders that may be allowed are (1) requests from the Owner for additional scope that is clearly not included in this Contract, such as additional equipment replacements, additional buildings, etc. and (2) for Hazardous Materials per section 10.3 of this contract.~~

~~§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Contract Documents.~~

~~§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. A Change Order shall be based upon agreement between the Owner and Qualified Provider. The Owner may issue a Change Directive without agreement by the Qualified Provider.~~

...

A Change Order is a written instrument signed by the Owner and ~~Design-Builder~~ Qualified Provider stating their agreement upon all of the following:

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- ~~.2~~ .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the ~~Design-Build Contract Amendment~~, the adjustment in the ~~Design-Builder's~~ Qualified Provider's compensation; and

...

~~§ 6.3 Change Directives~~

~~§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.~~

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

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

- ~~.1~~ .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- ~~.2~~ .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- ~~.3~~ .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- ~~.4~~ .4 As provided in Section 6.3.7.

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

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

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

~~§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the~~

Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

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

~~§ 6.3.8~~ The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

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

~~§ 6.3 (Not applicable)~~

...

~~§ 7.1.2~~ The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's Qualified Provider's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, Qualified Provider, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder-Qualified Provider to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

...

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

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

...

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

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

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

§ 7.2.7 Prior to the execution of the ~~Design-Build Amendment~~, the ~~Design-Builder~~ may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the ~~Design-Build Documents~~ and the ~~Design-Builder's Proposal~~. Thereafter, the ~~Design-Builder~~ may only request such evidence if (1) the Owner fails to make payments to the ~~Design-Builder~~ as the ~~Design-Build Documents~~ require; (2) a change in the Work materially changes the Contract Sum; or (3) the ~~Design-Builder~~ identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the ~~Design-Builder~~. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner shall communicate through the Qualified Provider with persons or entities employed or retained by the Qualified Provider.

§ 7.2.8 ~~Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.~~ The Owner shall purchase and maintain insurance as set forth in Exhibit B.

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

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

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

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

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

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

§ 7.6 The Owner has the authority to reject Work that does not conform to the ~~Design-Build-Contract Documents~~. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the ~~Design-Builder-Qualified Provider~~, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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If the ~~Design-Builder-Qualified Provider~~ fails to correct Work which is not in accordance with the requirements of the ~~Design-Build-Contract Documents~~ as required by Section 11.2 or persistently fails to carry out Work in accordance with the ~~Design-Build-Contract Documents~~, the Owner may issue a written order to the ~~Design-Builder-Qualified Provider~~ to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the ~~Design-Builder-Qualified Provider~~ or any other person or entity, except to the extent required by Section 5.13.1.3.

...

If the ~~Design-Builder-Qualified Provider~~ defaults or neglects to carry out the Work in accordance with the ~~Design-Build-Contract Documents~~ and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the ~~Design-Builder-Qualified Provider~~ the reasonable cost of correcting such deficiencies. If payments then or thereafter due the ~~Design-Builder-Qualified Provider~~ are not sufficient to cover such amounts, the ~~Design-Builder-Qualified Provider~~ shall pay the difference to the Owner.

...

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

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

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

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

...

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

...

The Contract Sum is stated in the ~~Design-Build-Contract Amendment~~.

...

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

...

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

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

(Not applicable)

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

~~§ 9.3.2~~ Unless otherwise provided in the ~~Design-Build-Contract Documents~~, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the ~~Design-Builder-Qualified Provider~~ 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 ~~Design-Builder-Qualified Provider~~ warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The ~~Design-Builder-Qualified Provider~~ further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the ~~Design-Builder's-Qualified Provider's~~ knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the ~~Design-Builder, Qualified Provider, Architect, Consultants, Contractors,~~

material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

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

...

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

...

- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the ~~Design-Builder-Qualified Provider~~;
- .3 failure of the ~~Design-Builder-Qualified Provider~~ to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;

...

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

...

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the ~~Design-Builder-Qualified Provider~~ and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the ~~Design-Builder-Qualified Provider~~ to whom the ~~Design-Builder-Qualified Provider~~ failed to make payment for Work properly performed or material or equipment suitably delivered.

...

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

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

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

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

§ 9.6.5 ~~Design-Builder-Qualified Provider~~ payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

~~§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision. Contract Documents.~~

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If the Owner does not issue a Certificate for Payment, through no fault of the ~~Design-Builder, Qualified Provider~~, within the time required by the ~~Design-Build-Contract Documents~~, then the ~~Design-Builder-Qualified Provider~~ may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the ~~Design-Builder's-Qualified Provider's~~ reasonable costs of shut-down, delay and start-up, plus interest as provided for in the ~~Design-Build-Contract Documents~~.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the ~~Design-Build-Contract Documents~~ so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

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

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

~~Design-Builder-Qualified Provider~~ shall then submit a request for another inspection by the Owner to determine Substantial Completion.

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

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

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

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§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the ~~Design-Builder-Qualified Provider~~, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and ~~Design-Builder-Qualified Provider~~ have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the ~~Design-Build-Contract Documents~~. When the ~~Design-Builder-Qualified Provider~~ considers a portion substantially complete, the ~~Design-Builder-Qualified Provider~~ shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the ~~Design-Builder-Qualified Provider~~ to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and ~~Design-Builder-Qualified Provider~~.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and ~~Design-Builder-Qualified Provider~~ shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

...

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the ~~Design-Builder-Qualified Provider~~ submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the ~~Design-Build-Contract Documents~~ to remain in force after final payment is currently in effect, (3) a written statement that the ~~Design-Builder-Qualified Provider~~ knows of no substantial reason that the insurance will not be renewable to cover the period required by the ~~Design-Build-Contract Documents~~, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field

changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the ~~Design-Builder, Qualified Provider~~, refuses to furnish a release or waiver required by the Owner, the ~~Design-Builder-Qualified Provider~~ may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the ~~Design-Builder-Qualified Provider~~ shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

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

...

- .2 failure of the Work to comply with the requirements of the ~~Design-Build-Contract Documents~~; or
- .3 terms of special warranties required by the ~~Design-Build-Contract Documents~~.

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

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The ~~Design-Builder-Qualified Provider~~ shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

...

§ 10.2.1 The ~~Design-Builder-Qualified Provider~~ shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

...

- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the ~~Design-Builder-Qualified Provider~~ or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the ~~Design-Builder, Qualified Provider~~; and

...

§ 10.2.2 The ~~Design-Builder-Qualified Provider~~ 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 ~~Design-Builder-Qualified Provider~~ 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 notify owners and users of adjacent sites and utilities of the safeguards and protections.

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

§ 10.2.5 The ~~Design-Build-Qualified Provider~~ shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the ~~Design-Build-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 ~~Design-Build-Qualified Provider~~, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the ~~Design-Build-Qualified Provider~~ is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the ~~Design-Build-Qualified Provider~~. The foregoing obligations of the ~~Design-Build-Qualified Provider~~ are in addition to the ~~Design-Build-Qualified Provider's~~ obligations under Section 3.1.14.

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

§ 10.2.7 The ~~Design-Build-Qualified Provider~~ shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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

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§ 10.3.1 The ~~Design-Build-Qualified Provider~~ is responsible for compliance with any requirements included in the ~~Design-Build-Contract Documents~~ regarding hazardous materials. If the ~~Design-Build-Qualified Provider~~ encounters a hazardous material or substance not addressed in the ~~Design-Build-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 ~~Design-Build-Qualified Provider~~, the ~~Design-Build-Qualified Provider~~, the ~~Qualified Provider~~ shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

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

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the ~~Design-Build-Qualified Provider~~, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or

expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

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

§ 10.3.5 The ~~Design-Builder~~ Qualified Provider shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the ~~Design-Builder~~ Qualified Provider brings to the site and negligently handles, or (2) where the ~~Design-Builder~~ Qualified Provider 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 ~~Design-Builder~~, the ~~Design-Builder~~ Qualified Provider, the Qualified Provider is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the ~~Design-Build-Contract~~ Documents, the Owner shall indemnify the ~~Design-Builder~~ Qualified Provider for all cost and expense thereby incurred.

...

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

...

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

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

...

§ 11.2.2.1 In addition to the ~~Design-Builder's~~ Qualified Provider's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the ~~Design-Build-Contract~~ Documents, any of the Work is found not to be in accordance with the requirements of the ~~Design-Build-Contract~~ Documents, the ~~Design-Builder~~ Qualified Provider shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the ~~Design-Builder~~ Qualified Provider a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the ~~Design-Builder~~ Qualified Provider and give the ~~Design-Builder~~ Qualified Provider an opportunity to make the correction, the Owner waives the rights to require correction by the ~~Design-Builder~~ Qualified Provider and to make a claim for breach of warranty. If the ~~Design-Builder~~ Qualified Provider fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

...

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

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

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

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

...

If the Owner prefers to accept Work that is not in accordance with the requirements of the ~~Design-Build-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.

...

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

§ 12.2 The ~~Design-Builder-Qualified Provider~~ and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the ~~Design-Builder-Qualified Provider~~ grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the ~~Design-Build-Contract Documents~~. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the ~~Design-Builder-Qualified Provider~~ rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The ~~Design-Builder-Qualified Provider~~ shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the ~~Design-Builder-Qualified Provider~~ to satisfy its obligations to the Owner under this Article 12. The ~~Design-Builder's-Qualified Provider's~~ licenses from the Architect and its Consultants and

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

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

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

~~§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.~~ **(Not applicable)**

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

§ 13.2 Termination or Suspension Following Execution of the Contract Amendment

§ 13.2.1 Termination by the Qualified Provider

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

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

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

~~§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.~~

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

~~§ 13.2.1 Termination by the Design-Builder~~

~~§ 13.2.1.1~~ **~~§ 13.2.1.1~~** The ~~Design-Builder~~ **~~§ 13.2.1.1~~** The ~~Qualified Provider~~ may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the ~~Design-Builder, Qualified Provider~~, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the ~~Design-Builder, Qualified Provider~~, for any of the following reasons:

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- ~~.3~~ Because the Owner has not issued a Certificate for Payment and has not notified the ~~Design-Builder Qualified Provider~~ of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the ~~Design-Build-Contract Documents~~; or
- ~~.4~~ The Owner has failed to furnish to the ~~Design-Builder-Qualified Provider~~ promptly, upon the ~~Design-Builder's-Qualified Provider's~~ request, reasonable evidence as required by Section 7.2.7.

~~§ 13.2.1.2~~ The ~~Design-Builder-Qualified Provider~~ may terminate the Contract if, through no act or fault of the ~~Design-Builder, Qualified Provider~~, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the ~~Design-Builder, Qualified Provider~~, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

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

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

...

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

...

- ~~.3~~ fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the ~~Design-Builder, Qualified Provider~~;

...

- ~~.5~~ is otherwise guilty of substantial breach of a provision of the ~~Design-Build-Contract Documents~~.

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

- ~~.1~~ Exclude the ~~Design-Builder-Qualified Provider~~ from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the ~~Design-Builder, Qualified Provider~~;

...

- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the ~~Design-Builder, Qualified Provider~~, the Owner shall furnish to the ~~Design-Builder-Qualified Provider~~ a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

...

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

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- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the ~~Design-Builder-Qualified Provider~~ is responsible; or

...

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the ~~Design-Builder-Qualified Provider~~ shall

...

§ 13.2.4.3 In case of such termination for the Owner's convenience, the ~~Design-Builder-Qualified Provider~~ shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

...

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and ~~Design-Builder-Qualified Provider~~ arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

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

...

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or ~~Design-Builder-Qualified Provider~~ must be initiated by written notice to the other party 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.

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

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the ~~Design-Builder-Qualified Provider~~ shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the ~~Design-Build Contract Documents~~.

§ 14.1.5 Claims for Additional Cost. If the ~~Design-Builder-Qualified Provider~~ intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

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

...

The ~~Design-Builder-Qualified Provider~~ and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

...

- .2 damages incurred by the ~~Design-Builder-Qualified Provider~~ for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the ~~Design-Build-Contract Documents~~.

...

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and ~~Design-Builder-Qualified Provider~~ initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

...

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

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

...

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

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§ 14.2.7 In the event of a Claim against the ~~Design-Builder-Qualified Provider~~, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a ~~Design-Builder's-Qualified Provider's~~ default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

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

...

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

§ 15.2.2 The Owner may, without consent of the ~~Design-Builder-Qualified Provider~~, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the ~~Design-Build-Contract Documents~~. The ~~Design-Builder-Qualified Provider~~ shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the ~~Design-Builder-Qualified Provider~~, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the ~~Design-Builder-Qualified Provider~~, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the ~~Design-Builder-Qualified Provider~~, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The ~~Design-Builder-Qualified Provider~~, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

...

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

§ 15.4.2 No action or failure to act by the Owner or ~~Design-Builder-Qualified Provider~~ shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

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§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the ~~Design-Build-Contract Documents~~ and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the ~~Design-Builder-Qualified Provider~~ shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The ~~Design-Builder-Qualified Provider~~ shall give the Owner timely notice of when and where tests and inspections are to be made so that

the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the ~~Design-Builder-Qualified Provider~~.

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

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

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

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

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

...

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

...

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

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

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- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and ~~Design-Builder-Qualified Provider~~

...

- .4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completedExhibit C, Scope of Services and Energy Conservation
- .5 AIA Document E202™-2022, BIM Exhibit for Sharing Models with Project Participants, Where Model Versions May Not be Enumerated as a Contract Document, if completed, or the following:Exhibit D, Energy Savings Guarantee
- .6 Exhibit E, Annual Reconciliation Statement
- .7 Exhibit F, Support Services
- .8 Exhibit G, Sample AIA Application for Payment

~~.6~~ ~~Other:~~ .9 Exhibit H, Project Plans and Specifications List

.10 Exhibit I, Warranty and Title

...



OWNER (Signature)

Jordan Gathers, Executive Director of Venues,
Parks, & Arts

DESIGN-BUILDER-QUALIFIED PROVIDER (Signature)

Matthew Anderson, Solar Project Manager

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 its associated Additions and Deletions Report and this certification at 07:32:08 ET on 03/23/2026 under Order No. 4104246198 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA[®] Document A141[®] – 2014 Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141TM-2014, Standard Form of Agreement Between Owner and Qualified Provider dated the Twenty-Fourth day of March in the year Two Thousand Twenty-Six (the "Agreement") (In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

MLK Dream Center
1522 Linden Street
South Bend, IN 46601

THE OWNER:

(Name, legal status and address)

City of South Bend
215 S Dr Martin Luther King Blvd.
South Bend, IN 46601

THE QUALIFIED PROVIDER:

(Name, legal status and address)

CMTA, Inc.
9519 Civic Way, Suite 100
Prospect, KY 40059

The Owner and Qualified Provider hereby amend the Agreement as follows.

TABLE OF ARTICLES

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

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Qualified Provider the Contract Sum in current funds for the Qualified Provider's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Qualified Provider for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

Stipulated Sum, in accordance with Section A.1.2 below

ADDITIONS AND DELETIONS:

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

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

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

Init.

[] Cost of the Work plus the Qualified Provider's Fee, in accordance with Section A.1.3 below

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

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

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be Three-hundred sixty-nine thousand three-hundred eighteen dollars and zero cents (\$369,318.00), subject to authorized adjustments as provided in the Contract Documents. This amount shall include all construction costs as well as all Owner direct purchase orders.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

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

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

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the 1st day of the month, the Owner shall make payment of the certified amount to the Qualified Provider not later than the 2nd day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty-one (31) days after the Owner receives the Application for Payment.

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

§ A.1.5.1.4 (Not applicable)

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

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

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

§ A.1.5.2 Progress Payments—Stipulated Sum

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

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

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10%) on the Work. Pending final determination of cost to the Owner of Changes in the Work;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

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

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and

(Paragraph deleted)

- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Qualified Provider, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

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

(Paragraph deleted)

- .1 When Owner direct Purchase Orders are used, retainage that would otherwise be held on materials and equipment shall transfer to the Qualified Provider, and the material suppliers will be paid the full amount of their invoices. The Owner shall retain ten percent (10%) from each Application for Payment, and an amount equal to ten percent (10%) of approved Purchase Order payments, up to fifty percent (50%) completion of the Work, then, provided the Work is on schedule and satisfactory, the Owner may at their sole discretion approve a reduction in retainage to five percent (5%) of the completed work plus Owner direct Purchase Orders. No part of the five percent (5%) retainage shall be paid until after Substantial Completion of the Work. After Substantial Completion of the Work of designated portion thereof, and with consent of Surety, the Owner shall release applicable retainage except for Work that is incomplete or deficient. The minimum lump sum retainage shall be twice the estimated cost to correct deficient or incomplete work.

(Paragraphs deleted)

§ A.1.5.3 (Not Applicable)

§ A.1.5.4 (Not Applicable)

§ A.1.5.5 Final Payment

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

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Qualified Provider's final accounting within 30 days after the Qualified Provider delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Qualified Provider's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final

Certificate for Payment, or notify the Qualified Provider in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

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

§ A.2.2 The Qualified Provider shall achieve Substantial Completion of the Work not later than
(Paragraphs deleted)
(Row deleted)

December 31, 2026

(Paragraphs deleted)

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

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

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

Document	Title	Date	Pages
Exhibit C	Scope of Services and Energy Conservation		
Exhibit D	Energy Savings Guarantee		
Exhibit E	Annual Reconciliation Statement		
Exhibit F	Support Services		
Exhibit G	Sample AIA Application for Payment		
Exhibit H	Project Plans and Specifications List		
Exhibit I	Warranty and Title		
Exhibit J	MWBE Participation		

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

Refer to Exhibit H

Section	Title	Date	Pages
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§ A.3.1.3 The Drawings:
(Either list the drawings here or refer to an exhibit attached to this Amendment.)

Refer to Exhibit H

Number	Title	Date
--------	-------	------

§ A.3.1.4
(Paragraphs deleted)
Allowances and Contingencies: (None)

§ A.3.1.5 Qualified Provider’s assumptions and clarifications:

(Paragraphs deleted)None

§ A.3.1.6 To the extent the Qualified Provider shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

(Paragraphs deleted)

ARTICLE A.4 QUALIFIED PROVIDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Qualified Provider's key personnel are identified below:

(Identify name, title and contact information.)

.1 Project Manager

Matthew Anderson
9519 Civic Way, Suite 100
Prospect, KY 40059
502-409.4062

.2 Construction Manager

Jason Tyler
9519 Civic Way, Suite 100
Prospect, KY 40059
502-409-4062

§ A.4.2 The Qualified Provider shall retain the following Consultants, Contractors and suppliers, identified below:

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

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract (Not applicable)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

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

(Paragraphs deleted)

(Not applicable)

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Rebates resulting from work in this Contract shall be paid to the Owner. Tax credits or deductions resulting from this Contract that the Owner is not eligible to receive due to tax-exempt status will be passed on to the project designers and/or engineers as allowed by all applicable federal laws.

(Paragraph deleted)

§ A.5.4 Other Agreements

(Paragraph deleted)

§ A.5.4.1 Agreements between the Qualified Provider and Contractors shall conform to the applicable payment provisions of the Contract Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Qualified Provider and a Contractor is awarded on a cost plus a fee basis, the Qualified Provider shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Qualified Provider in Section A.5.5, below.

