

**CHARTER TOWNSHIP OF VAN BUREN BOARD OF TRUSTEES
FEBRUARY 29, 2016 SPECIAL WORK STUDY MEETING
TENTATIVE AGENDA**

ROLL CALL:

Supervisor Combs	_____	Trustee McClanahan	_____
Clerk Wright	_____	Trustee Miller	_____
Treasurer Budd	_____	Engineer Nummer	_____
Trustee Hart	_____	Attorney McCauley	_____
Trustee Jahr	_____	Secretary Montgomery	_____

UNFINISHED BUSINESS:

- 1. Discussion on awarding a contract to Cross Renovation, Inc. For a not to exceed amount of \$380,000.00 for design and construction services to renovate and update the Clerk and Developmental Services Offices.
- 2. Discussion on approving the amended 2016 Building & Grounds Capital Fund from the present amount of \$400,000.00 to an amount of \$575,000.00.

NEW BUSINESS:

- 1. Discussion on the re-appointment of Joe Baskin and the appointment of Victor DeLibera to the DDA with terms to expire 3-9-2020.

PUBLIC COMMENT:

ADJOURNMENT:

Charter Township of Van Buren

REQUEST FOR BOARD ACTION

Agenda Item _____

WORK STUDY MEETING DATE:
2016-02-29

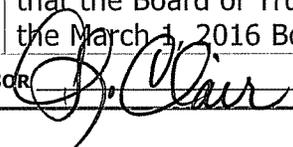
BOARD MEETING DATE:
2016-03-01

Consent Agenda _____ New Business _____ Unfinished Business Public Hearing _____

ITEM (SUBJECT)	Office Renovation Project
DEPARTMENT	Public Services, Developmental Services
PRESENTERS	Director James T. Taylor, Director Ronald Akers
PHONE NUMBER	734-699-8947 / 734-699-9288
INDIVIDUALS IN ATTENDANCE (OTHER THAN PRESENTER)	Cross Renovation, Inc.

Agenda topic

ACTION REQUESTED	Recommend to the Township Board to award a contract to Cross Renovation, Inc. for a not-to-exceed amount of \$380,000.00 for design and construction services to renovate and update the Clerk and Developmental Services Offices.
BACKGROUND – (SUPPORTING AND REFERENCE DATA, INCLUDE ATTACHMENTS)	See attachments.

BUDGET IMPLICATION	The project is being funded from Building & Grounds Capital Outlay 101-265-970-000.
IMPLEMENTATION NEXT STEP	Approval of the contract by Township Board contingent upon attorney approval of final draft.
DEPARTMENT RECOMMENDATION	Approval of contract with Cross Renovation, Inc. and authorize Supervisor and Clerk to execute contract upon attorney approval of final draft.
COMMITTEE/COMMISSION RECOMMENDATION	
ATTORNEY RECOMMENDATION	Contract has been approved by Township attorney. (May be subject to Attorney/Client Privilege and not available under FOIA)
ADDITIONAL REMARKS	The Directors of Public Services and Developmental Services requests that the Board of Trustees approve this contract as an agenda item at the March 1, 2016 Board meeting.
APPROVAL OF SUPERVISOR	



CHARTER TOWNSHIP OF VAN BUREN

DEPARTMENT OF PUBLIC SERVICES

DATE: March 01, 2016
TO: Township Board of Trustees
FROM: James T. Taylor, Director of Public Services
Ronald Akers, Director of Planning & Economic Development
RE: Request for Board Action – Office Renovation Project (CORRECTED COPY)

As noted in the attached outline, the proposed office renovation project is designed to improve the overall efficiency and service delivery to customers of Van Buren Township. The Developmental Office is a high volume and high traffic office in Township Hall that provides critical services in a number of areas, such as, permit issuance, project review and development, facilities and site management and serves residential homeowners, business owners, both current and potential developers, regulators, contractors and others. These services and customers are all served by the three operations that collaboratively work together to provide the needed services for this wide range of customers. This project also includes a smaller scale renovation of the Clerk's Office which provides office space to accommodate the Benefits Coordinator's need for space and security, while improving the counter operations.

As you can see, this effort is more than putting up more walls for offices and shuffling desks around, it is the first step in a comprehensive upgrade of the way we conduct our business. There is technology that will be integrated into our processes, a more open counter for customer convenience and reduced waiting time, and a host of other items listed in the attached outline.

We issued an RFP for Design and Build Services in which we received two responses. We evaluated each proposal as a team, interviewed both candidates and selected the one we believe best fits our desired objectives, Cross Renovation, Inc. The contract has been reviewed by our attorney, Patrick McCauley and delivered to you for your review. The project is being funded by four different sources and deposited in the Building & Grounds Capital Outlay.

The sources are as follows: \$150,000.00 (Water & Sewer); \$125,000.00 (Building & Grounds); \$100,000.00 (DDA); \$25,000.00 (MMRMA Reimbursement). Our request to the Board is to approve the contract award to Cross Renovation, Inc. to provide the design and build services for the Office Renovation Project as described in the RFP for a not-to-exceed amount of \$380,000.00.

MISSION STATEMENT

"The Van Buren Public Services Department is committed to a clean and safe environment, enhanced service delivery to its customers and protection of the significant public investment in the township's buildings and grounds, and water distribution and sanitary collection systems."

February 24, 2016

Sections modified from prior draft – Cross Renovation Contract

1.1.1 – Modified the total Contract Price to a total of \$380,000 with particular estimated cost allocations to design construction elements (not to exceed \$300,000) and furniture (not to exceed \$80,000).