§ A.5.4.2 The agreements between the Qualified Provider and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

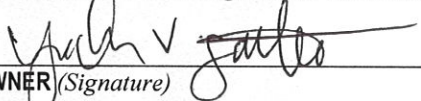
§ A.5.5 Accounting Records

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

§ A.5.6 Relationship of the Parties

The Qualified Provider accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Qualified Provider's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

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



OWNER *(Signature)*
Jordan Gathers, Executive Director of Venues,
Parks, and Arts

(Printed name and title)

QUALIFIED PROVIDER *(Signature)*
Matthew Anderson, Solar Project Manager

(Printed name and title)

Init.
/

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 07:32:00 ET on 03/23/2026.

PAGE 1

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and ~~Design-Builder~~ Qualified Provider dated the Twenty-Fourth day of March in the year Two Thousand Twenty-Six (the "Agreement")

...

MLK Dream Center
1522 Linden Street
South Bend, IN 46601

...

City of South Bend
215 S Dr Martin Luther King Blvd.
South Bend, IN 46601

...

THE DESIGN-BUILDER-QUALIFIED PROVIDER:

...

CMTA, Inc.
9519 Civic Way, Suite 100
Prospect, KY 40059

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

...

A.4 ~~DESIGN-BUILDER'S~~ QUALIFIED PROVIDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

...

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

...

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

- [] Cost of the Work plus the ~~Design-Builder's Qualified Provider's~~ Fee, in accordance with Section A.1.3 below
- [] Cost of the Work plus the ~~Design-Builder's Qualified Provider's~~ Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

PAGE 2

§ A.1.2.1 The Stipulated Sum shall be (~~\$—~~), ~~Three-hundred sixty-nine thousand three-hundred eighteen dollars and zero cents (\$369,318.00)~~, subject to authorized adjustments as provided in the ~~Design-Build Documents-Contract Documents~~. ~~This amount shall include all construction costs as well as all Owner direct purchase orders.~~

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

§ A.1.2.3 Unit prices, if any:
(Identify item, state the unit price, and state any applicable quantity limitations.)

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

§ A.1.3 Cost of the Work Plus Design-Builder's Fee

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

§ A.1.3.2 The Design-Builder's Fee:

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

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

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

§ A.1.4.2 The Design-Builder's Fee:

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

§ A.1.4.3 Guaranteed Maximum Price

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

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

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

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

(Provide information below or reference an attachment.)

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

§ A.1.4.3.4 Unit Prices, if any:
(Identify item, state the unit price, and state any applicable quantity limitations.)

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

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

...

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

...

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the 1st day of the month, the Owner shall make payment of the certified amount to the ~~Design-Builder-Qualified Provider~~ not later than the 2nd day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty-one (31) days after the Owner receives the Application for Payment.

...

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the ~~Design-Builder~~ shall submit payrolls, petty-cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the ~~Design-Builder~~ on account of the Cost of the Work equal or exceed (1) progress payments already received by the ~~Design-Builder~~, less (2) that portion of those payments attributable to the ~~Design-Builder's Fee~~; plus (3) payrolls for the period covered by the present Application for Payment. **(Not applicable)**

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

§ A.1.5.1.6 In taking action on the ~~Design-Builder's-Qualified Provider's Applications~~ for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the ~~Design-Builder-Qualified Provider~~ and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or

continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the ~~Design-Builder~~ Qualified Provider has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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

PAGE 3

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

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ~~percent (—%)~~ ten percent (10%) on the Work. Pending final determination of cost to the Owner of Changes in the ~~Work~~, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement; Work;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ~~percent (—%);~~ ten percent (10%);

...

(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)

- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the ~~Design-Builder, Qualified Provider~~, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

...

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

- .1 When Owner direct Purchase Orders are used, retainage that would otherwise be held on materials and equipment shall transfer to the Qualified Provider, and the material suppliers will be paid the full amount of their invoices. The Owner shall retain ten percent (10%) from each Application for Payment, and an amount equal to ten percent (10%) of approved Purchase Order payments, up to fifty percent (50%) completion of the Work, then, provided the Work is on schedule and satisfactory, the Owner may at their sole discretion approve a reduction in retainage to five percent (5%) of the completed work plus Owner direct Purchase Orders. No part of the five percent (5%) retainage shall be paid until after Substantial Completion of the Work. After Substantial Completion of the Work of designated portion thereof, and with consent of Surety, the Owner shall release applicable retainage except for Work that is incomplete or deficient. The minimum lump sum retainage shall be twice the estimated cost to correct deficient or incomplete work.

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

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

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

- .1 ~~Take the Cost of the Work as described in Article A.5 of this Amendment;~~

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

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

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

~~§ A.1.5.4.1~~ Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

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

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

§ A.1.5.3 (Not Applicable)

§ A.1.5.4 (Not Applicable)

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

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

PAGE 4

§ A.2.2 The ~~Design-Builder-Qualified Provider~~ shall achieve Substantial Completion of the Work not later than (—) days from the date of this Amendment, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work

Substantial Completion Date

December 31, 2026

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

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

...

<u>Exhibit C</u>	<u>Scope of Services and Energy Conservation</u>
<u>Exhibit D</u>	<u>Energy Savings Guarantee</u>
<u>Exhibit E</u>	<u>Annual Reconciliation Statement</u>
<u>Exhibit F</u>	<u>Support Services</u>
<u>Exhibit G</u>	<u>Sample AIA Application for Payment</u>
<u>Exhibit H</u>	<u>Project Plans and Specifications List</u>
<u>Exhibit I</u>	<u>Warranty and Title</u>
<u>Exhibit J</u>	<u>MWBE Participation</u>

...

Refer to Exhibit H

...

Refer to Exhibit H

...

§ A.3.1.4 The Sustainability Plan, if any:

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

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

Other identifying information:

Allowances and Contingencies: (None)

§ A.3.1.5 ~~Allowances and Contingencies:~~ Qualified Provider's assumptions and clarifications:
(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

~~.1~~ Allowances

~~.2~~ Contingencies

None

§ A.3.1.6 ~~Design Builder's assumptions and clarifications:~~ To the extent the Qualified Provider shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

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

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

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

ARTICLE A.4 QUALIFIED PROVIDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 ~~The Design Builder's~~ Qualified Provider's key personnel are identified below:

...

~~.1~~ Superintendent-Project Manager

Matthew Anderson
9519 Civic Way, Suite 100
Prospect, KY 40059
502-409.4062

.2 Project Construction Manager

Jason Tyler
9519 Civic Way, Suite 100
3—Others Prospect, KY 40059
502-409-4062

§ A.4.2 The Design-Build-er Qualified Provider shall retain the following Consultants, Contractors and suppliers, identified below:

...

§ A.5.1 Cost To Be Reimbursed as Part of the Contract (Not applicable)

§ A.5.1.1 Labor Costs

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

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

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

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

§ A.5.1.1.3 Wages and salaries of the Design-Build-er’s supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.5.1.1.4 Costs paid or incurred by the Design-Build-er for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Build-er or paid to the Architect or any Consultant, Contractor or supplier, with the Owner’s prior approval.

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

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

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

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work or, at the Owner’s option, shall be sold by the Design-Build-er. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Build-er at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Build-er shall mean fair market value.

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

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

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

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

§ A.5.1.5 Miscellaneous Costs

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

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

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

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

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

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

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

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

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

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

~~§ A.5.1.6 Other Costs and Emergencies~~

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

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

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

~~§ A.5.1.7 Related Party Transactions~~

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

~~§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design Builder and a related party, the Design Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.~~

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

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

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

~~...~~

~~§ A.5.3.1 Cash discounts obtained on payments made by the Design Builder shall accrue to the Owner if (1) before making the payment, the Design Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design Builder with which to make payments; otherwise, cash discounts shall accrue to the Design Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design Builder shall make provisions so that they can be obtained. Rebates resulting from work in this Contract shall be paid to the Owner. Tax credits or deductions resulting from this Contract that the Owner is not eligible to receive due to tax-exempt status will be passed on to the project designers and/or engineers as allowed by all applicable federal laws.~~

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

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

~~§ A.5.4.2~~ A.5.4.1 Agreements between the Design-Builder-Qualified Provider and Contractors shall conform to the applicable payment provisions of the Design-Build-Contract Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design-Builder-Qualified Provider and a Contractor is awarded on a cost plus a fee basis, the Design-Builder-Qualified Provider shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder-Qualified Provider in Section A.5.5, below.

~~§ A.5.4.3~~ A.5.4.2 The agreements between the Design-Builder-Qualified Provider and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

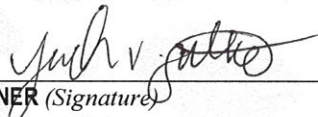
PAGE 6

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

...

The Design-Builder-Qualified Provider accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's-Qualified Provider's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

...


OWNER (Signature)

Jordan Gathers, Executive Director of Venues,
Parks, and Arts

DESIGN-BUILDER-QUALIFIED PROVIDER (Signature)

Matthew Anderson, Solar Project Manager

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 its associated Additions and Deletions Report and this certification at 07:32:00 ET on 03/23/2026 under Order No. 4104246198 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014 Exhibit A, Design-Build Amendment, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA® Document A141® – 2014 Exhibit B

Insurance and Bonds

for the following PROJECT:

(Name and location or address)

MLK Dream Center
1522 Linden Street
South Bend, IN 46601

THE OWNER:

(Name, legal status and address)

City of South Bend
215 S Dr Martin Luther King Blvd.
South Bend, IN 46601

THE QUALIFIED PROVIDER:

(Name, legal status and address)

CMTA, Inc.
9519 Civic Way, Suite 100
Prospect, KY 40059

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Qualified Provider(hereinafter, the Agreement), dated the Twenty-Fourth day of March in the year Two Thousand Twenty-Six.

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

TABLE OF ARTICLES

- B.1 GENERAL**
- B.2 QUALIFIED PROVIDER'S INSURANCE AND BONDS**
- B.3 OWNER'S INSURANCE**
- B.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE B.1 GENERAL

The Owner and Qualified Provider shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

ARTICLE B.2 QUALIFIED PROVIDER'S INSURANCE AND BONDS

§ B.2.1 The Qualified Provider shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Qualified Provider shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

ADDITIONS AND DELETIONS:

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

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

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

§ B.2.1.1

Insurance Required by Exhibit A—Article A.11, shall be no less than the following limits, or greater if required by law:

- .1 Worker’s Compensation:**
 - a. State** Statutory
 - b. Applicable Federal** Statutory
 - c. Employer’s Liability** \$500,000
- .2 Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractor’s Protection; Product Liability and Completed Operations: Broad Form Property Damage):**
 - a. General Aggregate (except Products-Completed Operations)** \$2,000,000
 - b. Products-Completed Operations Aggregate** \$1,000,000
 - c. Personal/Advertising Injury (per person/organization)** \$1,000,000
 - d. Each Occurrence (Bodily Injury and Property Damage)** \$1,000,000
 - e. Exclusions of Property in Contractor’s Care, Custody, or Control shall be eliminated.**
 - f. Property Damage Liability Insurance shall provide Coverage for Explosion, Collapse, and underground Damage.**
- .3 Contractual Liability:**
 - a. General Aggregate** \$2,000,000
 - b. Each Occurrence (Bodily Injury and Property Damage)** \$1,000,000
- .4 Automobile Liability:**
 - a. Bodily Injury** \$500,000 each person
\$1,000,000 each accident
 - b. Property Damage** \$500,000 each accident, or
a combined single limit of
\$1,000,000
- .5 Liability coverage for the Owner shall be provided by endorsement as additional insureds on the Qualified Provider’s Liability Policy.**
- .6 Excess Liability Umbrella Form:**
 - a. General Aggregate** \$2,000,000
 - b. Each Occurrence** \$2,000,000

- .7 There shall be an endorsement in each of the above policies as follows:
 "It is hereby agreed that in the event of a claim arising under this policy, the company may not deny liability by reason of the insured being a state, county, municipal corporation or governmental agency."

(Paragraphs deleted)

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

§ B.2.1.10 Certificates of Insurance. The Qualified Provider shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner’s written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Qualified Provider’s primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Qualified Provider with reasonable promptness.

§ B.2.2 Performance Bond and Payment Bond

The Qualified Provider shall provide surety bonds as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Performance and Payment Bonds written on AIA Document A312-2010, Performance Bond and Payment Bond	100% of the Contract Amount Sum including Owner’s Direct Purchase Orders

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

§ B.2.2.2 Coverage under the Performance and Payment Bond shall not extend to the Energy Savings Guarantee, as set forth in Exhibit F, or any related provisions.

ARTICLE B.3 OWNER’S INSURANCE

§ B.3.1 Owner’s Liability Insurance

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

§ B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Contract Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder’s risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Contract Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Qualified Provider, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who

are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Qualified Provider's services and expenses required as a result of such insured loss.

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ B.3.2.1.3 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Qualified Provider shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

(Paragraph deleted)

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Qualified Provider, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Qualified Provider shall be named insureds.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Qualified Provider in writing prior to any construction that is part of the Work. The Qualified Provider may then obtain insurance that will protect the interests of the Owner, Qualified Provider, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Qualified Provider is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 Loss of Use Insurance. At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Qualified Provider for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Qualified Provider a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Qualified Provider of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.3.2.7 Waivers of Subrogation. The Owner and Qualified Provider waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Qualified Provider, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Qualified Provider shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Qualified Provider, and by appropriate agreements, written where legally required for validity, the Qualified Provider shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Qualified Provider. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Qualified Provider after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Qualified Provider as the method of binding dispute resolution in the Agreement. If the Owner and Qualified Provider have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ B.3.2.11 The Owner's insurance coverage shall not apply to Qualified Provider's property.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

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

None.

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 07:31:51 ET on 03/23/2026.

PAGE 1

MLK Dream Center
1522 Linden Street
South Bend, IN 46601

...

City of South Bend
215 S Dr Martin Luther King Blvd.
South Bend, IN 46601

...

~~THE DESIGN-BUILDER:QUALIFIED PROVIDER:~~

...

CMTA, Inc.
9519 Civic Way, Suite 100
Prospect, KY 40059

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the ~~Design-Builder~~ hereinafter, Qualified Provider ~~hereinafter, the Agreement~~, dated the Twenty-Fourth day of March in the year ~~Two Thousand Twenty-Six~~.

...

~~B.2~~ DESIGN-BUILDER'S QUALIFIED PROVIDER'S INSURANCE AND BONDS

...

The Owner and ~~Design-Builder~~ Qualified Provider shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

~~ARTICLE B.2 DESIGN-BUILDER'S INSURANCE AND BONDS~~ ARTICLE B.2 QUALIFIED PROVIDER'S INSURANCE AND BONDS

§ B.2.1 The ~~Design-Builder~~ Qualified Provider shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is

located. The ~~Design-Builder-Qualified Provider~~ shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below: *(If the ~~Design-Builder-Qualified Provider~~ is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

PAGE 2

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

Insurance Required by Exhibit A—Article A.11, shall be no less than the following limits, or greater if required by law:

- | | |
|--|---|
| <u>.1 Worker’s Compensation:</u> | |
| <u>a. State</u> | <u>Statutory</u> |
| <u>b. Applicable Federal</u> | <u>Statutory</u> |
| <u>c. Employer’s Liability</u> | <u>\$500,000</u> |
| <u>.2 Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractor’s Protection; Product Liability and Completed Operations: Broad Form Property Damage):</u> | |
| <u>a. General Aggregate (except Products-Completed Operations)</u> | <u>\$2,000,000</u> |
| <u>b. Products-Completed Operations Aggregate</u> | <u>\$1,000,000</u> |
| <u>c. Personal/Advertising Injury (per person/organization)</u> | <u>\$1,000,000</u> |
| <u>d. Each Occurrence (Bodily Injury and Property Damage)</u> | <u>\$1,000,000</u> |
| <u>e. Exclusions of Property in Contractor’s Care, Custody, or Control shall be eliminated.</u> | |
| <u>f. Property Damage Liability Insurance shall provide Coverage for</u> | |
| <u>.1</u> | <u>damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person; Explosion, Collapse, and underground Damage.</u> |
| <u>.2</u> | <u>personal injury;</u> |
| <u>.3 damages because of injury to or destruction of tangible property; Contractual Liability:</u> | |
| <u>a. General Aggregate</u> | <u>\$2,000,000</u> |
| <u>b. Each Occurrence (Bodily Injury and Property Damage)</u> | <u>\$1,000,000</u> |
| <u>.4 bodily injury or property damage arising out of completed operations; and Automobile Liability:</u> | |
| <u>a. Bodily Injury</u> | <u>\$500,000 each person</u>
<u>\$1,000,000 each accident</u> |
| <u>b. Property Damage</u> | <u>\$500,000 each accident, or</u>
<u>a combined single limit of</u>
<u>\$1,000,000</u> |
| <u>.5 contractual liability applicable to the Design-Builder’s obligations under Section 3.1.14 of the Agreement. Liability coverage for the Owner shall be provided by endorsement as additional insureds on the Qualified Provider’s Liability Policy.</u> | |
| <u>.6 Excess Liability Umbrella Form:</u> | |
| <u>a. General Aggregate</u> | <u>\$2,000,000</u> |

b. Each Occurrence

\$2,000,000

.7 There shall be an endorsement in each of the above policies as follows:

"It is hereby agreed that in the event of a claim arising under this policy, the company may not deny liability by reason of the insured being a state, county, municipal corporation or governmental agency."

~~§ B.2.1.2~~ Automobile Liability covering vehicles owned by the Design Builder and non-owned vehicles used by the Design Builder with policy limits of not less than ~~(\$)~~ per claim and ~~(\$)~~ in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

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

~~§ B.2.1.4~~ Workers' Compensation at statutory limits.

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

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

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

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

~~§ B.2.1.8~~ The Design Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design Builder shall provide such written notice within five (5) business days of the date the Design Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

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

~~§ B.2.1.10~~ **Certificates of Insurance.** The ~~Design Builder Qualified Provider~~ shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the ~~Design Builder's Qualified Provider's~~ primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the ~~Design Builder Qualified Provider~~ with reasonable promptness.

PAGE 3

The ~~Design-Builder-Qualified Provider~~ shall provide surety bonds as follows:

...

<u>Performance and Payment Bonds written on AIA Document A312-2010, Performance Bond and Payment Bond</u>	<u>100% of the Contract Amount Sum including Owner's Direct Purchase Orders</u>
---	---

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

§ B.2.2.2 Coverage under the Performance and Payment Bond shall not extend to the Energy Savings Guarantee, as set forth in Exhibit F, or any related provisions.

...

§ B.3.2.1 Unless otherwise provided, at the time of execution of the ~~Design-Build-Contract Amendment~~, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the ~~Design-Build-Contract Amendment~~, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, ~~Design-Builder-Qualified Provider~~, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the ~~Design-Build-Contract Documents~~ or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the ~~Design-Builder's-Qualified Provider's~~ services and expenses required as a result of such insured loss.

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§ ~~B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit. Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Qualified Provider shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

§ ~~B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, ~~Design-Builder, Qualified Provider, Architect, Consultants, Contractor and Subcontractors~~ in the Work, and the Owner and ~~Design-Builder-Qualified Provider~~ shall be named insureds.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the ~~Design-Builder-Qualified Provider~~ in writing prior to any construction that is part of the Work. The ~~Design-Builder-Qualified Provider~~ may then obtain insurance that will protect the interests of the Owner, ~~Design-Builder, Qualified Provider, Architect, Consultants, Contractors, and Subcontractors~~ in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the ~~Design-Builder-Qualified Provider~~ is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 Loss of Use Insurance. At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the ~~Design-Builder-Qualified Provider~~ for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

...