1.1.2 – Added a reference to “furniture” in addition to design construction Work.

2.1.11 – Added a reference to “furniture” as part of the Project and Work.

3.1.1 – Modified Section to refer back to the Contract Price set forth in Section 1.1.1.

3.1.3 – Added a specific reference to a contingency amount as part of the Section 1.1.1 Contract Price.

4.1.1 – Added a right of the Township, but not a requirement, to review and approve all contracts and purchases before the contract is executed and the purchase consummated.

20.10 – Confirmed amount of total Contract Price as set forth in Section 1.1.1.

**CHARTER TOWNSHIP OF VAN BUREN
CONTRACT FOR
ARCHITECTURAL DESIGN & CONSTRUCTION SERVICES**

Agreement, made as of the _____ day of _____, 2016, between the facility owner, Charter Township of Van Buren, 46425 Tyler Road, Van Buren Township MI 48111 and the contractor, Cross Renovation, Inc. 28563 Pardo Street, Garden City MI 48135 for a Project to redesign and construct the offices of the Clerk and Developmental Services located in the Township Hall at 46425 Tyler Rd, Van Buren Township MI 48111.

The parties agree as follows.

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- B INSURANCE AND BONDS**

ARTICLE 1: THE WORK

1.1.1 Cross Renovation, Inc. will design and construct the Project. The total Contract Price for the Project shall be allocated between two (2) separate components, namely design/construction and furniture. The Contract Price established for design/construction work shall not exceed Three Hundred Thousand Dollars (\$300,000) allocated as follows:

Task Description	Estimated Cost
Pre-Construction Consultation and Design	\$8,000.00
Architectural Services	20,000.00
Estimation Services	5,000.00
Office Services	2,000.00
Project Management	15,000.00
Construction Costs including, for example, windows, carpet, walls, paint and electrical	210,000.00
Construction Management	12,600.00
Contingency for unknown or unforeseen matters which may be encountered and related to performance or completion of the Work	24,400.00
Spatial Design (interior)	<u>3,000.00</u>
	Not to exceed <u>\$300,000.00</u>

The Contract Price established for Furniture Work shall not exceed Eighty-Thousand Dollars (\$80,000.00) allocated as follows:

	<u>Estimated Cost</u>
Furniture design and acquisition, including but not limited to, these items:	Not to exceed \$80,000.00
Chairs, desks, presentation tools, Conference table(s), work tables, Work stations, white boards, Cabinets, etc.	

Cross Renovation, Inc. will furnish all the labor and materials to perform all the Work, including design, for the complete and prompt execution of the Project in accordance with the Contract Documents. In the event of conflict or inconsistency between the various terms, such conflict or inconsistencies shall be resolved by mutual agreement of the parties.

- 1.1.2 Cross Renovation, Inc. agrees to cooperate fully with the Charter Township of Van Buren in the design construction and furniture aspects of the Work to keep within the Charter Township of Van Buren's monetary limitations, as stipulated above (Art.1.1.1) in this Agreement.
- 1.1.3 Execution of this Agreement by Cross Renovation, Inc. is a representation that the Cross Renovation, Inc. has visited the site, become familiar with the local conditions under which the Work is to be performed and has correlated personal observations with the requirements of the Contract Documents.
- 1.1.4 The intent of the Contract Documents is to include all items and services necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings. In the event of any conflict between any of these documents, the greater service, better quality or greater quantity shall be included in the work prior to the development and acceptance of the Construction Management Proposal submitted by Cross Renovation, Inc.
- 1.1.5 The organization of the Specifications into division, section, and article, and the arrangement of Drawings shall not control Cross Renovation, Inc. in dividing the Work among any level of subcontractors or in establishing the extent of the Work to be performed by any trade.

ARTICLE 2: DEFINITIONS

The following definitions apply in this Agreement:

- 2.1.1 The word "Agreement" shall be considered to be this written Agreement entered into by the Charter Township of Van Buren and Cross Renovation, Inc. for the performance of the Work and payment therefore.
- 2.1.2 "Principal Representative(s)" shall refer to the Charter Township of Van Buren's designated project representative(s).
- 2.1.3 "Design/Build Entity" or "Design-Builder" shall refer to Cross Renovation, Inc.
- 2.1.4 "Construction Manager" shall mean Cross Renovation, Inc.
- 2.1.5 The term "subcontractor" shall mean a person, firm, or corporation licensed or registered in the State of Michigan supplying labor and materials, or only labor, for the Work, under separate agreement or agreements with Cross Renovation, Inc.

- 2.1.6** The Date of "Substantial Completion of the Work" or designated portion thereof is the date of notice of acceptance for each office by the Charter Township of Van Buren. "Final Completion" refers to completion of the punch list for the entire Work.
- 2.1.7** The "Contract Documents" consist of:
- a) This Agreement, including exhibits in Exhibits A and B. The Agreement represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Agreement may be amended or modified only by a Modification. A modification is (1) a written Amendment to the Agreement signed by both parties, (2) a change order, or (3) a change directive. 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 Design-Builder.
 - b) Charter Township of Van Buren Request for Proposals;
 - c) Construction Management Proposal;
 - d) The Estimated Cost Summary, any appendices, addenda, clarifications and allowances;
 - e) The Drawings released for Construction subsequent to execution of the Agreement;
 - f) The Specifications released for Construction subsequent to the execution of the Agreement;
 - g) Certificates/Evidence of Insurance;
 - h) Any Modifications issued after execution of this Agreement.
 - i) All Contract Documents are fully incorporated herein by reference.
- 2.1.8** Unless otherwise provided, the "Contract Time" is the period of time allotted in the Contract Documents for Completion of the Project.
- 2.1.9** The term "Day" as used in the Contract Documents shall mean calendar day unless specifically designated otherwise.
- 2.1.10** The word "Drawings" shall mean all Drawings approved by the Charter Township of Van Buren which have been prepared by the Architect and/or Engineer showing the Work to be done on the Project.
- 2.1.11** The "Project" is synonymous with the "Work." The "Work" or "Project" means the total design, construction and services required by the Contract Documents, whether completed or partially completed and includes all other labor, materials, equipment, furniture, tools, machinery and services provided or to be provided by Cross Renovation, Inc., the General Contractor, subcontractor, and/or sub-subcontractor to fulfill Cross Renovation, Inc.'s obligations.
- 2.1.12** "Schedule of Values" shall be defined as the itemized listing of description of the Work by division and section of the Specifications. The format shall be that of the Contractors standard form. Included shall be the material costs, and the labor and other costs plus the sum of both.

2.1.13 "Owner" shall mean the Charter Township of Van Buren.

2.1.14 "Submittal" shall mean any submission to the Owner for review and approval demonstrating how the Design-Builder 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.

ARTICLE 3: DESIGN/BUILD ENTITY'S SERVICES

The Design/Build Entity shall perform the following services under this Agreement in each of the phases described below:

3.1 CONTRACT PRICE AND PROGRESS PAYMENTS

3.1.1 Cross Renovation, Inc. will complete the Work for a not to exceed a total Contract Price as set forth in Section 1.1.1 including reasonable expenses directly related to the Project as follows: travel, fax, phone, mail, express mail, courier, transportation and reproduction.

3.1.2 Cross Renovation, Inc. acknowledges that the Charter Township of Van Buren is limited in the monies available for the Project. Should funding of a lesser amount be made available for the Project, it is the obligation of the Charter Township of Van Buren to revise the Project Scope of the Work consistent with the ultimate appropriation and the parties hereto shall agree on the revised Project Scope based on the ultimate appropriation.

3.1.3 Contingency Management: The parties have included in the Contract Price in Section 1.1.1 a not to exceed contingency amount of Twenty-Four Thousand, Four Hundred Dollars (\$24,400.00) to be applied to and used exclusively for matters currently unforeseen or unknown by Cross Renovation, Inc., which may be encountered and related to performance and completion of the Work. The use of this contingency amount will be pursuant to the procedures established for change orders in this Agreement. Cross Renovation, Inc. is responsible for performing in accordance with the Contract Documents, in exchange for the payment of the Contract Price by the Charter Township of Van Buren. Any adjustments in the Contract Price will be governed by this Agreement.

3.1.4 The Construction Costs shall include the compensation of the Architect and/or Engineer and/or Mechanical, Electrical and Plumbing ("MEP"), the MEP's consultants or any other sums due the Architect and/or Engineer and/or MEP and sub-contractors.

3.1.5 Construction Cost: Development of the Schedule of Values shall include, without duplication:

- a. The compensation for services and the cost of Work provided by the Design/Build Entity; including all labor, materials, equipment, tools, construction equipment and machinery, heat, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work;

3.1.6 Unless otherwise agreed, payments for Work performed shall be made bi-weekly. The hourly billing rates for the Design-Builder are set forth in the Construction Management Proposal. Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

ARTICLE 4: DESIGN SERVICES

- 4.1.1** Design services shall be performed by qualified Architects, Engineers and other professionals selected and paid by the Design/Build Entity. The professional obligations of such persons shall be undertaken and performed in the interest of the Design/Build Entity. Construction services shall be performed by qualified construction contractors and suppliers, selected and paid by the Design/Build Entity and acting in the interest of the Design/Build Entity. Nothing contained herein shall create any contractual relationship between subcontractors, Architects, Engineers and/or suppliers with the Principal Representative(s) or Owner. The Owner or its Principal Representative(s) shall have the right, but is not required to, review and approve all purchases, including furniture, before completion of the transaction and contracts prior to execution between Cross Renovation, Inc. and its Architects, Engineers, subcontractors and suppliers.
- 4.1.2** Design/Build Entity shall be responsible to the Principal Representative(s) for acts and omissions of the Design/Build Entity's employees, General Contractor, subcontractors, sub-subcontractors, agents and parties in privity of contract with the Design/Build Entity to perform a portion of the Work, including all design elements of the Project.
- 4.1.3** The Design-Build Entity has submitted to the Principal Representative(s) a preliminary design for the work and a proposal schedule for completion of the improvements for the Project. In preparation for the development of Construction Documents, the Design/Build Entity shall lead a final Design Development review which shall resolve outstanding issues with the preliminary design and shall fix all design elements of the project for final review by the Principal Representative(s).
- 4.1.4** The Design/Build Entity shall provide no fewer than eight (8) complete sets of Drawings Specifications, and such other documents necessary to fully illustrate the Design Development documents to the Principal Representative(s) for the Principal Representative(s)' prior approval before commencing the Work.