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the ~~Design-Builder-Qualified Provider~~ a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the ~~Design-Builder-Qualified Provider~~ of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.3.2.7 Waivers of Subrogation. The Owner and ~~Design-Builder-Qualified Provider~~ waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or ~~Design-Builder-Qualified Provider~~, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The ~~Design-Builder-Qualified Provider~~ shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the ~~Design-Builder, Qualified Provider~~, and by appropriate agreements, written where legally required for validity, the ~~Design-Builder-Qualified Provider~~ shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with

the method of binding dispute resolution selected in the Agreement between the Owner and ~~Design-Builder-Qualified Provider~~. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the ~~Design-Builder-Qualified Provider~~ after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and ~~Design-Builder-Qualified Provider~~ as the method of binding dispute resolution in the Agreement. If the Owner and ~~Design-Builder-Qualified Provider~~ have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ B.3.2.11 The Owner's insurance coverage shall not apply to Qualified Provider's property.

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None.

Exhibit C – Scope of Services and Energy Conservation Measures

A detailed description of each Energy Conservation Measure (ECM) is organized in the following sections:

Electrical Replacements & Upgrades

- E1 Solar PV Array
- E2 Energy Storage System (ESS)

Energy Conservation Measure Narratives

E1 Solar PV Array

The Solar Photovoltaic design drawings and specifications, located in Exhibit H, detail the specifics of the scope of services and ECMs at each building. Solar PV Arrays are included at the following facilities:

- 1. MLK Dream Center

The following narrative summarizes the upgrades at these facilities:

The building will receive a turnkey photovoltaic (PV) system consisting of PV solar modules, a racking system, and DC to AC inverters. The PV modules are high-efficiency commercial tier 1 solar modules with a low degradation rate. The DC to AC inverters include an internet-based monitoring system that will be monitored through the length of the contract. PV modules will be placed at the best orientation to maximize yearly production.

The solar PV arrays at MLK Dream Center will be a roof-mounted system. The system has been designed to minimize or eliminate the requirements of roof penetrating attachments. All roof mounted systems will be installed in accordance with roof manufacturers’ specifications for the continuation of existing roof warranties.

The following table summarizes the PV systems that will be installed at each location.

Location	kW (DC)	Racking System
MLK Dream Center	100.28	Roof Mount

E2 Energy Storage System (ESS)

The Energy Storage System (ESS) design drawings and specifications, located in Exhibit H, detail the specifics of the scope of services and ECMs at each building. ESS are included at the following facilities:

- 1. MLK Dream Center

Location	kWh / kW
MLK Dream Center	58.200 kWh / 30.0 kW AC

Exhibit D – Energy Savings Guarantee

D.0 Energy Usage Baseline

The energy usage baseline is established based on the average consumption analysis for each of the facilities as in *Table D.0.1*. This data was furnished by the Owner’s utility providers and taken over the last three years. The Owner and Qualified Provider agree that the energy usage baselines represented in *Table D.0.1* are accurate. Refer to *Table D.2.1* for list of utility accounts used to develop baseline.

Table D.0.1 – Energy Usage Baseline

Facility	Floor Area (SQF)	Electric (kWh/Year)	KW (kW/year)
MLK Dream Center	40,400	525,300	1,450 ^a
TOTAL		525,300	1,450

^a Estimated usage and demand based on bills from January to August 2025, since this building is new construction.

D.1 Utility Rates

The following utility rates were used as the basis of the energy cost savings calculations and are used throughout the term of the contract. The following schedules will be used to reconcile the value of the guaranteed energy savings in future years.

Electric Rates:

Indiana Michigan Power

Tariff 240 – Large General Service

Buildings: MLK Dream Center

Service Charge per Month	\$29.00
Demand Charge (per kW)	\$9.443
First 300 kWh per kWh Charge	\$0.08008
Over 300 kWh per kWh Charge	\$0.02789
PJM Off-System Sales Margin (per kW)	\$7.432
	+ Other riders, taxes, surcharges, fees
	Total Electric Charges

D.2 Guaranteed Energy Savings

The Qualified Provider guarantees the annual level of energy savings to be achieved as a result of the installation and operation of the Energy Conservation Measures and provision of services provided for in this Contract in accordance with the methods of savings measurement and verification as set forth in *D.12 - Measurement and Verification Plan*. The Year 1 guaranteed energy and cost savings guarantee is set forth in *Tables D.2.1* and *D.2.2*.

Table D.2.1 – Guaranteed Energy Savings

Facility	Floor Area (ft ²)	Electric (kWh/yr)	Demand (kW/yr)
MLK Dream Center	40,400	103,790	N/A ^a
Total		103,790	N/A

^a Demand savings are not guaranteed, since demand savings will be impacted by the building operation outside of CMTA control. However, demand will be monitored in annual Measurement and Verification reports from CMTA, including calculated demand savings.

Table D.2.2 – Calculated Year 1 Utility Cost Savings

Facility	Guaranteed Year 1 Utility Cost Savings
MLK Dream Center	\$5,865
Total	\$5,865

D.3 Energy Cost Escalation Rate

The projected annual energy escalation rate used for determining energy cost savings is described below in *Table D.3.1 – Energy Cost Escalation Rates*. The Owner and Qualified Provider have reviewed the history of energy escalation and agree that this is an appropriate rate. Refer to section *D.1* for utility rates used.

Table D.3.1 – Energy Cost Escalation Rates

Utility	Annual Escalation
Electric	3%

D.4 Construction Phase Energy Savings

Energy produced during the construction period, such as during commissioning or shortly after PTO but before substantial completion will be considered construction phase energy savings. The construction phase energy savings will be credited towards the first-year energy savings figures in the appropriate year on the reconciliation report.

D.5 Rebates and Incentives

CMTA will coordinate and submit for all available rebate programs. Rebates resulting from work in this Contract shall be turned over to City of South Bend. Due to the volatility of these programs, a guaranteed rebate incentive value is not included in this project. Tax credits or deductions resulting from this Contract that the Owner is not eligible to receive due to tax-exempt status will be passed on to the Qualified Provider, project designers and/or engineers as allowed by all applicable federal laws. The Owner agrees that the allocation of the Section 179D commercial buildings energy efficiency tax deduction(s) resulting from the upgrades of this contract will be provided to the Qualified Provider.

CMTA will coordinate with City of South Bend for the Investment Tax Credit (ITC) incentives application submission as outlined under the Inflation Reduction Act of 2022. City of South Bend shall be responsible for submitting all associated forms and applications necessary to secure these credits. CMTA shall supply all project documentation and supplemental information requested by City of South Bend as needed in this effort.

D.6 Commencement Date

The Commencement Date of the Energy Savings Guarantee shall be the first day of the month after the month in which the project has been accepted by the Owner as Final Completion and Acceptance.

The Commencement Date shall not occur, and the Owner shall not be required to accept the work under this Contract unless and until all Equipment installation for the Project Site(s) is completed by the Qualified Provider in accordance with the terms and conditions of this Contract. The Owner shall have 30 days after notification by the Qualified Provider to inspect and accept the project scope. The Owner reserves the right to reject the Equipment if the installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Contract. The Qualified Provider shall be paid in full, including retainage, after the punch list is completed and the Qualified Provider has satisfied all claims for labor and materials. The project close out will not be unreasonably withheld by the Owner.

D.7 Owner Responsibilities

The Owner acknowledges that their involvement in this project is vital to achieve the guaranteed energy and O&M savings and agree to the following:

1. Provide the Qualified Provider with online access to utility bills (where applicable), and/or provide utility bills in a timely fashion (within 10 days of receipt from the Utility Company) for the term of the contract.
2. Provide the Qualified Provider with clearance for remote access to the solar monitoring software for the term of the contract.
3. Properly operate, maintain, repair, and replace all equipment, components, and systems with similar operating functionality and/or efficiencies.
4. Notify the Qualified Provider of any changes to the buildings, utilization schedules, automation system sequences, or temperature setpoints. Any changes should be sub-metered or modeled with approved software to determine the impact on energy usage.
5. Provide the Qualified Provider with access to the buildings to perform evaluations and analysis of system operation.
6. Continue the Measurement and Verification program as outlined in *Exhibit G - Support Services Agreement*. Should the M&V program be cancelled in any given year by the Owner, the Owner relieves the Qualified Provider of the guarantee per this contract. The Owner has the right to cancel the M&V program at any point throughout the term of the 20-year guarantee period.

D.8 Annual Review and Reimbursement/Reconciliation

Energy-related cost savings shall be measured and/or calculated as specified in *D.10.1 - Measurement and Verification Plan* with a report provided within 60 days of the end of the guarantee year for the previous year for each anniversary of the Commencement Date.

In the event the Energy and Cost Savings achieved during such guarantee year are less than the Guaranteed Energy and Cost Savings as defined in *Tables D.2.1 and D.2.2* the Qualified Provider shall pay the Owner an amount equal to the deficiency as calculated using the rates indicated in *Section D.1*.

The Qualified Provider shall remit such payments to the Owner within 30 days of the reconciliation statement that determines monies are due. When the total energy savings in any one year during the guarantee period exceed the Energy and Cost Savings Guarantee as set forth in *D.2*, such excess savings

shall first be applied to reimburse the Qualified Provider for any payment the Qualified Provider made to Owner to meet the guarantee for previous years in which the energy savings fell short of the Qualified Provider’s Guaranteed Savings under the terms as set in this Exhibit.

In the event the Energy and Cost Savings achieved during a guarantee year are more than the Guaranteed Energy and Cost Savings as defined in D.2, the surplus savings shall carry forward for the cost reconciliation future guarantee years.

D.9 Adjustments to the Guarantee

The Owner acknowledges that CMTA cannot be held responsible for items reasonably outside of CMTA’s control. These include the following factors:

1. Changes in the building construction, such as architectural features, square footage additions, building system changes, etc.
2. Changes in utility account status, addition of new utility accounts, addition of new utility metering devices, etc.
3. Weather variance from baseline years to current years. For purposes of documenting the baseline years (June 2020 – May 2023), the following parameters define the baseline period:

Table D.9.1 – Annual Weather Variance Baseline

Parameter	Annual Full Sun Hours (kWh/m ² per day)
Annual Full Sun Hours	3.75

4. Addition of energy consuming equipment at the site.
5. Changes in occupancy.
6. Owner’s failure to adhere to operating and maintenance requirements as defined by the equipment manufacturer.

CMTA reserves the right to appropriately adjust the baseline for any of the above factors before calculating achieved savings. Adjustments shall be made with sub-metering equipment or by using modeled data from approved software. The Owner shall notify the Qualified Provider in writing 60 days in advance of a circumstance that may warrant a baseline adjustment during the term of the 20-year guarantee period.

While CMTA reserves the right to appropriately adjust the baseline for these factors, we recognize that City of South Bend desires a partner who demonstrates accountability and integrity and that’s exactly the type of firm we are. We are confident in our Energy Guarantees and will never do anything to undermine the integrity of that promise.

CMTA will never adjust the baseline without first consulting the City of South Bend and discussing the reasonability of why such a change would be necessitated. Baseline adjustments are not viewed as a means to offset any deficiencies in savings. Rather, CMTA expects the Owner to make us aware of any large changes that may affect performance so that we can help make necessary changes to the equipment and HVAC strategies to accommodate these changes. CMTA will do all we can to help you address your needs as it relates to energy savings.

D.10 Measurement and Verification Plan

The annual measurement and verification for this project will be based on the *International Performance Measurement and Verification Protocol (IPMVP)*. IPMVP provides four options for determining savings (Options A, B, C and D). These options are summarized as follows:

Option A – Partially Measured Retrofit Isolation

Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the energy conservation measure's (ECM) affected system(s) and/or the success of the project. Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer's specifications, or engineering judgment. Documentation of the source or justification of the estimated parameter is required. Typical applications may include a lighting retrofit, where the power drawn can be measured and hours of operation can be estimated. Savings that are guaranteed using this method are stipulated based on the assumptions used in the calculation methodology and are agreed to by the Owner.

Option B - Retrofit Isolation

Savings are determined by field measurement of all key performance parameters which define the energy use of the ECM-affected system. Typical applications may include a variable frequency drive retrofit where both energy usage and hours of operation are documented.

Option C - Whole Facility Meter Comparison

Savings are determined by measuring energy use at the whole facility or sub-facility level. This approach is likely to require a regression analysis or similar to account for independent variables such as weather conditions. Typical examples may include measurement of a facility where several ECMs have been implemented, or where the ECM is expected to affect all equipment in a facility.

Option D - Calibrated Simulation

Savings are determined through simulation of the energy use of the whole facility, or of a sub-facility. Simulation routines are demonstrated to adequately model actual energy performance measured in the facility. This Option usually requires considerable skill in calibrated simulation. Typical applications may include measurement of a facility where several ECMs have been implemented, but no historical energy data is available.

The Measurement and Verification Plan utilized to reconcile the savings excess/shortfall is illustrated in *Table D.10.1*:

Table D.10.1 – Measurement and Verification Plan

Facility	IPMVP Guarantee Option
	Electric Consumption Savings
MLK Dream Center	B

The measurement and verification plan for each facility is detailed by the applicable IPMVP option on the following pages.

M&V Plan Summary

1. Measurement and Verification Method: Option C - Whole Facility Meter Comparison: Savings are determined by measuring energy use at the whole facility or sub-facility level.
2. What is measured: Utility Bill (Units).
3. Sample size (or population) measured: A sample of 12 of months will be used as an average.
4. How measurements are performed: CMTA will have remote access to the building utility information to track guarantee.
5. How measurements are used to determine the actual savings: 12 months of building demand data will be analyzed to verify that the metered demand and/or metered consumptions is sufficient to cover the guarantee.
6. How often measurements are performed: CMTA will monitor utility bills monthly and compare to guarantee.

D.11 Summary of Annual Cost Savings

The following table shows the annual energy savings and O&M savings for the 20-term project. Utility cost savings are valued at the rates and escalation rates provided in *D.1 – Utility Rates* and *D.3 – Energy Cost Escalation Rates, respectively.*

Table D.11.1 – Annual Energy Savings

Project Year #	Year	Utility Cost Savings
Year 1	2026	\$5,865
Year 2	2027	\$5,920
Year 3	2028	\$6,037
Year 4	2029	\$6,155
Year 5	2030	\$6,277
Year 6	2031	\$6,400
Year 7	2032	\$6,526
Year 8	2033	\$6,655
Year 9	2034	\$6,786
Year 10	2035	\$6,920
Year 11	2036	\$7,056
Year 12	2037	\$7,195
Year 13	2038	\$7,337
Year 14	2039	\$7,481
Year 15	2040	\$7,629
Year 16	2041	\$7,779
Year 17	2042	\$7,932
Year 18	2043	\$8,089
Year 19	2044	\$8,248
Year 20	2045	\$8,410

Exhibit E – Annual Reconciliation Statement Example

The following pages represent an example format for the documentation and reporting of the Annual Reconciliation Statement.



CMTA

A **LEGENCE** Company

Year 3 Energy Savings Report

January 25, 2023



Ohio County Schools

Guaranteed Energy Savings Contract

CMTA ENERGY SOLUTIONS

PERFORMANCE CONTRACTING | MEP DESIGN | NET ZERO ENGINEERING

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Table of Contents:

1. Executive Summary
2. Scope of Work Summary
3. Utility Baselines
4. District Summary
5. School by School Energy Data

1. Executive Summary

CMTA is pleased to present the Year 3 Guaranteed Energy Savings Reconciliation Report for the Ohio County School District. The total savings for Year 3 is \$648,218. **All electric and natural gas data in this report is taken from the actual utility bills.** The tables below contain the basic project and scope of work information.

Table 1-1: Project Information

Contract Start Date	February 2, 2019
Contract Year	3
Current Savings Period	January 1, 2022 through December 31, 2022
Report Type	Year 3 Annual Report
Buildings	14 Buildings (12 schools, Operations Center, Board Office)
Report Date	1/25/23

The project guaranteed and actual energy savings are shown below (as measured by the actual utility bills).

Table 1-2: Year 3 Utility Savings Summary

Unit	Target Reduction	Actual Reduction	Cost Per Unit	Actual Savings
Electric Consumption (kWh)	1,914,216	4,007,148	Varies	\$286,526
Electric Demand (kW)	2,742	9,740	Varies	\$143,963
Natural Gas (therms)	104,418	66,913	\$0.62286	\$41,678
Water Savings (Gallons)	4,127,000	4,127,000	Varies	\$47,968
Electric Rate Change Savings	n/a	n/a	n/a	\$53,040
Total Utility Savings:				\$573,174

Total maintenance and operations cost savings are shown below:

Table 1-3: Year 3 Maintenance and Operations Cost Summary

Unit	Guaranteed Amount	Actual Amount
Operational and Maintenance Savings	\$75,044	\$75,044
Total O&M Savings:		\$75,044

The total savings amount vs the total guaranteed amounts for Year 2 are shown below.

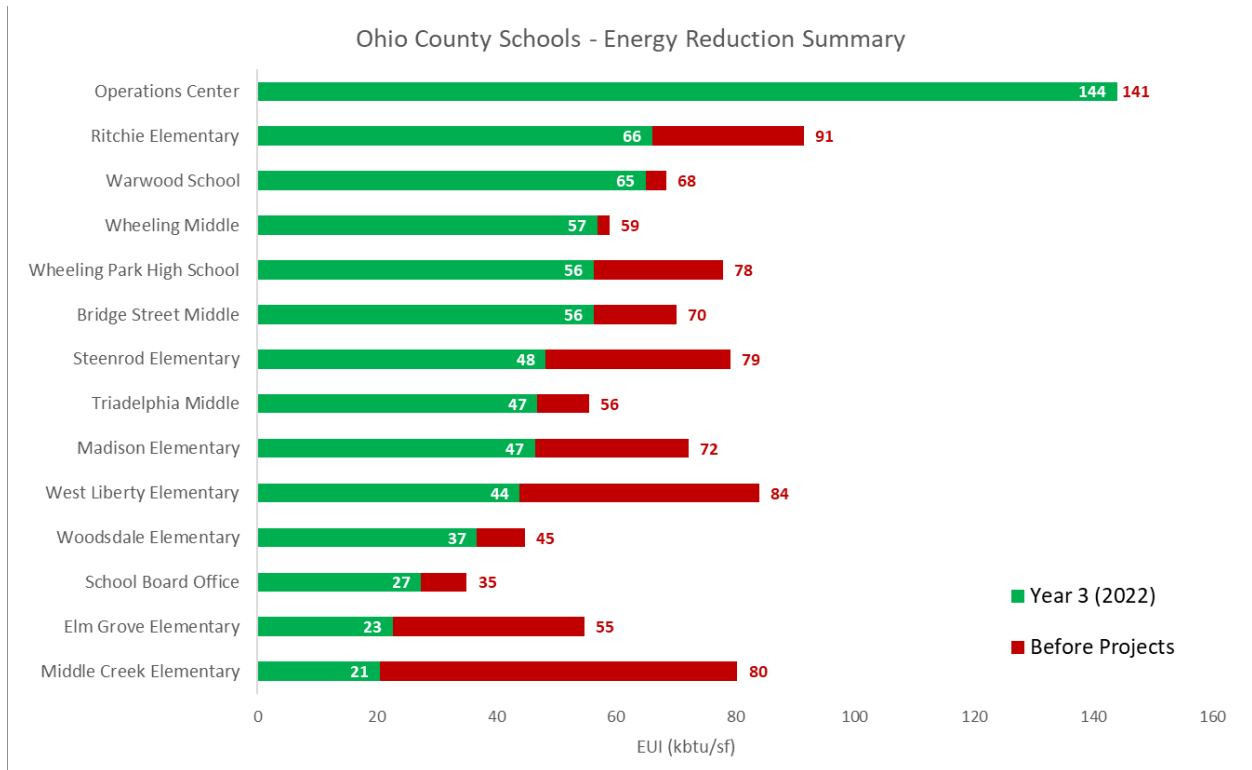
Table 1-4: Project Cumulative Savings

Year	Guaranteed Savings			Actual Savings			Excess Savings
	Energy Savings	O&M Savings	Total Savings	Energy Savings	O&M Savings	Total Savings	
Construction	\$50,000	\$141,998	\$191,998	\$156,830	\$288,763	\$445,593	\$253,595
2020	\$259,774	\$130,874	\$390,648	\$534,474	\$130,874	\$665,348	\$274,700
2021	\$267,567	\$71,476	\$339,043	\$489,460	\$71,476	\$560,936	\$221,893
2022	\$350,801	\$75,044	\$425,845	\$573,174	\$75,044	\$648,218	\$222,373
Total	\$928,142	\$419,391	\$1,347,534	\$1,753,938	\$566,157	\$2,320,095	\$972,561

Table 1-5: Year 3 – Energy Reduction by School

School	Electric EUI			Natural Gas EUI			Total EUI		
	Before Projects	Year 3 (2022)	% Reduction	Before Projects	Year 3 (2022)	% Reduction	Before Projects	Year 3 (2022)	% Reduction
Middle Creek Elementary	32	18	43%	48	2	95%	80	21	74%
Elm Grove Elementary	36	17	52%	19	6	70%	55	23	59%
West Liberty Elementary	23	16	31%	61	28	54%	84	44	48%
Steenrod Elementary	30	19	35%	49	29	41%	79	48	39%
Madison Elementary	30	17	43%	43	30	31%	72	47	36%
Ritchie Elementary	32	22	31%	59	44	26%	91	66	28%
Wheeling Park High School	51	25	51%	27	31	-18%	78	56	28%
School Board Office	31	24	22%	4	3	20%	35	27	22%
Bridge Street Middle	26	22	13%	45	34	24%	70	56	20%
Woodsdale Elementary	32	25	23%	13	12	6%	45	37	18%
Triadelphia Middle	16	12	24%	39	34	12%	56	47	16%
Warwood School	26	26	-1%	43	39	9%	68	65	5%
Wheeling Middle	25	21	14%	34	36	-4%	59	57	3%
Operations Center	63	54	15%	78	90	-16%	141	144	-2%

The bar graph on the following page summarizes the energy usage intensity (EUI) for all buildings before and after the projects. The red data set represents the baselines (before the projects) and the green represents the EUI for Year 3 from the utility bills.