- 4.1.5** Upon the Principal Representative(s) review and approval of the Design Development submittal, the Design/Build Entity shall prepare, for the Principal Representative(s) final review and approval, a 100% complete Construction Documents submittal and all drawings and specifications necessary for completion of the Project. This submittal shall also include the Design/Build Entity's final Scope Narrative for the Project.
- 4.1.6** The Contract Documents shall be developed and submitted in accordance with the information and detail required for the Work and shall illustrate the extent and scope of Work. Upon review and approval of the Contract Documents submittal, the Principal Representative(s) shall issue an Authorization to Commence with Construction for the Work.
- 4.1.7** It shall be the responsibility of the Design/Build Entity to establish a design submittal and review schedule in conjunction with the Principal Representative(s) and other authorities that is mutually acceptable.
- 4.1.8** The final Contract Documents shall be subject to the final approval by the Charter Township Board of Trustees. The Principal Representative's final review must be completed within thirty (30) days, excepting holidays, commencing with the date of receipt of the complete documents by the Charter Township Board of Trustees.
- 4.1.9** The Design/Build Entity shall respond to all written review comments in a written, tabular format mutually agreed upon with the Principal Representative(s). Any reviews held in meeting format shall be documented by the Design/Build Entity and copies distributed as directed by the Principal Representative(s). The minutes of all construction meetings shall be recorded and distributed to all participants of the meetings. The Design/Build Entity shall be responsible for resolving review comments and obtaining necessary approvals prior to proceeding with the Work.
- 4.1.10** The Design/Build Entity shall divide the Work in the Drawings and Specifications to facilitate the bidding and awarding of subcontracts, sub-subcontracts, allowing for phased construction and funding, if practicable, taking into consideration such factors including time of performance, availability of labor, overlapping trade jurisdictions, and provisions for temporary facilities.
- 4.1.11** The Design/Build Entity is responsible for the cost of all expenses including but not limited to the photocopying and printing requirements for eight (8) copies of documents required by the Contract Documents outlined in this section. The Charter Township of Van Buren shall pay for any additional review sets required in addition to those sets specified.
- 4.1.12** In addition to the copies required for the preceding Design Phases, the Design/Build Entity shall furnish sufficient sets to insure distribution among subcontractors and reviewing authorities other than the Principal Representative(s).

- 4.1.13** The Design/Build Entity shall review the Drawings and Specifications as such are prepared, and shall recommend alternative solutions to the Principal Representative(s) whenever design details affect construction feasibility, schedules or costs.
- 4.1.14** The Principal Representative(s) shall review documents submitted by the Design/Build Entity and shall render decisions pertaining thereto without unreasonable delay.
- 4.1.15** The Design/Build Entity shall develop a Construction Schedule based upon the Architect's design efforts and design schedule, and which is coordinated and integrated therewith. The Design/Build Entity shall provide the requirements and assignment of responsibilities for safety precautions and programs as required for the execution of the Work, temporary project facilities and for equipment, materials and services for common use of subcontractors.
- 4.1.16** The Design Development documents shall include but not be limited to:
- a. Any changes made to the Construction Management Proposal.
 - b. Confirm design requirements indicated in the Request for Proposal.
 - c. Floor plans including proposed movable equipment and furnishings
 - d. Proposed architectural finish schedule, HVAC, plumbing, and electrical fixture schedules;
 - e. An updated project schedule, including a timetable for submission of any other designs required due to change orders.
- 4.1.17** All Work performed shall fully comply with all applicable Federal, State and local statutes, codes, laws, rules, regulations and ordinances.
- 4.1.18** The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work.

4.1.19 Progress Reports

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

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

4.1.20 The Design-Builder, 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.

4.1.21 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner and in accordance with applicable industry standards.

4.1.22 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the 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 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.

4.1.23 Design-Builder's Submittals

4.1.23.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 4.1.20, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Price or extension of Contract Time based on the time required for review of Submittals.

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

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

4.1.23.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Contract Documents. The Work may deviate from the Contract Documents only if the Design-Builder 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 Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

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

4.1.24 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear

and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

4.1.25 Royalties, Patents and Copyrights

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

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

4.1.26 Indemnification

4.1.26.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's elected and appointed officials, agents, representatives, and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 4.1.26.

4.1.26.2 The indemnification obligation under this Section 4.1.26 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

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

ARTICLE 5: CONTROL OF THE WORK

5.1.1 The Design/Build Entity shall supervise and direct the Work of its subcontractors and sub-subcontractors and shall coordinate the Work with the activities and responsibilities of the Principal Representative(s) to complete the Project in accordance with the Charter Township of Van Buren's objectives of cost, time and quality and the Contract Documents.

- 5.1.2 The Design/Build Entity shall establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Team.
- 5.1.3 The Design/Build Entity shall schedule and conduct as needed progress meetings at which the Principal Representative(s), General Contractor, Architect and/or Engineer, MEP, and Design/Build Entity can discuss jointly such matters as procedures, progress, schedule, costs, quality control and problems.
- 5.1.4 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 overall Project Plan unless the Owner and Design-Builder execute a Modification.
- 5.1.5 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 Overall Project Plan, 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.

ARTICLE 6: SUPERVISION AND CONSTRUCTION PROCEDURES

- 6.1.1 The Design/Build Entity shall propose and implement an approved procedure for processing and tracking requests for clarifications, submittals and shop drawing review for review and approval by the Principal Representative(s)
- 6.1.2 The Design/Build Entity shall neither create nor imply a responsibility or duty of review by the Principal Representative(s).
- 6.1.3 No approval of any drawings, specifications, samples, or product data by the Principal Representative(s) shall relieve the Design/Build Entity of responsibility for any deviation from the requirements of the Contract Documents unless the Design/Build Entity has specifically informed the Principal Representative(s) in writing at the time of submission that such deviation exists and has identified the deviation and the Principal Representative(s) have approved the deviation.
- 6.1.4 The Design/Build Entity shall assist in developing and implementing a system for the preparation, processing and tracking of Modifications, Amendments and Change Orders and recommend necessary or desirable changes to the Principal Representative(s).
- 6.1.5 The Design/Build Entity shall record and distribute minutes of all construction meetings.