2. Scope of Work Summary

Phase 1 Energy Conservation Measure Narratives

The following narratives describe the Energy Conservation Measures included in the scope of the phase 1 project completed in 2019.

H-1: Geothermal HVAC Renovation & Controls Upgrades

Full geothermal HVAC system replacements were completed at Elm Grove Elementary and Middle Creek Elementary. This included new water source heat pumps, ventilation outside air unit, pumps, motors, VFDs, etc.

H-2: HVAC Equipment Upgrades & Controls Upgrades

HVAC system upgrades and controls upgrades were completed at Wheeling Park High School. This included new air handlers, boilers, chiller, pumps, motors, VFDs, pool dehumidification unit, exhaust fans, VAV boxes, etc.

H-3: HVAC Controls Upgrades & Retro-commissioning

This ECM involves various DDC controls upgrades, control sequence optimization, and retro-commissioning to improve comfort and reduce energy costs. The following list summarizes these upgrades:

Board Office

- New controls and BAS graphics for (8) eight HVAC units serving this facility. All other equipment is excluded.

Bridge Street and Madison

- New VFDs for two HVAC unit supply fans
- Control sequence optimization
- Retro-commissioning

Operations Center

- New controls and BAS graphics for (2) two HVAC units serving this facility. All other equipment is excluded.

Ritchie

- New controls and BAS graphics for the (10) ten HVAC units
- Control sequence optimization
- Retro-commissioning

E1: Lighting Efficiency Upgrades

This ECM involved replacing interior and exterior lighting with LED technology across the district. The following list summarizes these upgrades:

- Provide LED retrofits or replacements per the plans and specifications
- Removal and disposal of existing fixtures where applicable
- Installation of new LED fixtures

P1: Water Efficiency Upgrades

This ECM involved upgrading, retrofitting, or replacing plumbing fixtures throughout the district with low-flow fixtures to reduce water and sewer consumption. Additionally, at certain facilities water meters were replaced or added to achieve cost savings. The following list summarizes these upgrades.

- Existing 3.5 gpf toilets will be replaced with 1.28 gpf fixtures
- Existing 1.0 gpf urinal valves will be retrofitted with 0.5 gpf valves
- Sinks will be retrofitted with 0.35 gpm aerators
- Downsizing of water meters at Middle Creek Elementary and West Liberty Elementary
- Water meters installed on WPHS cooling tower makeup and blowdown lines for monthly sewer credit

G1: Electric Utility Rate Analysis and Optimization

This ECM included analyzing the existing utility rate structures for each facility. It was determined that all schools currently served by the *General Service Secondary* rate would realize annual savings simply by switching to the *School Service Secondary* rate offered by AEP.

Phase 2 Energy Conservation Measure Narratives

The following narratives describe the Energy Conservation Measures included in the scope of the phase 2 project completed in 2022.

H-1: HVAC Controls Upgrades

This ECM involved upgrading the HVAC controls to support the bond project HVAC equipment upgrades in renovation areas at Steenrod Elementary, Triadelphia Middle, West Liberty Elementary, and Wheeling Park High School. Refer to the contract plans and specifications for further definition of the scope of work.

E1: Lighting Efficiency Upgrades

This ECM involved retrofitting existing fluorescent light fixtures with LED lamps in the areas below:

- Bridge Street Middle classrooms and basement corridors
- Madison Elementary administration and kitchen areas
- Ritchie Elementary cafeteria

E2: Electric Utility Rate Optimization

This ECM included changing the electric rate structure at Wheeling Park High School from *Large Capacity Power Service Secondary* rate to the *General Service Secondary* rate offered by AEP.

3. Utility Baselines

Energy Baseline Data

The table below indicates the annual baseline energy data (3-year average of actual utility bills) for each facility.

Facility	Baseline Conditions					
	Floor Area	Electric		Natural Gas	EUI	Water
	(ft ²)	(kWh/yr)	(kW/yr)	(Therms/yr)	(kBtu/ft ²)	(kgal/yr)
Bethlehem Elementary School	15,500	109,013	493	7,971	75.4	170
Bridge Street Middle School	61,156	457,240	1,686	27,245	70.1	331
Elm Grove Elementary School	37,500	391,296	1,613	7,170	54.7	1,017
Madison Elementary School	74,820	647,746	2,155	31,876	72.1	387
Middle Creek Elementary School	37,500	350,528	1,438	18,158	80.3	477
Ritchie Elementary School ⁽¹⁾	65,787	621,600	1,862	38,925	91.4	510
Steenrod Elementary School	33,400	292,864	1,011	16,463	79.2	439
Triadelphia Middle School ⁽²⁾	78,238	536,853	1,869	44,147	79.8	613
Warwood School	87,253	656,107	2,685	37,294	68.4	821
West Liberty Elementary School	25,812	174,272	953	15,727	84.0	182
Wheeling Middle School	63,558	459,684	1,575	21,761	58.9	288
Wheeling Park High School	348,849	5,245,333	13,209	92,700	77.9	7,327
Woodsdale Elementary School	54,215	505,344	2,107	7,053	44.8	815
Board Office	14,541	131,171	527	623	35.1	50
Operations Center	24,000	267,341	739	11,160	84.5	227

⁽¹⁾ Data is not a full 3 years due to recent renovation

⁽²⁾ In the original contract the Annex energy usage was removed from the baseline as it was planned to be demolished as part of the Bond Project. Since the Annex was not demolished as part of the Bond Project, the baseline energy usage for the Annex has been included.

4. District Summary

CMTA is pleased to present the Year 2 Guaranteed Savings Reconciliation Report for the Ohio County Schools project. A summary for Year 2 is described the following tables.

Table 4-1: Year 3 Energy Savings Summary

Utility	Saved	Guaranteed	% to Guarantee
Electric Consumption (kWh)	4,007,148	1,914,216	209%
Electric Demand (kW)	9,740	2,742	355%
Natural Gas (therms)	66,913	104,418	64%
Water Savings (gallons)	4,127,000	4,127,000	100%

Table 4-2: Year 3 Cost Savings Summary

Utility	Saved	Guaranteed	% to Guarantee
Electric Consumption (kWh)	\$286,526	\$158,074	181%
Electric Demand (kW)	\$143,963	\$27,434	525%
Natural Gas (therms)	\$41,678	\$64,286	65%
Water Savings (gallons)	\$47,968	\$47,968	100%
Electric Rate Savings	\$53,040	\$53,040	100%
Operation and Maintenance Savings	\$75,044	\$75,044	100%
Total	\$648,218	\$425,845	152%

Table 4-3: Total Excess Savings Summary

Year	+/-	
Construction Period	2019	\$253,595
Year 1	2020	\$274,700
Year 2	2021	\$221,893
Year 3	2022	\$222,373

Total Excess Savings To-Date: \$972,561

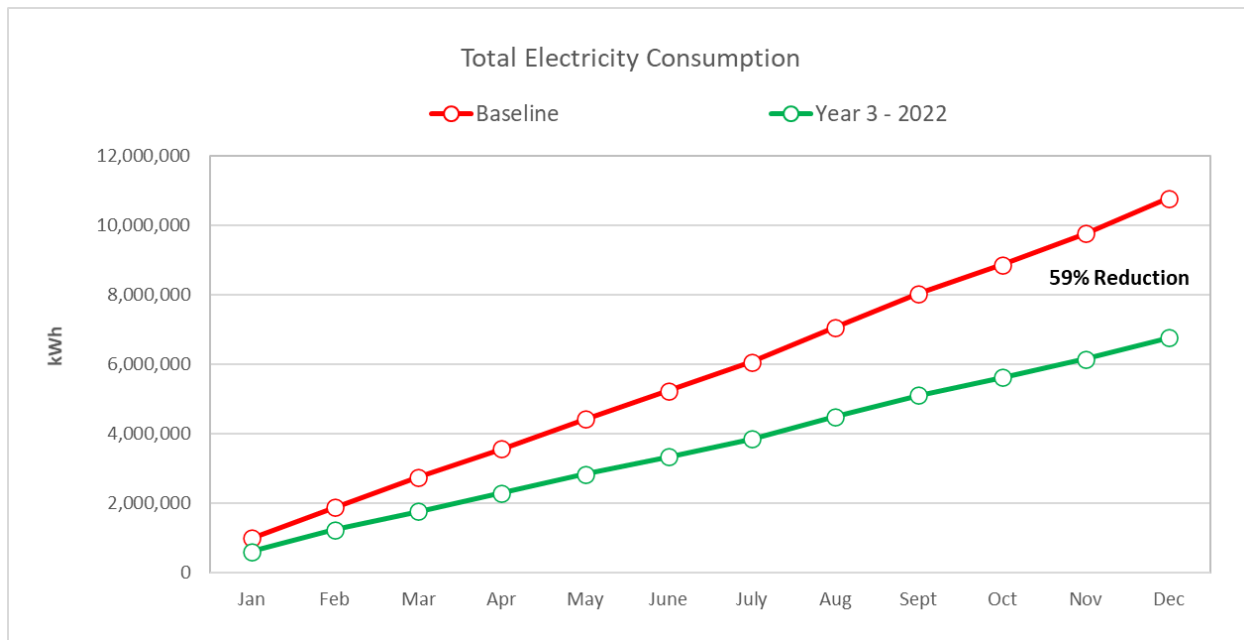
With a savings guarantee of \$425,845, the project savings are 152% ahead of the guarantee level for Year 3. This represents a Year 3 excess savings of \$222,373. Added to the excess savings from past years this project has produced a total of \$972,561 in excess savings above and beyond the guaranteed amount. The excess savings are 100% retained by Ohio County Schools.

Table 4-4: Comparison of Current Electric Rates to Baseline Electric Rates

Utility	Facilities	Unit	Baseline \$/unit	Actual Year 3 \$/unit	Actual Annual Escelation %
Electric (AEP - School Service Secondary Rate)	Bridge Street, Elm Grove, Madison, Middle Creek, Ritchie, Steenrod, Warwood, West Liberty, Wheeling Middle, Woodsdale	Electric (kWh)	0.07974	0.09129	3%
		Electric (kW)	5.1	9.77	14%
Electric (AEP - General Service Secondary Rate)	WPHS, Board Office, Op Center	Electric (kWh)	0.0701	0.0628	-2%
		Electric (kW)	9.44	18.43	14%

The previous table indicates that electric prices on the whole have escalated well above the 3% value used in the lease purchase financial model. Moreover, it is evident that AEP is putting a greater cost emphasis on the electric demand (kW) component of the bill. Ohio County Schools is well equipped to counteract that shift as a result of automated “peak shaving” controls programming that was implemented as part of this project. Ultimately, the increase in electric costs over the last several years make the energy reduction accomplished by this project all the more valuable. The district is not only saving energy but also protecting itself from future rate increases brought on by the utility companies.

The following graphs summarize the district’s overall performance. The green line represents the district’s usage in the past year, and the red line indicates the baseline usage.



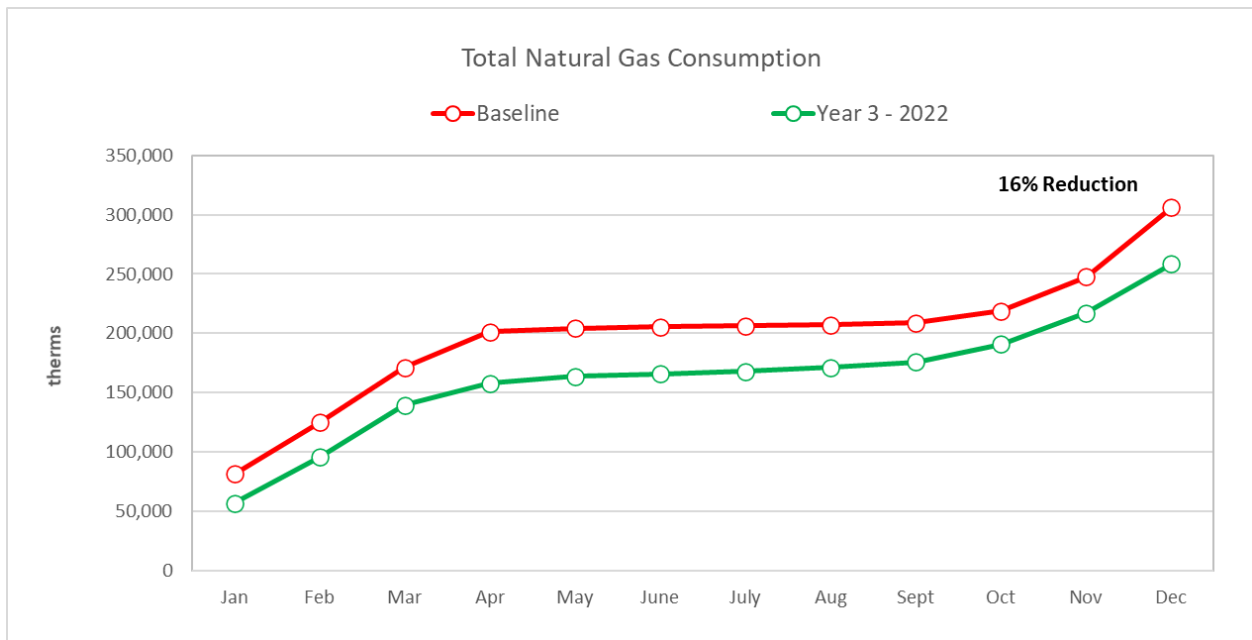
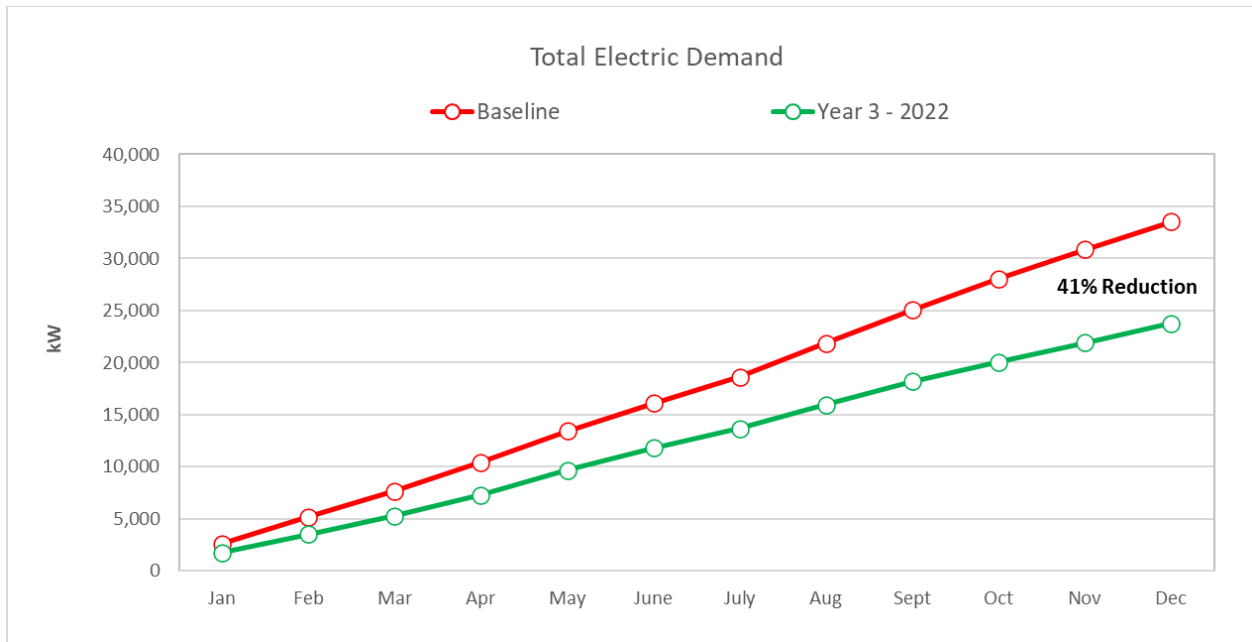
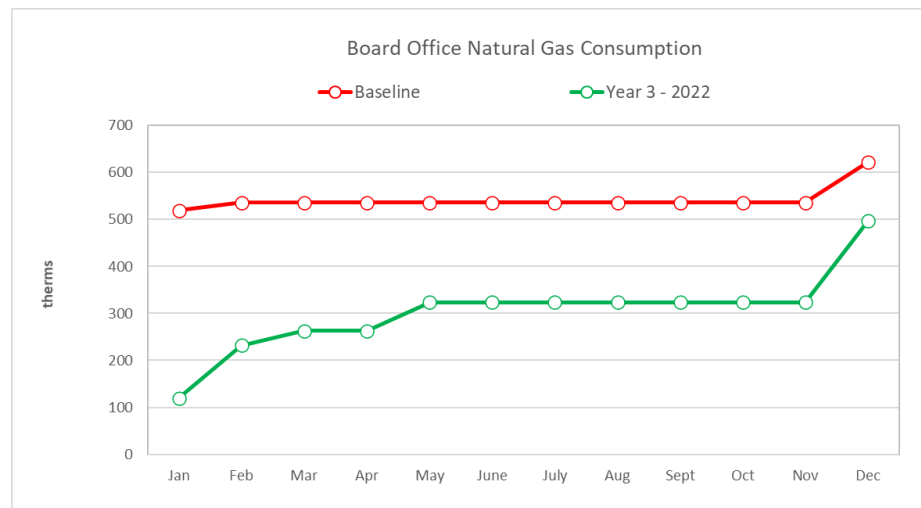
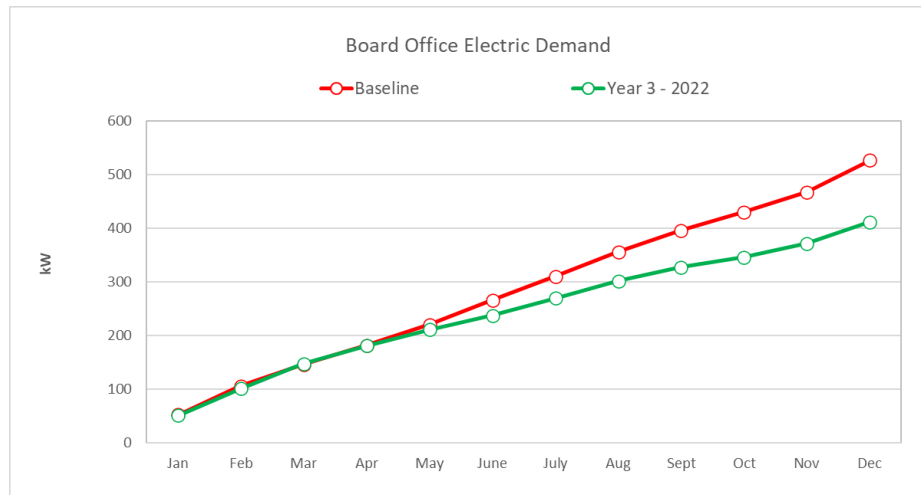
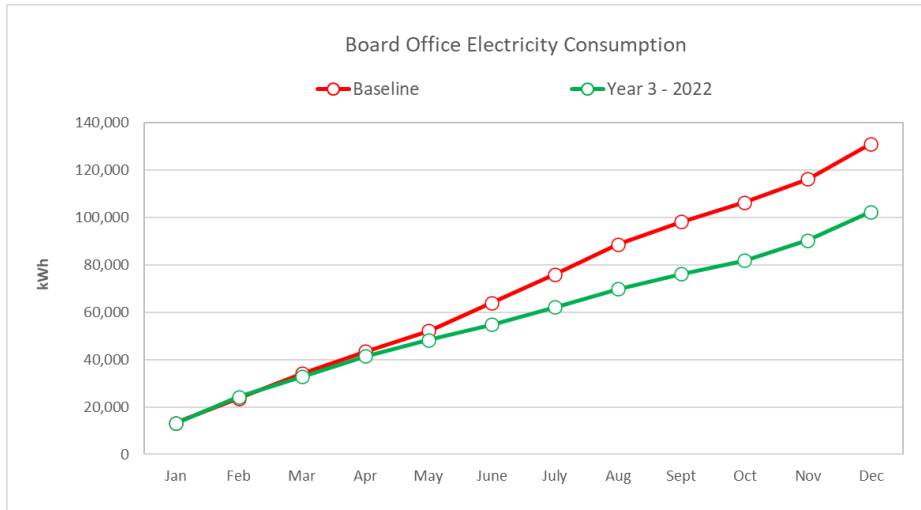