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

ARTICLE 7: SCHEDULE AND COORDINATION

- 7.1.1** The Design/Build Entity shall schedule and coordinate the Work of all of its General Contractor, subcontractors and sub-subcontractors on the Project including their use of the site. The Design/Build Entity shall keep these entities informed of the Project construction schedule to enable these entities to plan and perform the Work properly.
- 7.1.2** The Design/Build Entity shall prepare and submit a construction schedule to the Principal Representative(s) for the Work which shall provide for the expeditious and practicable execution and completion of the Work. The schedule shall be consistent with previously issued schedules, not to exceed time limits current under the Contract Documents and shall be related to the entire Project to the extent required by the Contract Documents.
- 7.1.3** The schedule for the performance of the Work shall be, at the discretion of the Design/Build Entity, upon approval by the Principal Representative(s).
- 7.1.4** The Design/Build Entity shall perform the Work within the identified times of the most recent schedule and consistent with the established Contract Time, subject to potential changes in Project Scope as set forth in Section 3.1.2.
- 7.1.5** Upon receipt of approval from the Owner, the Design-Builder may cause construction of the Project to commence.
- 7.1.6** The Design-Builder shall supervise, inspect and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Agreement, unless the Contract Documents give other specific instructions concerning these matters.

- 7.1.7** Unless otherwise provided in the Contract Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.
- 7.1.8** When a material or system is specified in the Contract Documents, the Design-Builder may make substitutions only in accordance with Article 11.
- 7.1.9** The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.
- 7.1.10** The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when this Agreement is executed, whether or not yet effective or merely scheduled to go into effect.
- 7.1.11** The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. During and at the completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project. If the Design-Builder fails to clean up as provided in this Agreement, within twenty-four (24) hours after having received written notice from the Owner, the Owner may do so and Owner shall be entitled to and shall receive reimbursement from the Design-Builder.
- 7.1.12** The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

ARTICLE 8: AMENDMENTS AND CHANGE ORDERS

- 8.1.1** The Design/Build Entity shall maintain at the Project site on a current basis, one record copy of all Submittals, Drawings, Specifications, Scope Narrative, Addenda, Amendments, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and samples. The record copies shall be documented within fourteen (14) days from the date performed in the field and available to the Principal Representative(s).

- 8.1.2** The Design/Build Entity shall maintain at the Project site on a current basis a log to record receipt of all items set forth in paragraph 8.1.1 so as to record and permit the determination of the most current copies.
- 8.1.3** The Design/Build Entity shall advise the Principal Representative(s) on a current basis of all changes in the Work made during construction.
- 8.1.4** The Design/Build Entity shall maintain mutually acceptable provisions for submittal of samples for exterior building materials, interior finishes, masonry mock-up, color boards, project close-out procedures, including but not limited to equipment start-up and testing, As-Builts, and O&M manuals, and maintenance training, will be incorporated into the Specifications.

ARTICLE 9: START-UP

- 9.1.1** The Design/Build Entity, with the Principle Representative's maintenance and/or contracted testing personnel, shall direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors of all tiers.

ARTICLE 10: AS-BUILT DRAWINGS

- 10.1.1** At the conclusion of the Construction Phase, the Principal Representative(s) shall receive As-Built Drawings and Specifications from the Design/Build Entity.
1. These redline changes shall describe the built condition of the Project. This information and all of the incorporated changes directed by Addenda, Change Order/Amendment or Supplemental Instructions shall be incorporated by the Design/Build Entity into a Record Drawings document provided to the Principal Representative(s) in the form of electronic CAD files and one (1) hard copy bound set.
 2. The As-Built Drawings shall be reviewed by the Design/Build Entity's Architect/Engineers and Principal Representative(s) prior to incorporating into the Record Drawings

ARTICLE 11 CHANGES IN THE WORK

11.1 General

- 11.1.1** Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by Change Order or Change Directive, subject to the limitations stated in this Article 11 and elsewhere in the Contract Documents.

- 11.1.2** 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, provided, however, that the parties shall negotiate in good faith required adjustments in the Contract Price or Contract Time, if any.

11.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly.

11.2 Change Orders

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

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

11.3 Change Directives

11.3.1 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 Price, or Contract Time. The Owner may by Change Directive, without invalidating the Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Contract Price or, Contract Time being adjusted accordingly.

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

11.3.3 If the Change Directive provides for an adjustment to the Contract Price an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 11.4.7.

11.4.4 If unit prices are stated in the Contract 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.

11.4.5 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 Price or Contract Time.

- 11.4.6** A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Price, Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
- 11.4.7** If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Price, the parties shall negotiate in good faith to 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 11.3.3.3, 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 Contract Documents, costs for the purposes of this Section 11.4.7 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.
- 11.4.8** 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 Price, 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.
- 11.4.9** 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 Price 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 19.
- 11.4.10** When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Price, 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.

ARTICLE 12 OWNER'S RESPONSIBILITIES

12.1 General

12.1.1 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.

12.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within ten (10) days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

12.2 Information and Services Required of the Owner

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

12.2.2 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 Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

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

12.2.4 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 Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

12.2.5 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 Design-Builder.

12.2.6 Except as otherwise provided in the Contract 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.

12.3 Submittals

- 12.3.1** 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 Design-Builder 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 Design-Builder of the obligations under this Agreement. 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.
- 12.3.2** Upon review of the Submittals required by the Contract Documents, the Owner shall notify the Design-Builder of any non-conformance with the Contract Documents the Owner discovers.
- 12.4** Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Contract Documents.
- 12.5** The Owner shall not be responsible for the Design-Builder'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 Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.
- 12.6** 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, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

12.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 14.8 and the date of final completion in accordance with Section 14.10.

12.8 Owner's Right to Stop Work

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

12.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the 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 the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 13 TIME

13.1 Progress and Completion

13.1.1 Time limits stated in the Contract Documents are of the essence of the Agreement. The Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

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

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

13.2 Delays and Extensions of Time

13.2.1 If the Design-Builder 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 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.

13.2.2 Claims relating to time shall be made in accordance with applicable provisions of this Agreement.

13.2.3 This Section 13.2 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. See also Section 20.9.

ARTICLE 14 PAYMENT APPLICATIONS AND PROJECT COMPLETION

14.1 Contract Price

The Contract Price is stated in the Exhibits and Section 1.1.1.

14.2 Schedule of Values

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

14.3 Applications for Payment

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

14.3.1.1 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.

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

14.3.2 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 Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

14.3.3 The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

14.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 14.5.1.

14.5 Decisions to Withhold Certification

14.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 14.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

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

.7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

14.5.3 If the Owner withholds certification for payment under Section 14.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

14.6 Progress Payments

14.6.1 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.

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

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

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

14.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 14.6.2, 14.6.3 and 14.6.4.

14.6.6 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.

14.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Price, 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.

14.7 Failure of Payment

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

14.8 Substantial Completion

14.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 14.8.

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

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

14.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 14.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

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

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

14.9 Partial Occupancy or Use

14.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated and approved by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, 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 Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 14.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

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

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

14.10 Final Completion and Final Payment

14.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Contract Documents and the Agreement fully performed, the Owner will, subject to Section 14.10.2, promptly issue a final Certificate for Payment.

14.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the 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 Agreement, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

14.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the 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 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.

- 14.10.4** 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.
- 14.10.5** Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 15 PROTECTION OF PERSONS AND PROPERTY

15.1 Safety Precautions and Programs

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

15.2 Safety of Persons and Property

- 15.2.1** The Design-Builder 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 Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
 - .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 15.2.2** The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.
- 15.2.3** The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Agreement, 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.
- 15.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

15.2.5 The Design-Builder 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 15.2.1.2 and 15.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 15.2.1.2 and 15.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under this Agreement.

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

15.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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

15.3 Hazardous Materials

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

15.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or

entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Price shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

15.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 15.3.1 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.

15.3.4 The Owner shall not be responsible under this Section 15.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's overall Project plan. The Owner shall be responsible for materials or substances required by the Owner's overall Project plan, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

15.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 15.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

15.4 Emergencies

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

ARTICLE 16 UNCOVERING AND CORRECTION OF WORK

16.1 Uncovering of Work

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

16.2 Correction of Work

16.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the 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 expense.

16.2.2 After Substantial Completion

16.2.2.1 In addition to the Design-Builder's obligations under this Agreement, 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 this Agreement, 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 Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 12.9.

16.2.2.2 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. The Work shall be corrected pursuant to the one (1) year warranty one (1) time with the exception of mechanical or hazardous items which are subject to corrections until reasonably acceptable to Owner.

16.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 16.2.

- 16.2.3** The Design-Builder 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 Design-Builder nor accepted by the Owner.
- 16.2.4** The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.
- 16.2.5** Nothing contained in this Section 16.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 16.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

16.3 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 Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 17 COPYRIGHTS AND LICENSES

- 17.1** Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.
- 17.2** The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.
- 17.3** Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including

prompt payment of all sums when due, under the 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 rightfully terminates this Agreement for cause as provided in Section 18.1.4 or 18.2.1 the license granted in this Section 17.3 shall terminate.

17.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 17. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

17.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 17.3.2. The terms of this Section 17.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 18.1.4 or 18.2.2.

ARTICLE 18 TERMINATION OR SUSPENSION

18.1 Termination or Suspension

18.1.1 If the Owner fails to make payments to the Design-Builder for Work 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.

18.1.2 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 adjusted.

18.1.3 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.

18.1.4 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.

18.1.5 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.

18.1.6 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 18.1.6 be greater than the compensation set forth in this Agreement.

18.2 Termination or Suspension Following Execution of the Agreement

18.2.1 Termination by the Design-Builder

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 14.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

18.2.1.2 The Design-Builder may terminate the Agreement if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under

direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 18.2.3 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.

18.2.1.3 If one of the reasons described in Section 18.2.1.1 or 18.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Agreement and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

18.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Agreement and recover from the Owner as provided in Section 18.2.1.3.

18.2.2 Termination by the Owner For Cause

18.2.2.1 The Owner may terminate the Agreement if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 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 Design-Builder;
- .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.

18.2.2.2 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 and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

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

18.2.2.3 When the Owner terminates the Agreement for one of the reasons stated in Section 18.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

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

18.2.3 Suspension by the Owner for Convenience

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

18.2.3.2 The Contract Price and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 18.2.3.1. Adjustment of the Contract Price 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 Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Agreement.