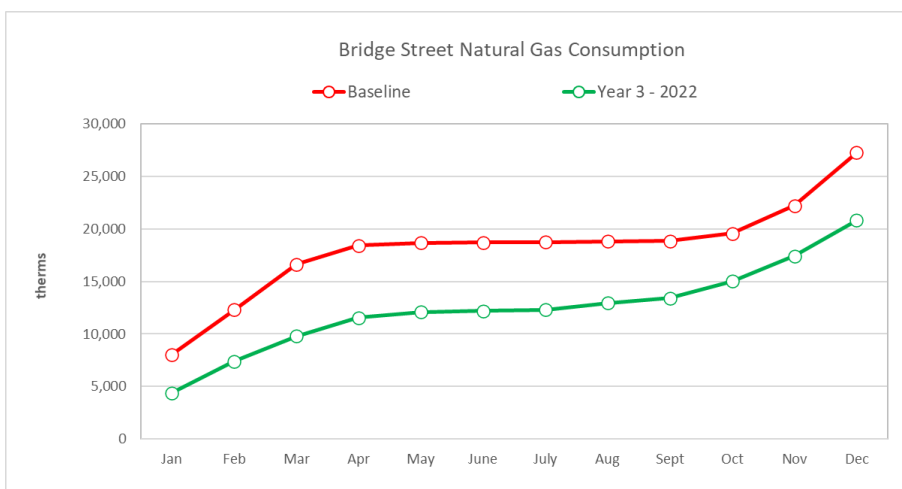
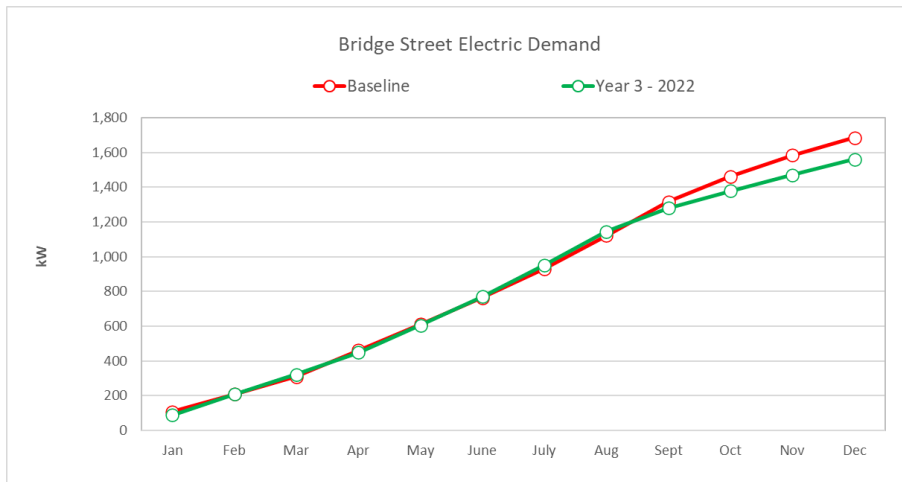
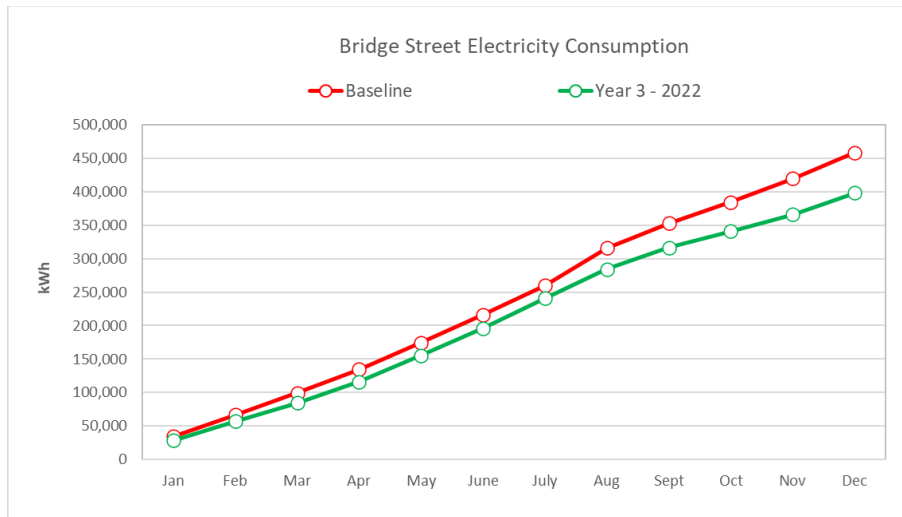
Table 4-6: School Electrical Usage Summary – Baseline Vs. Actual

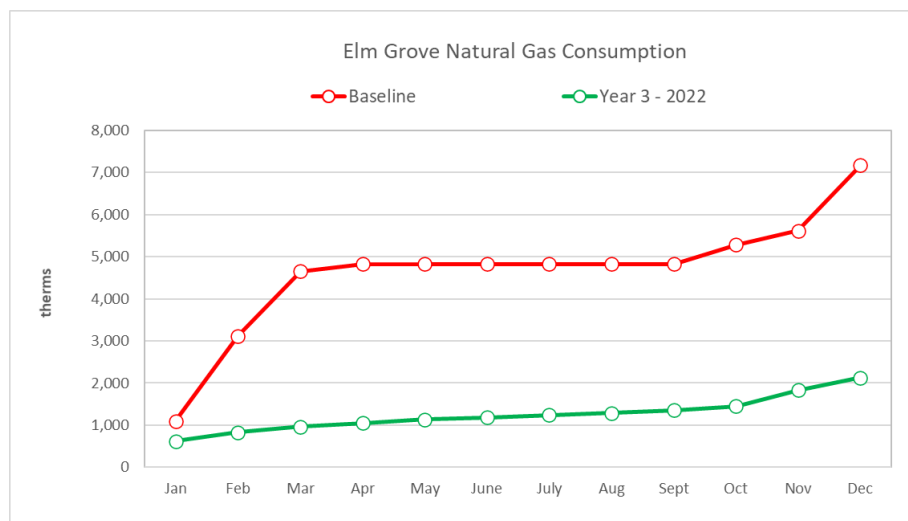
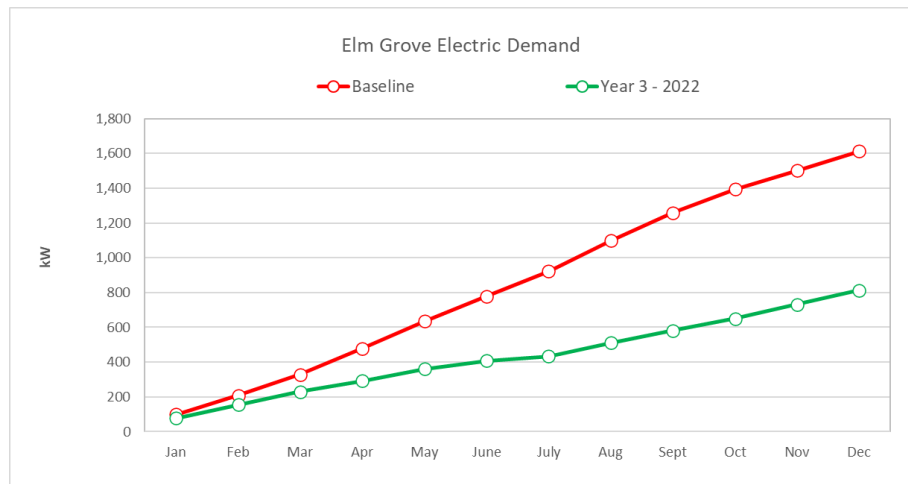
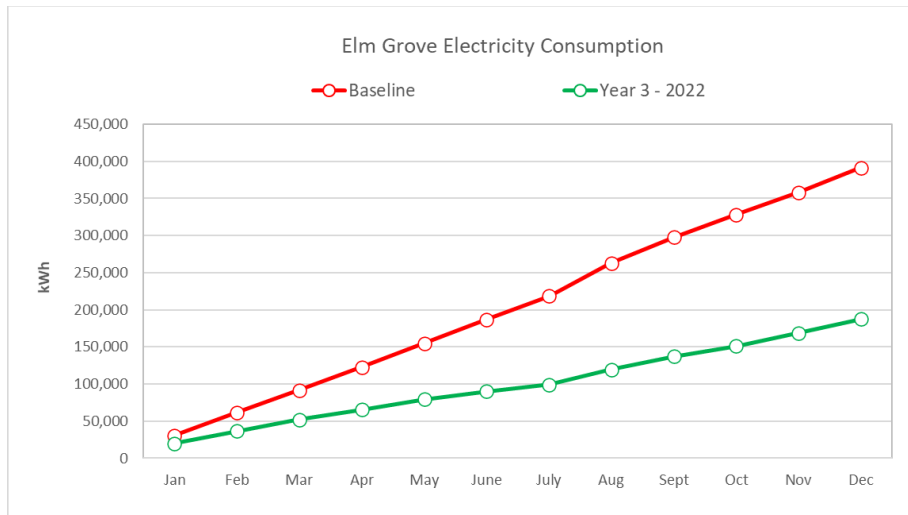
School	Electric Consumption (kWh)			Electric Demand (kW)			Natural Gas (therms)		
	Baseline	Year 3	Savings	Baseline	Year 3	Savings	Baseline	Year 3	Savings
Bridge Street	458,252	398,440	59,812	1,686	1,560	126	27,245	20,796	6,449
Elm Grove	391,296	187,182	204,114	1,613	814	799	7,170	2,122	5,048
Madison	647,746	370,944	276,802	2,155	1,540	615	31,876	22,114	9,762
Middle Creek	350,528	186,048	164,480	1,438	896	542	18,158	908	17,250
Ritchie	621,600	428,400	193,200	1,862	1,759	103	38,925	28,865	10,060
WPHS	5,245,333	2,546,640	2,698,693	13,209	7,762	5,447	92,700	109,559	-16,859
Board Office	131,171	102,320	28,851	527	412	115	623	497	125
Op Center	267,341	228,463	38,878	739	641	98	11,160	12,922	-1,762
Steenrod	329,795	213,700	116,095	1,111	999	112	18,489	10,853	7,636
Triadelphia	536,853	452,240	84,613	1,869	1,752	117	44,147	42,677	1,470
West Liberty	174,272	120,384	53,888	953	607	346	15,727	7,223	8,504
Warwood	656,107	665,248	-9,141	2,685	2,268	417	Phase 3		
Wheeling Middle	459,684	393,600	66,084	1,575	1,267	308			
Woodsdale	505,344	389,952	115,392	2,107	1,395	712			

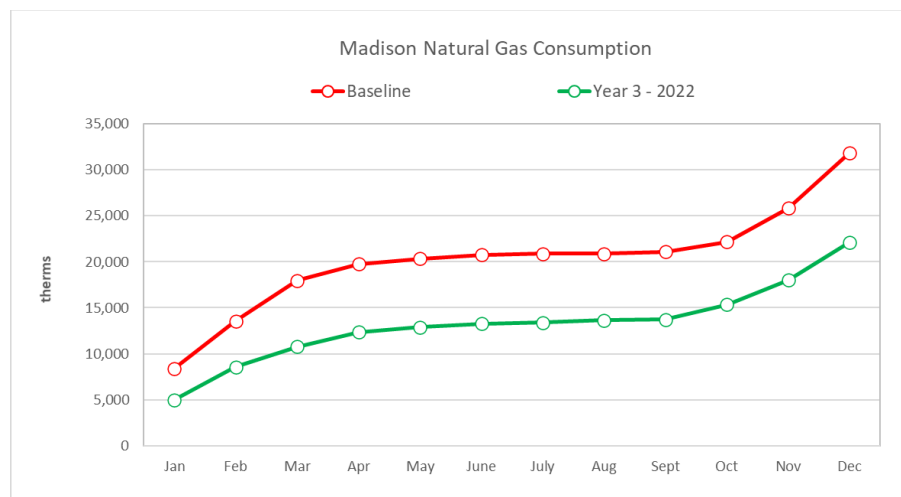
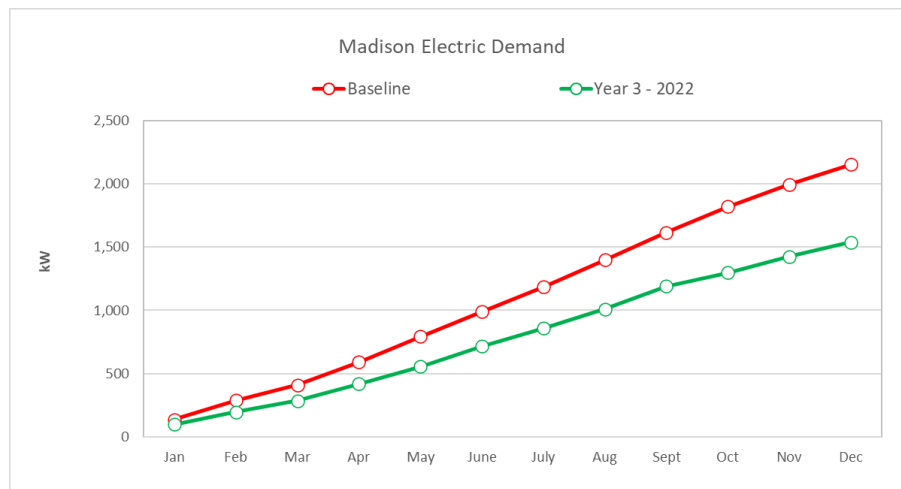
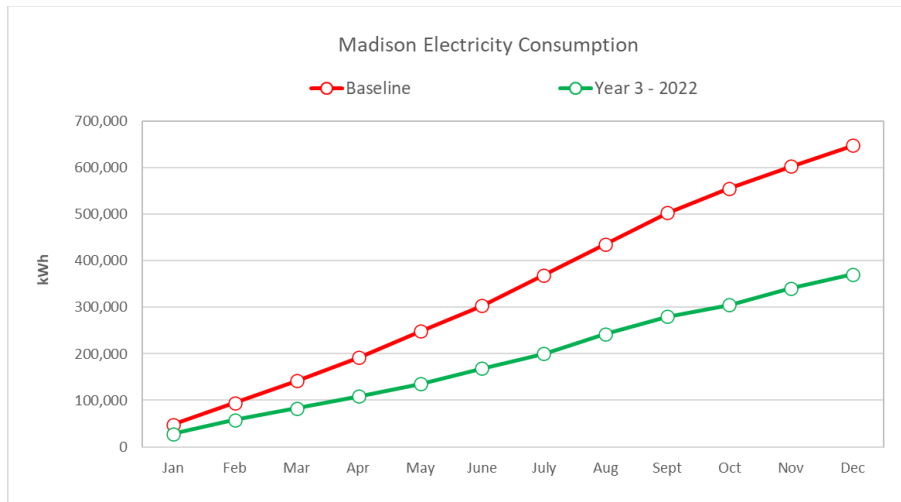
5. School by School Energy Data

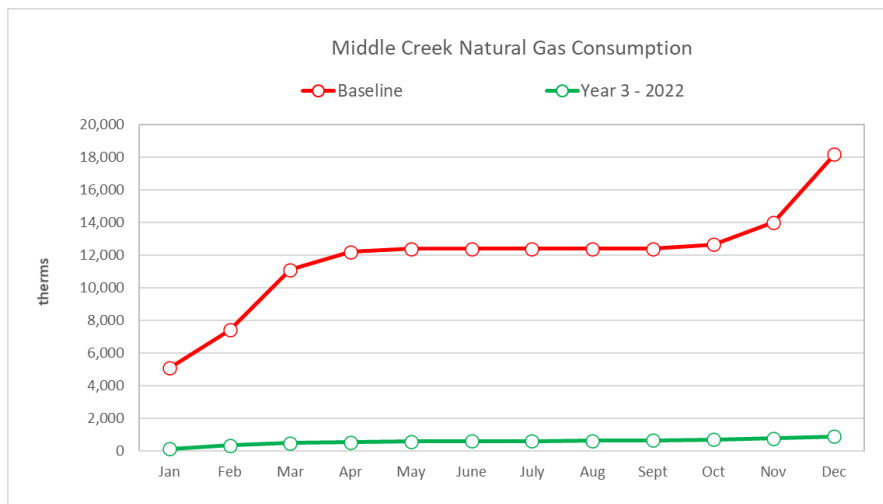
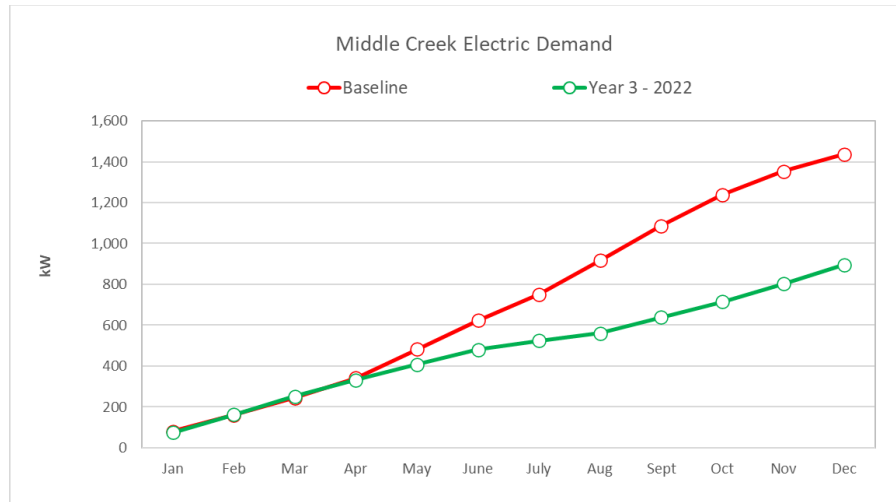
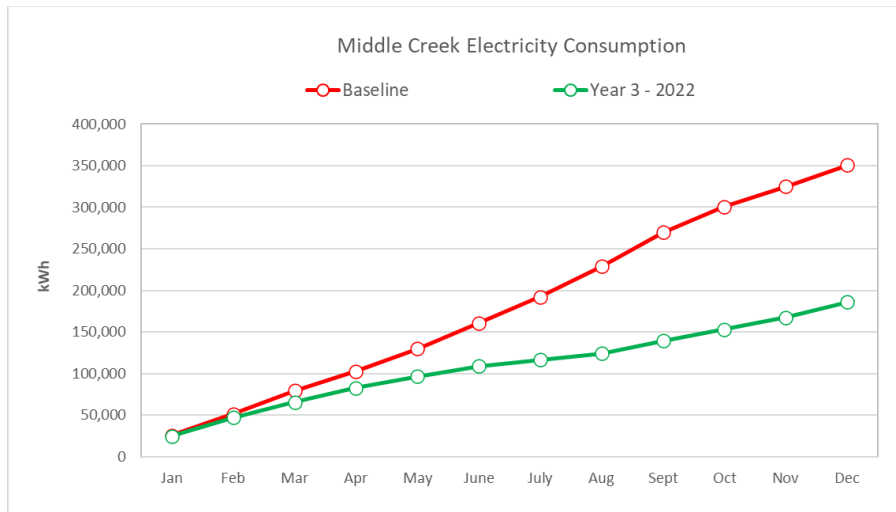
The graphs on the following pages show the performance for each building compared to the baseline presented in the previous section. The graphs show a cumulative energy usage of each utility for Year 3. The graphs are ordered in alphabetical order with one school or building per page. These graphs allow for a clear depiction of how each utility is performing in comparison to the baseline data.

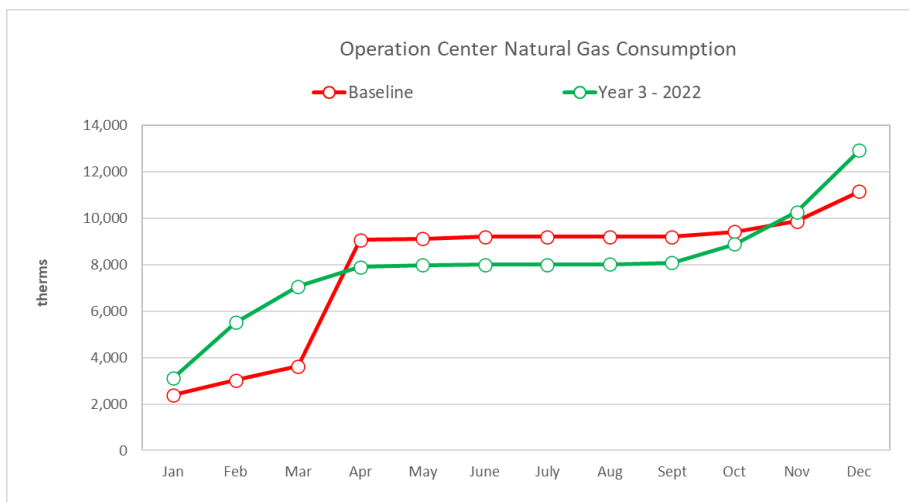
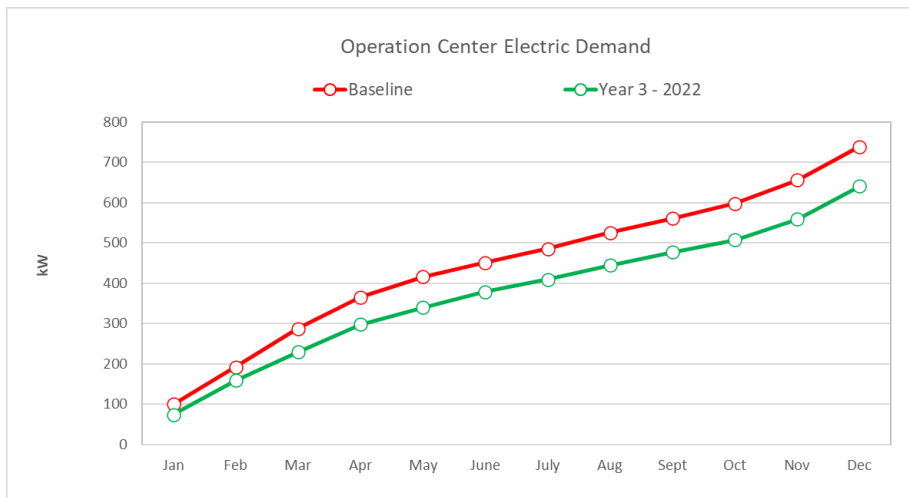
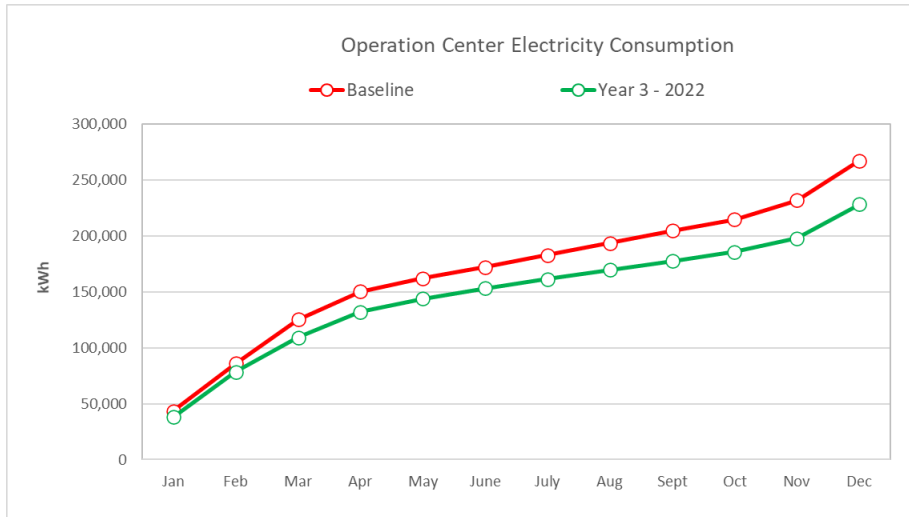


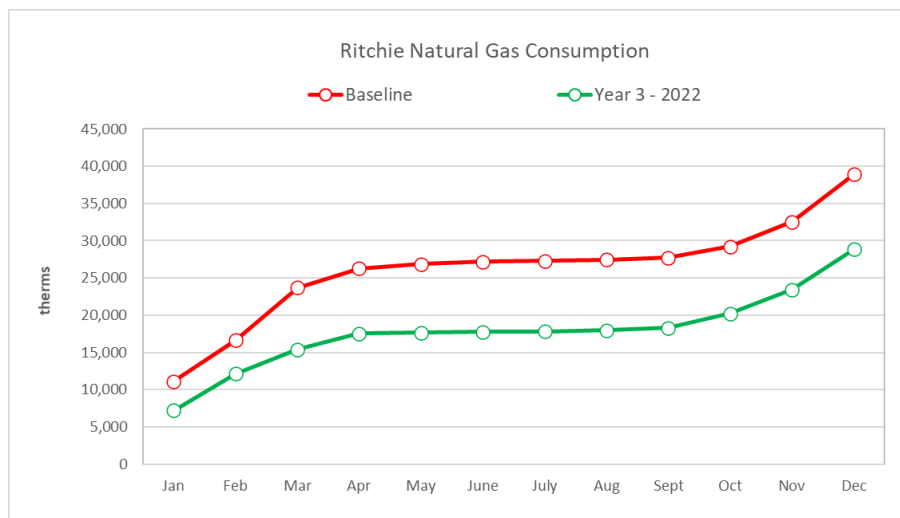
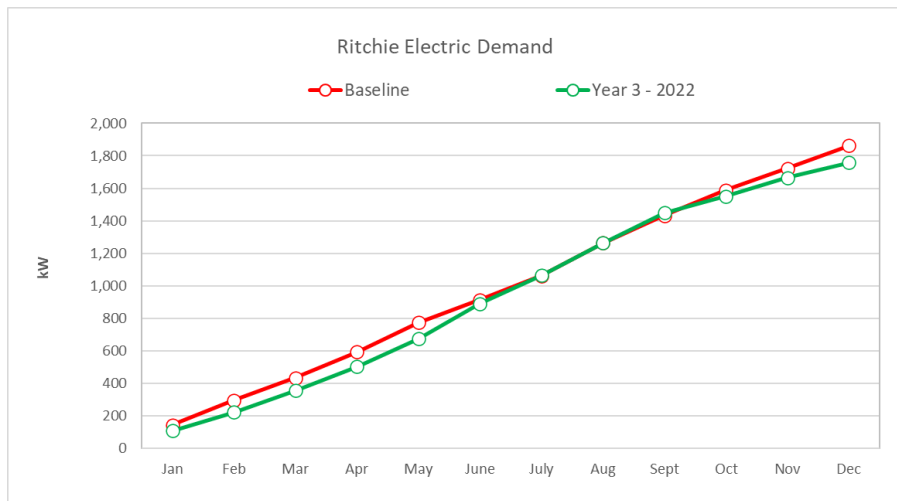
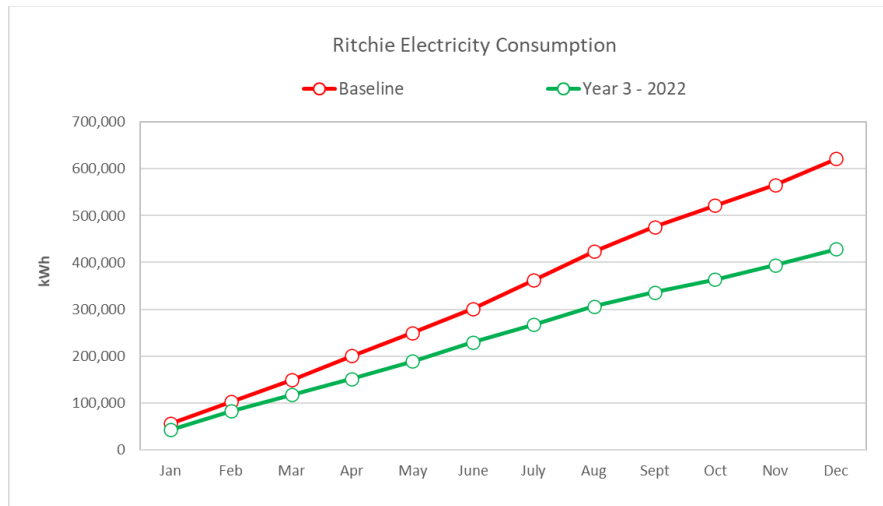


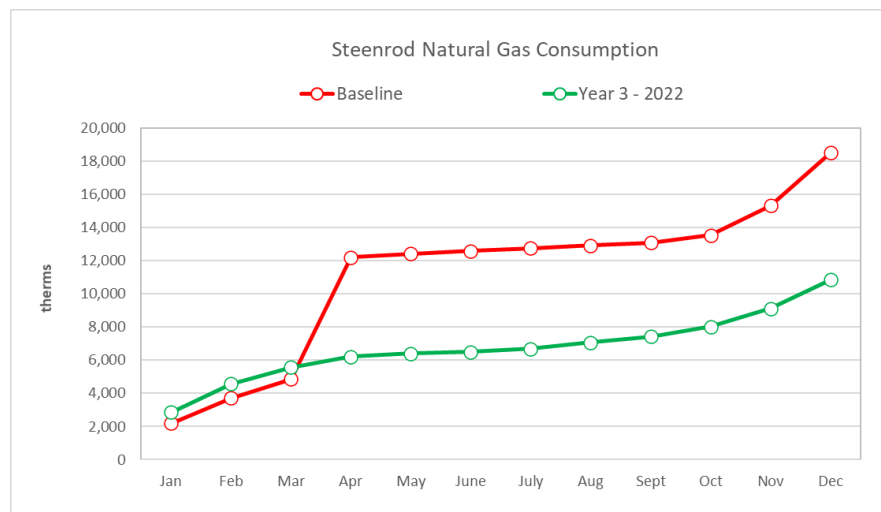
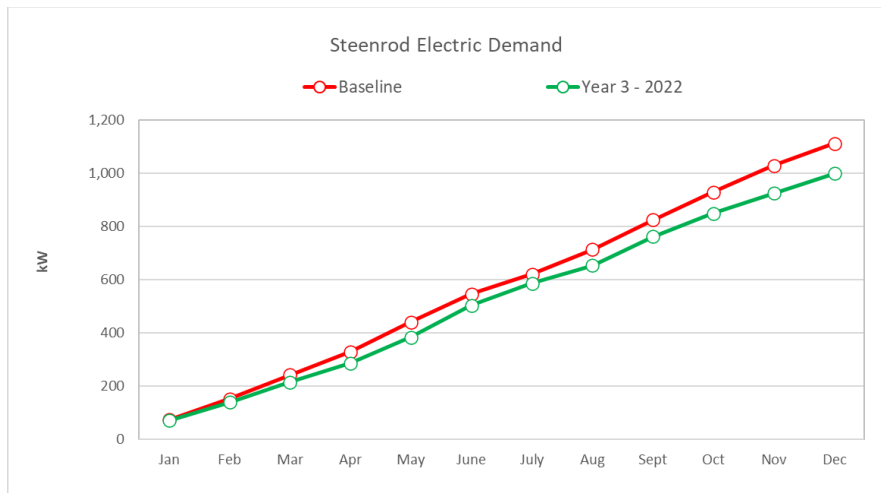
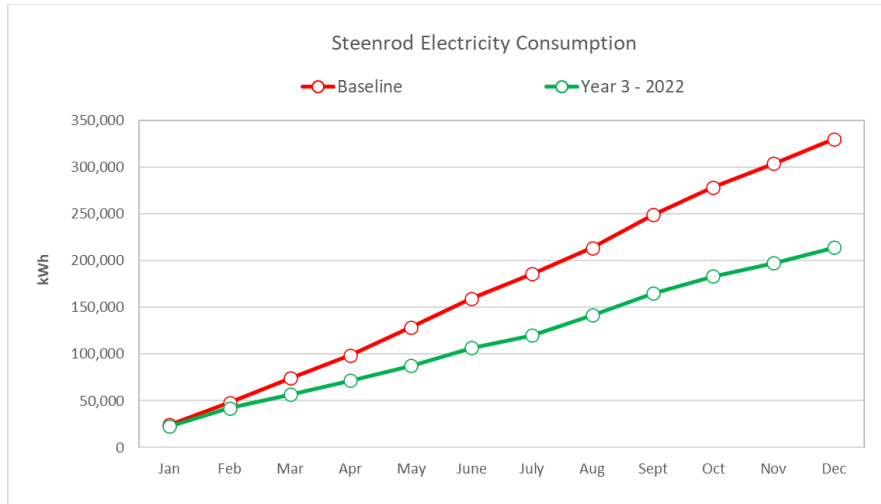


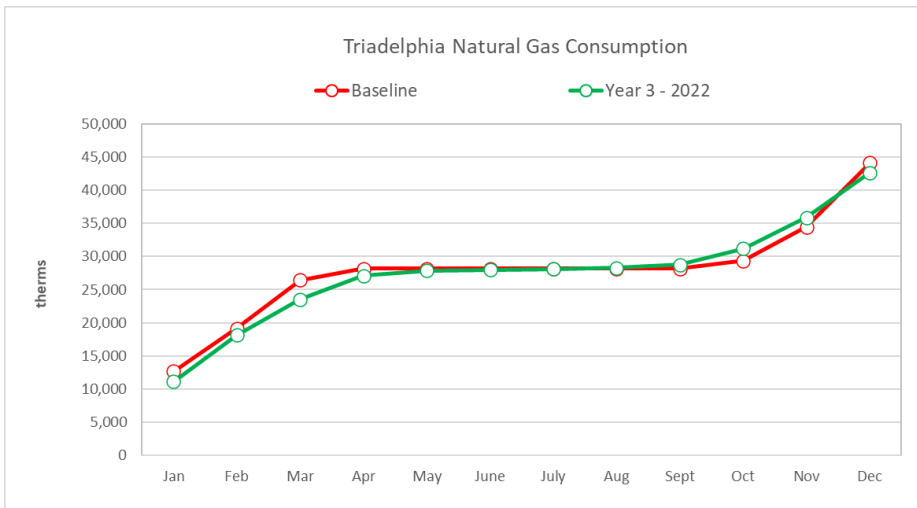
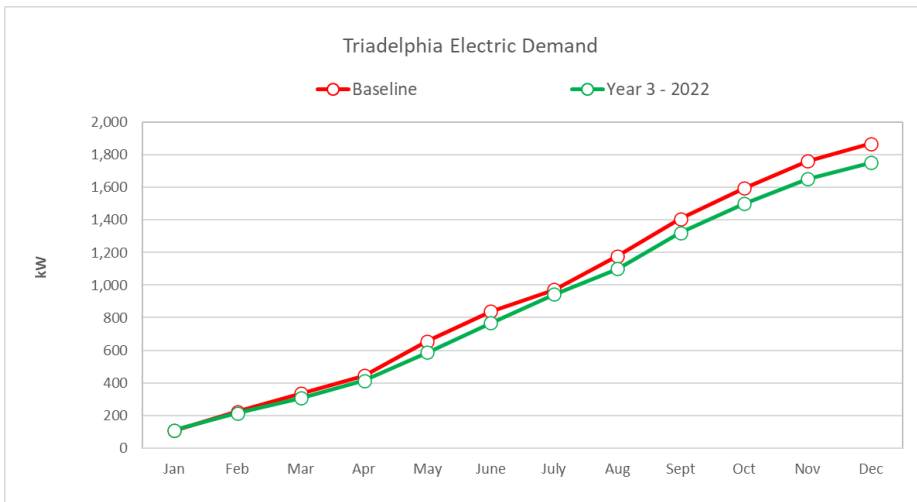
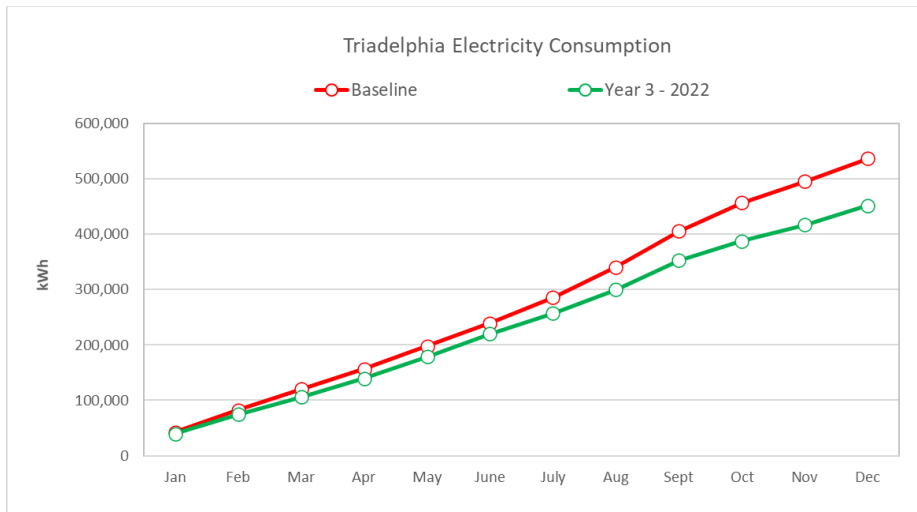