18.2.4 Termination by the Owner for Convenience

18.2.4.1 The Owner may, at any time, terminate the Agreement for the Owner's convenience and without cause.

18.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

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

18.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder 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 19 CLAIMS AND DISPUTE RESOLUTION

19.1 Claims

19.1.1 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 Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Agreement. The responsibility to substantiate Claims shall rest with the party making the Claim.

19.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Agreement in accordance with the requirements of the binding dispute resolution method if selected jointly by the parties within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 19.1.2.

19.1.3 Notice of Claims

19.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party 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.

19.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 14.10.4 or 14.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 19.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 19.2.1 shall not apply.

19.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 14.7 and Article 18, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

19.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Price, 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 15.4.

19.1.6 Claims for Additional Time

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

19.1.6.2 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.

19.1.7 Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 18. Nothing contained in this Section 19.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents or this Agreement.

19.2 Initial Decision

19.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 15.3 and 15.4 of the 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.

19.2.2 Procedure

19.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 19.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

19.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 19.1.3.1: (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.

- 19.2.3** 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.
- 19.2.4** If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.
- 19.2.5** The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Price 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.
- 19.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 19.2.6.1.
- 19.2.6.1** 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.
- 19.2.7** In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.
- 19.2.8** 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.

19.3 Mediation

- 19.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 14.10.4, 14.10.5, and 19.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.
- 19.3.2** 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 Agreement, 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 19.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

19.3.3 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.

19.4 Arbitration

19.4.1 All claims 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 Agreement, 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.

19.4.1.1 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.

19.4.2 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.

19.4.3 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.

19.4.4 Consolidation or Joinder

19.4.4.1 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).

19.4.4.2 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.

19.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 19.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 20 MISCELLANEOUS PROVISIONS

20.1 Governing Law

The Contract shall be governed by the law of the State of Michigan.

20.2 Successors and Assigns

20.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 20.2.2, neither party to the Agreement shall assign the Agreement 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 Agreement.

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

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

20.3 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.

20.4 Rights and Remedies

20.4.1 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.

20.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Agreement, 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.

20.5 Tests and Inspections

20.5.1 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 Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

20.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 20.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 20.5.3, shall be at the Owner's expense.

20.5.3 If such procedures for testing, inspection or approval under Sections 20.5.1 and 20.5.2 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 Design-Builder's expense.

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

20.5.5 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.

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

20.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, namely information specifically identified in writing as confidential, 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 20.6.1.

20.6.1 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 Agreement.

20.7 Capitalization

Terms capitalized in the Agreement include those that are (1) specifically defined, or (2) the titles of numbered articles.

20.8 Interpretation

20.8.1 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.

20.8.2 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.

20.8.3 Insurance Requirements:

The Design-Builder, General Contractor, or any of their subcontractors or sub-subcontractors, shall not commence work under this Agreement until they have obtained the insurance required under this Agreement, and shall keep such insurance in force during the entire life of this Agreement. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan and acceptable to the Charter

Township of Van Buren. The requirements below should not be interpreted to limit the liability of the parties providing insurance. All deductibles are the responsibility of the parties providing insurance.

20.9 Liquidated Damages

20.9.1 Substantial Completion. The Owner and the Design-Builder agree that this Agreement shall provide for the imposition of liquidated damages based on the Date of Substantial Completion.

20.9.1 The Design-Builder understands that if the Date of Substantial Completion established by this Agreement, as may be amended by subsequent Change Order, is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Design-Builder agrees that if the Date of Substantial Completion is not attained the Design-Builder shall pay the Owner Five Hundred Dollars (\$500.00) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Substantial Completion.

20.9.2 Final Completion. The owner and the Design-Builder agree that this Agreement shall provide for the imposition of liquidated damages based on the Date of Final Completion.

20.9.2.1 The Design-Builder understands that if the Date of Final Completion established by this Agreement, as may be amended by subsequent Change Order is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Design-Builder agrees that if the Date of Final Completion is not attained the Design-Builder shall pay the Owner Five Hundred Dollars (\$500.00) as liquidated damages and not as a penalty for each Day that Final Completion extends beyond the Date of Final Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Final Completion.

20.9.3 Notwithstanding anything to the contrary contained herein, before any liquidated damages apply to failure to attain the dates of either substantial completion and/or final completion, Owner shall be required to give Design-Builder written notice of the failure to attain the necessary completion. Design-Builder and Owner shall then mutually agree on the number of additional days Design-Builder shall have to achieve the necessary completion, provided however, that the additional days shall not exceed ten (10) days from the date of the Owner's notice. If the Design-Builder

fails to achieve the necessary completion within the additional time agreed to by Owner, then the Design-Builder shall be liable for the daily liquidated damages amount for each day the necessary completion, substantial and/or final, is not achieved.

20.10 The parties acknowledge and agree that the total not to exceed Contract Price is \$380,000 as set forth in Section 1.1.1.

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

CHARTER TOWNSHIP OF
VAN BUREN

CROSS RENOVATION, INC.

OWNER

DESIGN-BUILDER

By: _____

By: _____

Its: Supervisor

Its: _____

And

By: _____

Its: Clerk

EXHIBIT A

- Charter Township of Van Buren RFP
- Cross Renovation, Inc. Construction Management Proposal and Estimated Cost Summary

EXHIBIT B

Insurance and Bonds.

Insurance. Design-Builder and all subcontractors and sub-subcontractors shall comply with the insurance requirements set forth in the Agreement and Attachment IV of the RFP.