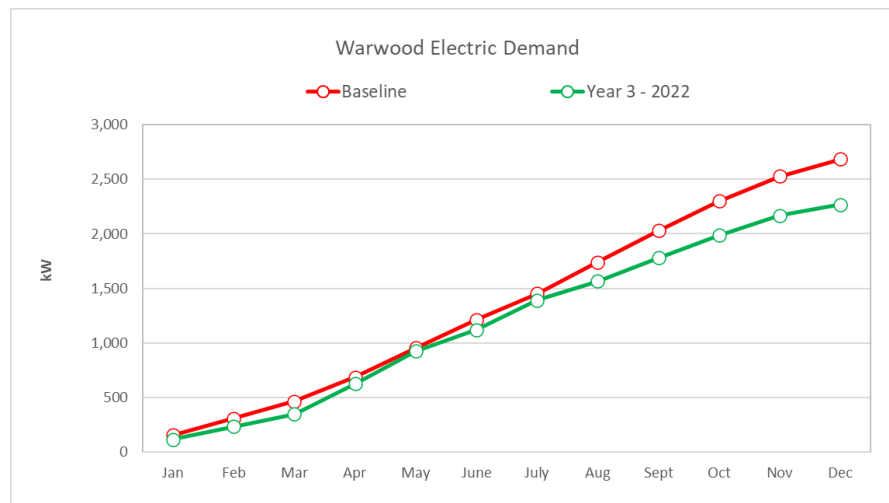
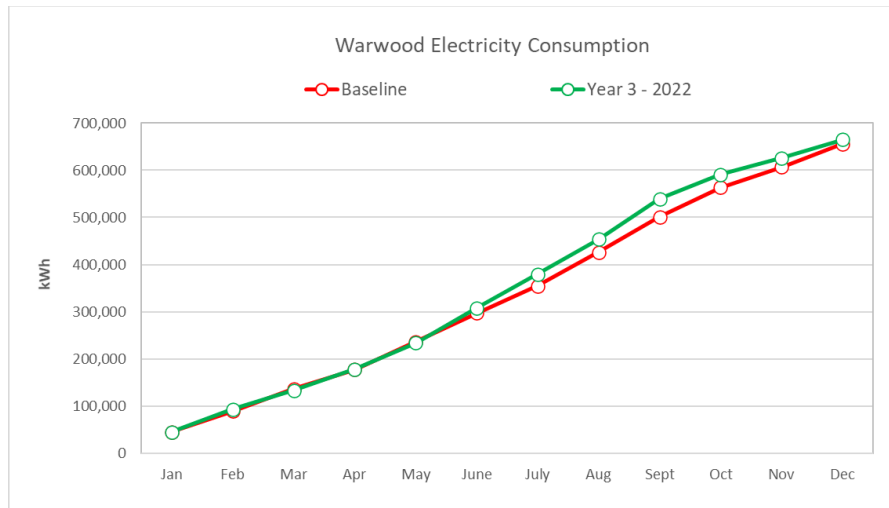


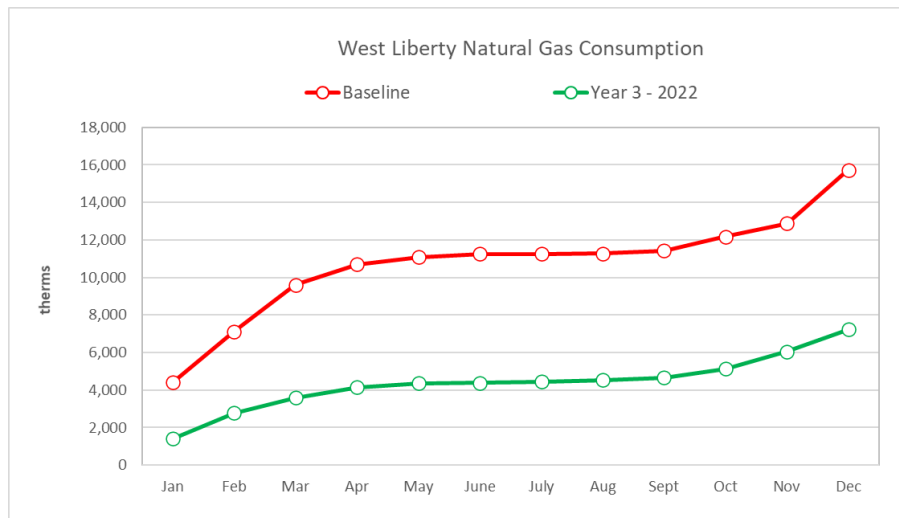
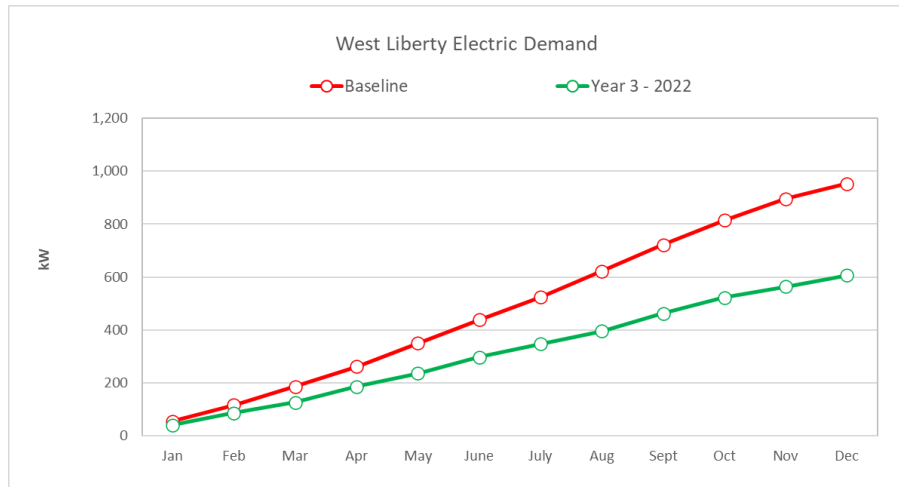
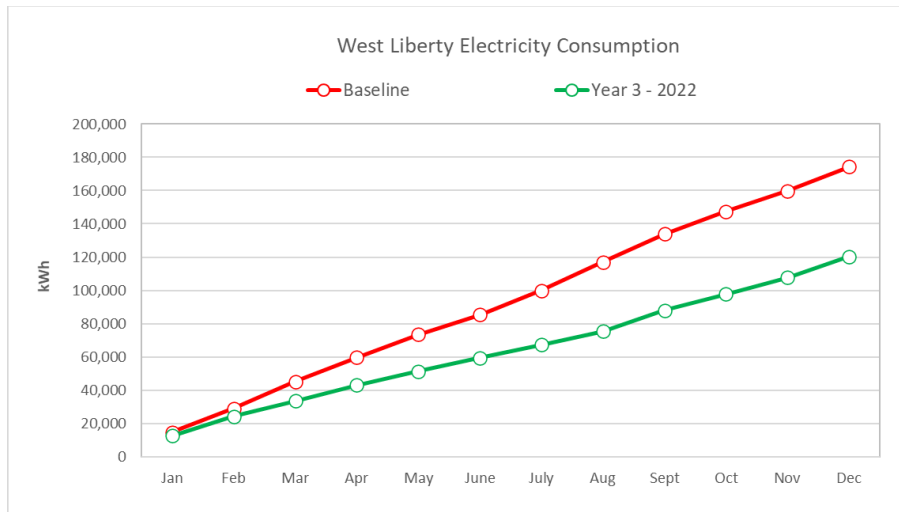


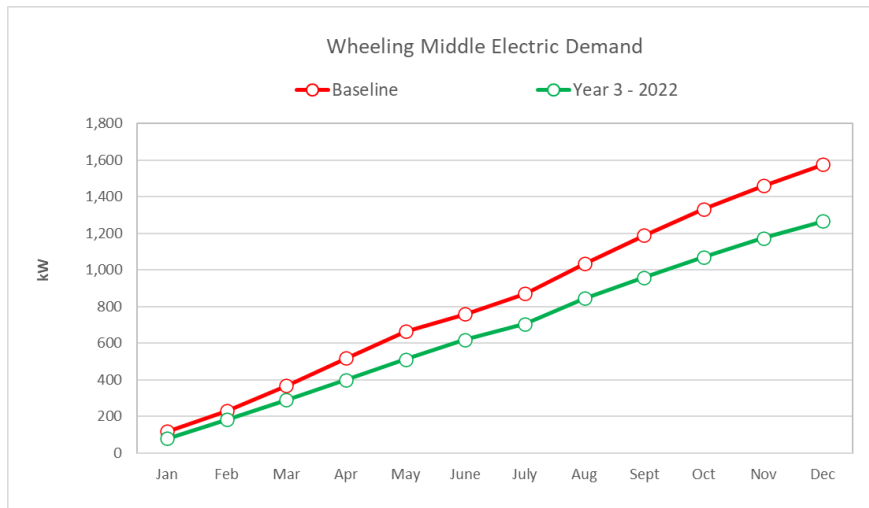
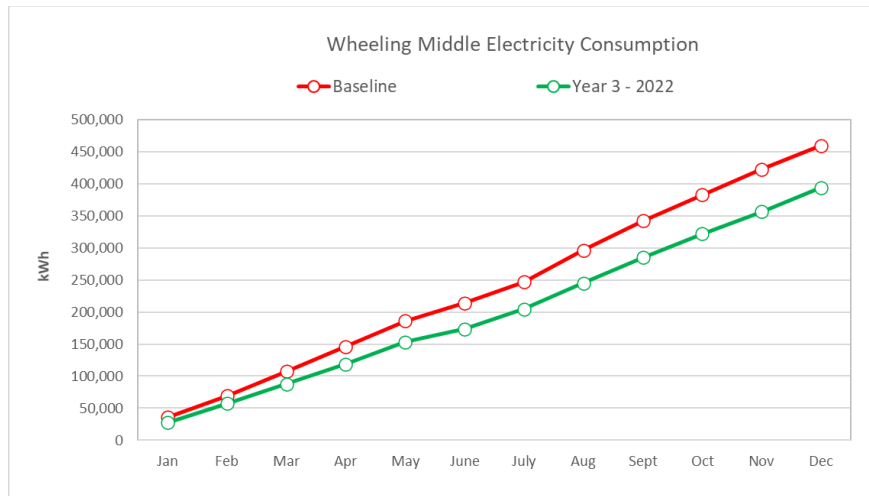


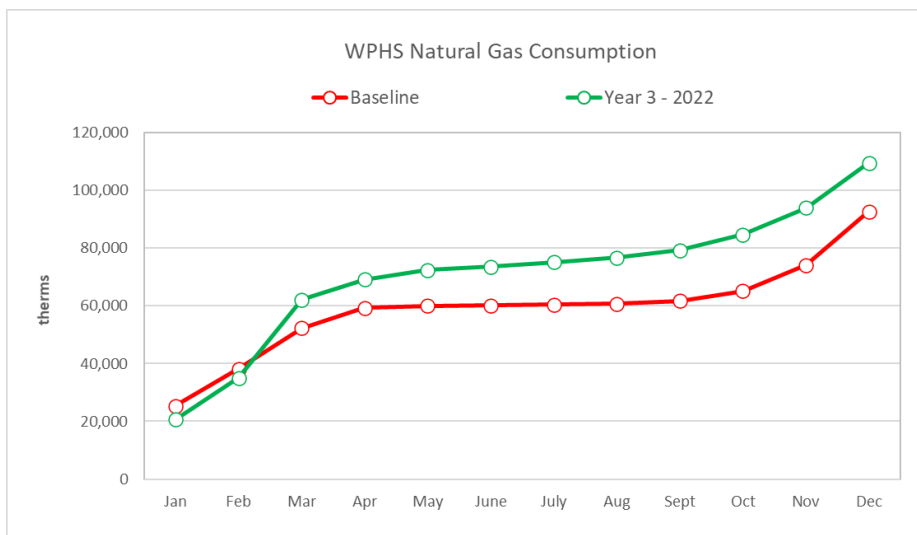
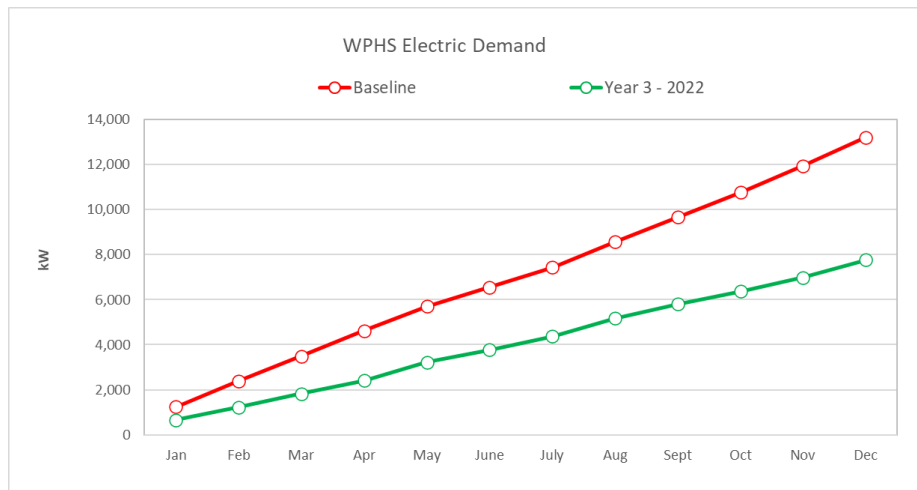
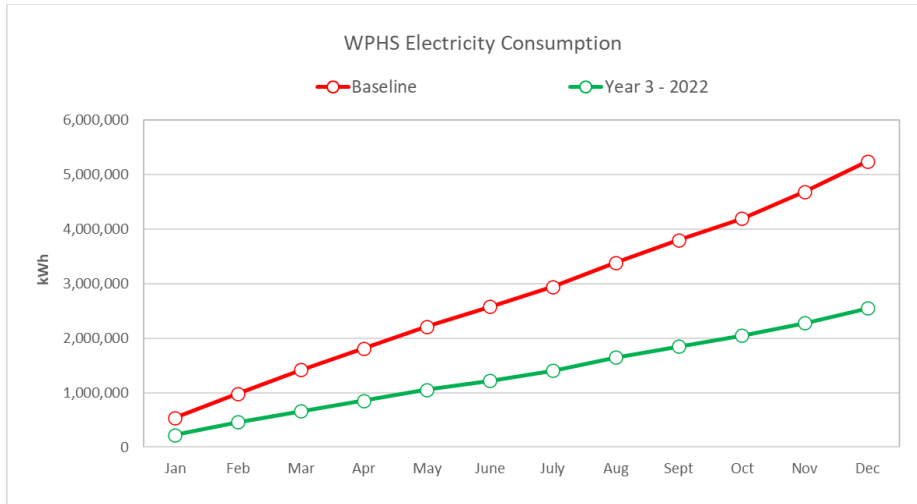












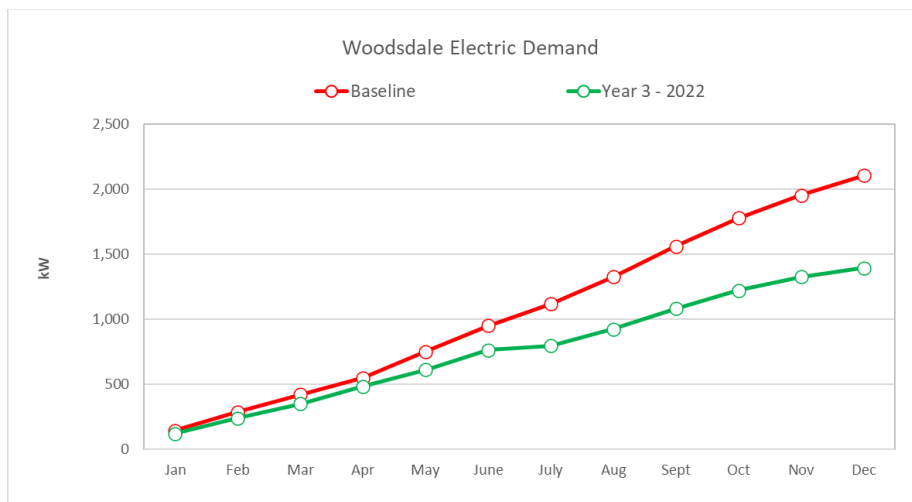
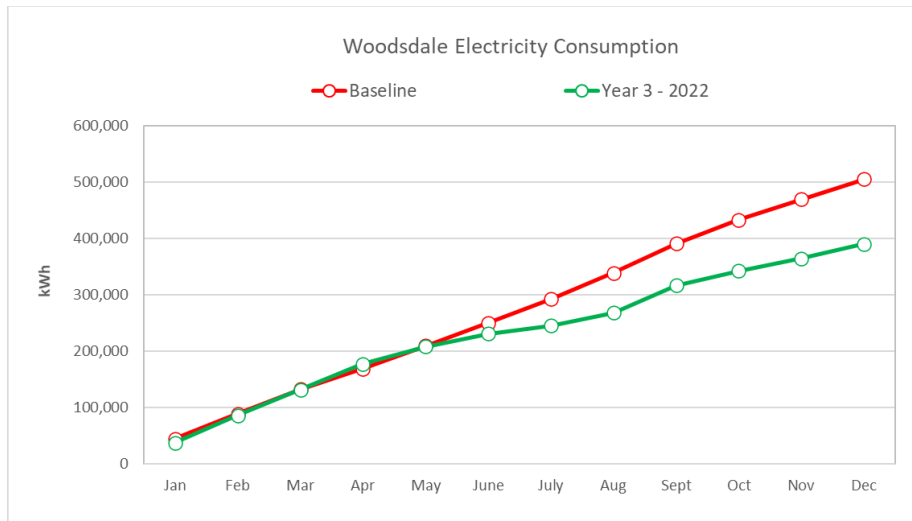


Exhibit F – Support Services Agreement

In coordination with *Exhibit D - Energy Savings Guarantee*, CMTA Energy Solutions will perform the Measurement and Verification (M&V) offerings stated below.