Bond. Design-Builder shall provide a performance bond in form and substance satisfactory to Owner in the total amount of \$275,600 to assure performance of timely completion of the Project and payment of contractors and consultants.

Charter Township of Van Buren

REQUEST FOR BOARD ACTION

Agenda Item _____

BUDGET WORKSHOP DATE:
2016-02-29

BOARD MEETING DATE:
2016-03-01

Consent Agenda _____ New Business _____ Unfinished Business Public Hearing _____

ITEM (SUBJECT)	Amended 2016 Building & Grounds Capital Fund Budget
DEPARTMENT	Public Services
PRESENTER	Director James T. Taylor
PHONE NUMBER	734-699-8947
INDIVIDUALS IN ATTENDANCE (OTHER THAN PRESENTER)	

Agenda topic

ACTION REQUESTED	
To approve the Amended 2016 Building & Grounds Capital Fund from the present amount of \$400,000.00 to an amount of \$575,000.00.	
BACKGROUND – (SUPPORTING AND REFERENCE DATA, INCLUDE ATTACHMENTS)	
See attached memo.	

BUDGET IMPLICATION	2016 Building & Grounds Capital Fund to be amended from a total of \$400,000.00 to \$575,000.00.
IMPLEMENTATION NEXT STEP	Township Board to approve the budget amendment for the 2016 Building & Grounds Capital Fund as presented.
DEPARTMENT RECOMMENDATION	Director of Public Services recommends Board approval.
COMMITTEE/COMMISSION RECOMMENDATION	
ATTORNEY RECOMMENDATION	N/A
(May be subject to Attorney/Client Privilege and not available under FOIA)	
ADDITIONAL REMARKS	
APPROVAL OF SUPERVISOR	



CHARTER TOWNSHIP OF VAN BUREN
DEPARTMENT OF PUBLIC SERVICES

DATE: March 01, 2016
TO: Township Board of Trustees
FROM: James T. Taylor, Director of Public Services
Ronald Akers, Director of Planning & Economic Development
RE: Request for Budget Amendment (CORRECTED COPY)

The budget for the proposed office renovation project requires an amendment to accurately reflect the total amounts being allocated. The recommended amendment to the 2016 Building & Grounds Capital Outlay 101-265-970-000 is recommended to be amended from \$400,000.00 to \$575,000.00. This amended amount is to cover the cost of the Office Renovation Project Contract for \$380,000.00 and technology upgrades estimated to be within \$20,000.00.

MISSION STATEMENT

"The Van Buren Public Services Department is committed to a clean and safe environment, enhanced service delivery to its customers and protection of the significant public investment in the township's buildings and grounds, and water distribution and sanitary collection systems."



Agenda Item: _____

REQUEST FOR ACTION

WORK STUDY MEETING: FEB 29, 2016

BOARD MEETING: MARCH 15, 2016

X New Business	Unfinished Business	Public Hearing
ITEM (SUBJECT)	Consider: a. The reappointment of Joe Baskin to the Downtown Development Authority, term to expire March 9, 2020 b. The appointment of Victor DeLibera to the Downtown Development Authority, term to expire March 9, 2020	
DEPARTMENT	Supervisor	
PRESENTER	Supervisor Combs/Executive Director Ireland	
PHONE NUMBER	734-699-8910/734-699-8900 x9201	
INDIVIDUALS IN ATTENDANCE (OTHER THAN PRESENTER)		

Agenda topic

ACTION REQUESTED	
Approve: a. The reappointment of Joe Baskin to the Downtown Development Authority, term to expire March 9, 2020. b. The appointment of Victor DeLibera to the Downtown Development Authority, term to expire March 9, 2020	
Background – (Supporting and reference Data, Include attachments)	
<p>The terms of office for Mr. Joe Baskin and Mr. Ed Miller will expire on the Downtown Development Authority (DDA) Board on March 9, 2016. Director Baskin has made his interest known in continuing to serve on the DDA Board. He serves in the capacity as a business owner within the DDA District. Mr. Miller serves in the capacity as a resident member of the Authority; however, Mr. Miller has requested that he not be considered for reappointment for personal reasons.</p> <p>Mr. Baskin takes his responsibility seriously, his service has been instrumental in many of the successes of the DDA and he has volunteered his time to serve on sub committees of the DDA. Mr. Baskin brings the perspective of the small business owner. This has been a valuable and successful component of the projects the DDA has undertaken.</p> <p>The DDA Act requires that if there are more than 100 people residing within the district, one of the DDA members must be a resident. I have spoken with and have received an application from Mr. Victor DeLibera who previously served a term as a resident member. Mr. DeLibera has indicated he would be honored to be appointed again because he believes "a strong quality of life is developed through community service."</p> <p>The reappointment of Mr. Baskin and the appointment of Mr. DeLibera is consistent and compliant with the requirements of the DDA Act. Mr. Baskin serves as a business representative and Mr. DeLibera would serve as a resident representative. The original application for Mr. Baskin and new application for Mr. DeLibera</p>	

has been attached for your review. I feel that both of these individuals have and will continue to be champions of the Van Buren Township Downtown Development Authority.

BUDGET IMPLICATION	Non-Compensated
IMPLEMENTATION NEXT STEP	Clerk to notify applicants
DEPARTMENT RECOMMENDATION	approval
COMMITTEE/COMMISSION RECOMMENDATION	
ATTORNEY RECOMMENDATION	n-a
(May be subject to Attorney/Client Privilege and not available under FOIA)	
ADDITIONAL REMARKS	

McCombs