1. CMTA Energy Solutions shall: (a) Review system performance data and utility trend; (b) identify and document any apparent operational or maintenance related conditions that may reasonably impact the achievement of guaranteed savings; (c) notify the Owner in writing of such conditions within a reasonable period after identification; (d) provide reasonable clarification or recommendations related to system operation or maintenance practices when such practices materially affect savings verification, without assuming responsibility for implementation.
2. CMTA Energy Solutions will have remote access to building automation systems and solar monitoring that are web-based and will be granted site access to review building automation systems that are not web-based. An engineer will review system operation at least annually and more often as necessitated by the building energy performance.
3. CMTA Energy Solutions will provide an annual reconciliation report to the City of South Bend outlining the performance of the energy conservation measures for the last year.
4. The cost of this M&V Service is included in the project cash flow as a separate annual cost that is in addition to the total project cost. Therefore, this fee will be billed annually for Year 1 through 20. The cost will be escalated per year as seen in the table below.
5. City of South Bend can discontinue the M&V Service at any time. If cancelled, energy savings will no longer be guaranteed.

Table G.1 – M&V Service Cost Offering

Year	M&V
2026	\$0
2027	\$1,000
2028	\$1,030
2029	\$1,061
2030	\$1,093
2031	\$1,126
2032	\$1,159
2033	\$1,194
2034	\$1,230
2035	\$1,267
2036	\$1,305
2037	\$1,344
2038	\$1,384
2039	\$1,426
2040	\$1,469
2041	\$1,513
2042	\$1,558

**City of South Bend
Solar and Energy Storage at MLK Dream Center
Guaranteed Energy Savings Contract**



2043	\$1,605
2044	\$1,653
2045	\$1,702

Exhibit G – Sample AIA Application for Payment

Refer to the following pages for a sample AIA application.

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

PAGE ONE OF PAGES

TO OWNER: PROJECT: [REDACTED]

APPLICATION NO: 0

Distribution to:

<input type="checkbox"/>	OWNER
<input type="checkbox"/>	ARCHITECT
<input type="checkbox"/>	CONTRACTOR
<input type="checkbox"/>	
<input type="checkbox"/>	

FROM CONTRACTOR: [REDACTED]

VIA ARCHITECT:

PERIOD TO: [REDACTED]

PROJECT NOS:

CONTRACT FOR:

CONTRACT DATE:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

The undersigned Design Builder certifies that to the best of the Design Builder's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Design Builder for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

- 1. ORIGINAL CONTRACT SUM \$ [REDACTED]
- 2. Net change by Change Orders \$ 0.00
- 3. CONTRACT SUM TO DATE (Line 1 ± 2) \$ 0.00
- 4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 0.00
- 5. RETAINAGE:
 - a. [REDACTED] % of Completed Work \$ 0.00
(Column D + E on G703)
 - b. [REDACTED] % of Stored Material \$ Included in above
(Column F on G703)
 - Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$ 0.00
- 6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total) \$ 0.00
- 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$ [REDACTED]
- 8. CURRENT PAYMENT DUE \$ 0.00
- 9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$ 0.00

DESIGN BUILDER:

By: [REDACTED] Date: [REDACTED]

State of: [REDACTED] County of: [REDACTED]
 Subscribed and sworn to before me this [REDACTED] day of [REDACTED]
 Notary Public: [REDACTED]
 My Commission expires: [REDACTED]

DESIGN BUILDER'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Design Builder certifies to the Owner that to the best of the Design Builder's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Design Builder is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ [REDACTED]

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

DESIGN BUILDER:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Design Builder named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Design Builder under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	[REDACTED]	[REDACTED]
Total approved this Month	[REDACTED]	[REDACTED]
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	

Exhibit H – Project Plans and Specifications

H.1 Project Plans

1. Solar Drawings

MLK Dream Center

- PV001 – Coversheet
- PV002 – General Notes
- PV101 – Site Plan
- PV102 – Plot Plan
- PV103 – Staging Plan
- PV104 – Roof Safety Riser
- PV105 – Photo Map
- PV106 – Safety Placards & Signage
- PV201 – Conduit Plan
- PV202 – Single Line Diagram: PV System
- PV203 – Single Line Diagram: Batteries
- PV301 – Ballast and Strings
- PV401 – Equipment BOM
- PV501 – Spec-Sheets

H.2 Specification

The following specification sections have been developed and issued for the project:

1. Solar Specifications

Exhibit I – Warranty & Title

Warranty

Qualified Provider hereby warrants to Owner that all materials furnished by the Qualified Provider, if any, and all workmanship performed by the Qualified Provider in connection with the project, shall be in accordance with the general industry standards of the mechanical and electrical construction industry; shall be performed in a competent, good and workmanlike manner and in compliance with the Contract Documents, and all pertinent laws, rules, and regulations; and shall be free from any and all defective materials or workmanship. The Qualified Provider shall promptly remedy any and all defective materials or workmanship furnished by the Qualified Provider or any Sub-contractor upon receipt of written notice thereof from Owner. If required by Owner, the Qualified Provider shall furnish satisfactory evidence as to the kind and quality of materials and equipment used in connection with the Project.

The warranty set forth herein shall continue to be effective for a period of one (1) year following Owner's acceptance or beneficial use of each Energy Conservation Measure, acceptance of a particular Facility, or acceptance of the Project, whichever comes first. Owner shall give the Qualified Provider written notice of all defective work, specifically detailing the deficiencies to be corrected, and the Qualified Provider shall repair or otherwise remedy such defective work in an expeditious manner.

To the extent possible, the Qualified Provider shall assign to the Owner all warranties that the Qualified Provider receives from its vendors and/or Sub-contractors for any materials or equipment, which are or are to become permanent features of the Project, which shall be in addition to the other warranties provided herein.

Title and Risk of Loss

Risk of Loss for all equipment and materials provided by Qualified Provider and/or Sub-contractor shall transfer to Owner upon installation and acceptance of such equipment and materials to Owner's Facilities. Title to an Energy Conservation Measure shall vest with the Owner upon installation, acceptance, and approving payment to the Qualified Provider. It is the intent of all parties that any transfer of title to Owner pursuant to this contract shall occur automatically without necessity of any bill of sale, certificate of title, or other instrument of conveyance beyond the partial certificate of acceptance. The Owner shall be responsible for operating and maintaining all Measures that are installed. The Owner shall also be responsible for any real or personal property taxes related to the Measures.

Exhibit J – MWBE Participation

Refer to the following pages for the completed MWBE Participation documentation.

**CITY OF SOUTH BEND
MINORITY AND WOMEN BUSINESS ENTERPRISE INCLUSION PROGRAM PLAN**



**FORM MBE-2.0
EVIDENCE OF GOOD FAITH EFFORTS**

This completed form should be included as part of the Bids documents related to City of South Bend Public Works Projects requiring Good Faith Efforts to obtain MBE participation.

Project Number: 125-00B Date: 3/23/2026
 Project Name: MLK Dream Center Solar Project
 Bidder: CMTA, Inc.
 Contact Person: Matt Anderson Telephone: 410-980-2191
 Address: 9519 Civic Way
 City: Prospect State: KY Zip: 40059
 Email: manderson@cmta.com

To determine whether a bidder has demonstrated good faith efforts to reach the MBE utilization goals set forth in the City of South Bend Public Works Project Specifications, the City and its agencies, boards, or commissions, **REQUIRE ALL** of the following Good Faith Efforts as listed in the table below*:

EVIDENCE OF GOOD FAITH EFFORTS	
<p>MBE LIST(S): The bidder reviewed 1) the City of South Bend’s Minority and Women Business Enterprise Inclusion Program Plan; 2) the list of certified MWBEs provided by the City; and 3) the Indiana Department of Administration list of Minority and Women Owned Businesses (both certified and non-certified) found at: http://www.in.gov/idoa/.</p>	
GOOD FAITH EFFORTS TO OBTAIN MBE PARTICIPATION	
The bidder shall initial each item below, as evidence of its good faith efforts to obtain MBE participation in the awarded contract.	
MA	I affirm that I reviewed the City of South Bend’s Minority and Women Business Enterprise Inclusion Program Plan and the Indiana Department of Administration’s certified list of Indiana Minority and Women Business Enterprises, found on their website (http://www.in.gov/idoa/).
MA	I affirm that I have made good faith efforts to select portions of the contract work to be performed by MWBEs, including, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE participation.
MA	I affirm that I have made good faith efforts to solicit through all reasonable and available means the interest of all MBEs in the scopes of work of the contract.
MA	I affirm that I attended all pre-bid meetings scheduled by the City of South Bend to inform MBEs of contracting and subcontracting opportunities.
MA	I affirm that I advertised in general circulation and/or trade association publications concerning subcontract opportunities and allowed MBEs reasonable time to respond to such advertisements.
MA	I affirm that I performed any and all necessary steps to provide written notices in a manner reasonably calculated to inform MBEs of subcontracting opportunities and allowed sufficient time for MBEs to participate effectively.
MA	I affirm that I followed up on initial solicitations with interested MBEs.
MA	I affirm that I negotiated with interested MBEs in good faith, including providing such MBEs with adequate information about the plans, specifications and other requirements of the subcontract.
MA	I affirm that I have made good faith efforts to assist interested MBEs in obtaining bonding, lines of credit, or insurance as required by the City or the bidder, where appropriate.

**CITY OF SOUTH BEND
MINORITY AND WOMEN BUSINESS ENTERPRISE INCLUSION PROGRAM PLAN**



**FORM MBE-2.0
EVIDENCE OF GOOD FAITH EFFORTS**

	<p align="center">MA</p>	<p>I affirm that I have made good faith efforts to assist interested MBEs in obtaining necessary equipment, supplies, materials, or related assistances or services, where appropriate.</p>
	<p align="center">MA</p>	<p>I affirm that I did not reject any MBEs as unqualified without sound business reasons based on a thorough investigation of their capabilities.</p>
	<p>CONTRACT RECORDS: The bidder has maintained the following records for each MBE that has bid on the subcontracting opportunity:</p> <ol style="list-style-type: none"> 1. Name, address, and telephone number; 2. A description of information provided by the bidder or subcontractor; and 3. A statement of whether an agreement was reached, and if not, why not, including any reasons for concluding that the MBE was unqualified to perform the job. 	

***Proper demonstration of Good Faith Efforts requires your initials next to all of the above boxes. Any omissions shall be considered grounds for rejection of the bid by the Board of Public Works. The City of South Bend reserves the right to request additional information.**

**CITY OF SOUTH BEND
MINORITY AND WOMEN BUSINESS ENTERPRISE INCLUSION PROGRAM PLAN**



**FORM WBE-2.0
EVIDENCE OF GOOD FAITH EFFORTS**

This completed form should be included as part of the Bids documents related to City of South Bend Public Works Projects requiring Good Faith Efforts to obtain MWBE participation.

Project Number: 125-008B Date: 3/23/2026
 Project Name: **MLK Dream Center Solar Project**
 Bidder: **CMTA, Inc.**
 Contact Person: **Matt Anderson** Telephone: **410-980-2191**
 Address: **9519 Civic Way**
 City: **Prospect** State: **KY** Zip: **40059**
 Email: **manderson@cmta.com**

To determine whether a bidder has demonstrated good faith efforts to reach the WBE utilization goals set forth in the City of South Bend Public Works Project Specifications, the City and its agencies, boards, or commissions, **REQUIRE ALL** of the following Good Faith Efforts as listed in the table below*:

	EVIDENCE OF GOOD FAITH EFFORTS
	WBE LIST(S): The bidder reviewed 1) the City of South Bend’s Minority and Women Business Enterprise Inclusion Program Plan; 2) the list of certified MWBEs provided by the City; and 3) the Indiana Department of Administration list of Minority and Women Owned Businesses (both certified and non-certified) found at: http://www.in.gov/idoa/ .
	GOOD FAITH EFFORTS TO OBTAIN WBE PARTICIPATION
	The bidder shall initial each item below, as evidence of its good faith efforts to obtain WBE participation in the awarded contract.
MA	I affirm that I reviewed the City of South Bend’s Minority and Women Business Enterprise Inclusion Program Plan and the Indiana Department of Administration’s certified list of Indiana Minority and Women Business Enterprises, found on their website (http://www.in.gov/idoa/).
MA	I affirm that I have made good faith efforts to select portions of the contract work to be performed by WBEs, including, where appropriate, breaking out contract work items into economically feasible units to facilitate WBE participation.
MA	I affirm that I have made good faith efforts to solicit through all reasonable and available means the interest of all WBEs in the scopes of work of the contract.
MA	I affirm that I attended all pre-bid meetings scheduled by the City of South Bend to inform WBEs of contracting and subcontracting opportunities.
MA	I affirm that I advertised in general circulation and/or trade association publications concerning subcontract opportunities and allowed WBEs reasonable time to respond to such advertisements.
MA	I affirm that I performed any and all necessary steps to provide written notices in a manner reasonably calculated to inform WBEs of subcontracting opportunities and allowed sufficient time for WBEs to participate effectively.
MA	I affirm that I followed up on initial solicitations with interested WBEs.
MA	I affirm that I negotiated with interested WBEs in good faith, including providing such WBEs with adequate information about the plans, specifications and other requirements of the subcontract.
MA	I affirm that I have made good faith efforts to assist interested WBEs in obtaining bonding, lines of credit, or insurance as required by the City or the bidder, where appropriate.

**CITY OF SOUTH BEND
MINORITY AND WOMEN BUSINESS ENTERPRISE INCLUSION PROGRAM PLAN**



**FORM WBE-2.0
EVIDENCE OF GOOD FAITH EFFORTS**

	<p align="center">MA</p>	<p>I affirm that I have made good faith efforts to assist interested WBEs in obtaining necessary equipment, supplies, materials, or related assistances or services, where appropriate.</p>
	<p align="center">MA</p>	<p>I affirm that I did not reject any WBEs as unqualified without sound business reasons based on a thorough investigation of their capabilities.</p>
	<p>CONTRACT RECORDS: The bidder has maintained the following records for each WBE that has bid on the subcontracting opportunity:</p> <ol style="list-style-type: none"> 1. Name, address, and telephone number; 2. A description of information provided by the bidder or subcontractor; and 3. A statement of whether an agreement was reached, and if not, why not, including any reasons for concluding that the MWBE was unqualified to perform the job. 	

***Proper demonstration of Good Faith Efforts requires your initials next to all of the above boxes. Any omissions shall be considered grounds for rejection of the bid by the Board of Public Works. The City of South Bend reserves the right to request additional information.**

CITY OF SOUTH BEND
MINORITY AND WOMEN BUSINESS ENTERPRISE INCLUSION PROGRAM PLAN



FORM MBE-2.1
MBE CONTACTED

This completed form should be supplied with Bids that pertain to City of South Bend Public Works Projects requiring Good Faith Efforts to contact MBEs. It is the bidder's sole responsibility to verify whether any listed minority-owned business meets the MBE qualifications. Attach additional pages if necessary.

PAGE 1 OF 1

Project Number: 125-008B MBE Participation Goal 1.1%

Project Name: MLK Dream Center Solar Project

Bidder: CMTA, Inc.

By: *[Signature]* Solar Project Manager 3/23/2026
(Signature) (Title) (Date)

MBE Firm Cheneco

Owner or Contact at MBE Firm Carmen Hendrixson

Telephone: 317/818-6933 Fax: _____ Email: carmen.hendrixson@telamon.com

TYPE OF WORK SOLICITED FOR THIS PROJECT:

Labor for commercial solar project including DC/racking and AC/communications.

RESULTS OF CONTACT WITH THE MBE FIRM:

Bid received but was price prohibitive compared to non-MWBE firm.

MBE Firm _____

Owner or Contact at MBE Firm _____

Telephone: _____ Fax: _____ Email: _____

TYPE OF WORK SOLICITED FOR THIS PROJECT:

RESULTS OF CONTACT WITH THE MBE FIRM:

CITY OF SOUTH BEND
MINORITY AND WOMEN BUSINESS ENTERPRISE INCLUSION PROGRAM PLAN



FORM MBE-2.1
WBE CONTACTED

This completed form should be supplied with Bids that pertain to City of South Bend Public Works Projects requiring Good Faith Efforts to contact WBEs. It is the bidder's sole responsibility to verify whether any listed woman-owned business meets the WBE qualifications. Attach additional pages if necessary.

PAGE 1 OF 1

Project Number: 125-008B WBE Participation Goal 4.3%

Project Name: MLK Dream Center Solar Project

Bidder: CMTA, Inc.

By: *M. D. O'Neil* Solar Project Manager 3/23/2026
(Signature) (Title) (Date)

WBE Firm Cheneco

Owner or Contact at WBE Firm Carmen Hendrixson

Telephone: 317/818-6933 Fax: _____ Email: carmen.hendrixson@telamon.com

TYPE OF WORK SOLICITED FOR THIS PROJECT:

Labor for commercial solar project including DC/racking and AC/communications.

RESULTS OF CONTACT WITH THE WBE FIRM:

Bid received but was price prohibitive compared to non-MWBE firm.

WBE Firm _____

Owner or Contact at WBE Firm _____

Telephone: _____ Fax: _____ Email: _____

TYPE OF WORK SOLICITED FOR THIS PROJECT:

RESULTS OF CONTACT WITH THE WBE FIRM:

Bid Amounts

For the construction required to complete the work, in accordance with the contract documents, I/We submit the following lump sum prices as listed in the following tables.

Bid Package	School	Scope	System Size	Weeks to Complete	Bid Amount
S1.A.	MLK Dream Center	DC / Mechanical	100.28 kW DC	1.5	\$35,448
S1.B.	MLK Dream Center	AC / Monitoring	100.28 kW DC	2.5	\$90,668.85
S 1.C.	MLK Dream Center	Batteries	30 kW / 60 kWh	1	\$13,690.40

Total: \$139,807.25

If CMTA requires Performance and Payment Bonding, indicate Performance and Payment Bonding rate:

Performance & Payment BondingRate: \$ 20 / \$1,000

Inclusions and Exclusions, included below or on a separate page:

We are an MBE certified company, all other contractors we use are also MBE and or VBE as well.
AC & DC installation will be installed at the same time.

Cheneco

Name of Contractor

Scott Nelson, VP of Business Development

Authorized Representative (Name & Title, Printed)



Authorized Representative (Signature)

October 31, 2025

Date of Signature



Quality. Transparency. Results

Bid Amounts

For the construction required to complete the work, in accordance with the contract documents, I/We submit the following lump sum prices as listed in the following tables.

Bid Package	School	Scope	System Size	Weeks to Complete	Bid Amount
S1.A.	MLK Dream Center	DC / Mechanical	112.815 kW DC	2	\$40112
S1.B.	MLK Dream Center	AC / Monitoring	112.815 kW DC	2	\$50,140
S 1.C.	MLK Dream Center	Batteries	30 kW / 60 kWh	Included in AC	Included in AC

If CMTA requires Performance and Payment Bonding, indicate Performance and Payment Bonding rate:

Performance & Payment Bonding Rate: \$ / \$1,000

2751 Prosperity Avenue | Fairfax, VA 22031 | cmta.com

Performance Contracting | MEP Engineering | Zero Energy Engineering | Technology | Commissioning



Quality. Transparency. Results

Inclusions and Exclusions, included below or on a separate page:

Southern Solar and Electrical Contracting

Name of Contractor

Tony Sweazy, Partner

Authorized Representative (Name & Title, Printed)

Tony Sweazy

Authorized Representative (Signature)

2-13-2025

Date of Signature

