

MANISTEE CITY COUNCIL

MEETING AGENDA

TUESDAY, MARCH 5, 2013 – 7:00 P.M. – COUNCIL CHAMBERS

I. Call to Order.

- a.) PLEDGE OF ALLEGIANCE.
- b.) ROLL CALL.

II. Public Hearings.

- a.) PUBLIC HEARING ON AN APPLICATION TO THE STATE OF MICHIGAN LAND AND WATER CONSERVATION FUND FOR A GRANT TO ASSIST WITH REBUILDING THE ROTARY PARK PLAYGROUND IN DOUGLAS PARK.

City Manager Mitch Deisch will make a presentation on rebuilding the Rotary Park Playground and the grant application that is being submitted.

At this time the public has an opportunity to comment on the project and the proposed grant application.

No action is anticipated this evening. Council will be asked to approve a Resolution of Support for the grant application at the regular meeting scheduled for March 19, 2013.

- b.) PUBLIC HEARING ON MICHIGAN ECONOMIC DEVELOPMENT CORPORATION CDBG SIGNATURE BUILDING GRANT PROGRAM.

The purpose of this public hearing is to afford an opportunity for all citizens to express opinions, ask questions, and discuss a proposed grant application for \$330,000 from the Michigan Economic Development Corporation (MEDC) CDBG Signature Building Grant Program to assist in the purchase of the building at 312 River Street, Manistee, Michigan.

At this time the public is invited to speak on the Michigan Economic Development Corporation CDBG Signature Building Program grant application. City Council will take action on the request later in the meeting.

III. Citizen Comments on Agenda Related Items.

IV. Consent Agenda. All agenda items marked with an asterisk (*) are on the consent agenda and considered by the City Manager to be routine matters. Prior to approval of the Consent Agenda, any member of Council may have an item from the Consent Agenda removed and taken up during the regular portion of the meeting. Consent agenda items include:

- V. Approval of Minutes.
- VI. a.) Approval of Payroll.
b.) Cash Balances Report.
- XI. b.) Notification Regarding Next Work Session.

At this time Council could take action to approve the Consent Agenda as presented.

***V. Approval of Minutes.** Approval of the minutes of the February 19, 2013 regular meeting as attached.

VI. Financial Report.

- *a.) APPROVAL OF PAYROLL.
- *b.) CASH BALANCES REPORT.

VII. Unfinished Business.

VIII. New Business.

- a.) CONSIDERATION OF ENTERING INTO A DEVELOPMENT AGREEMENT WITH BLUE COW LLC.

The Michigan Economic Development Corporation's (MEDC) CDBG Signature Building Grant Program provides funding for communities and entities desiring to purchase anchor buildings in a community's downtown, rehabilitate the structures and develop new businesses within them resulting in the creation of new jobs.

Blue Cow LLC is requesting the City submit an application to the MEDC for \$330,000 to assist in the purchase of the building at 312 River Street, Manistee, Michigan (the Winkler Block is the historic name, formerly the Tuscan Grille). The agreement holds Blue Cow LLC solely responsible for the repayment and shall hold harmless the City. The City Attorney has reviewed and approved the development agreement.

At this time Council could take action to authorize the Mayor and City Clerk to execute the development agreement with Blue Cow LLC.

b.) CONSIDERATION OF MICHIGAN ECONOMIC CORPORATION CDBG SIGNATURE BUILDING GRANT PROGRAM – BLUE COW LLC.

Blue Cow LLC has made an offer to purchase the building at 312 River Street, Manistee, Michigan. With the assistance of the Main Street Downtown Development Authority an application to the Michigan Economic Development Corporation (MEDC) CDBG Signature Building Grant Program has been prepared. The application requires a public hearing, which was held earlier this evening, to allow for public comment on the request; and a resolution from City Council supporting the request.

At this time Council could take action to authorize the Mayor and City Clerk to execute a resolution supporting a grant application to the Michigan Economic Development Corporation CDBG Signature Building Grant Program for Blue Cow LLC.

c.) CONSIDERATION OF LAKES TO LAND REGIONAL INITIATIVE.

The City Planning Commission has begun work on updating the Master Plan. A component of the update will need public input. While the majority of work on the plan will be done in house, assistance is available from the Lakes to Land Regional Initiative. The Lakes to Land Initiative will assist with the public involvement and facilitate public input as well as assist in the plan development.

The City Attorney has reviewed and approved the Agreement to Partner Collaborative Master Plan and Implementation Strategy.

At this time Council could take action to authorize the Mayor and City Clerk to execute the Resolution and Agreement to Partner Collaborative Master Plan and Implementation Strategy with the Lakes to Land Regional Initiative.

d.) CONSIDERATION OF HARBOR COMMISSION BYLAW AMENDMENTS.

The Manistee Harbor Commission took action at their February 19, 2013 meeting to review and approve changes to their bylaws. A copy of the bylaws showing proposed amendments has been attached. These amendments provide additional clarification and update the bylaws to coincide with recently revised Chapter 266 of the Code of Ordinances.

At this time Council could take action to approve amendments to the bylaws of the Manistee Harbor Commission and authorize the Mayor to execute the document.

e.) CONSIDERATION OF FISH CLEANING STATION AND BEACH PAVILION CONTRACT.

On February 6, 2013 bids were due for the Fish Cleaning Station and Beach Pavilion construction that is to take place this spring. Twelve bids were received in response to the project.

Adams Construction	\$747,150
BCI Construction	\$639,600
Cole, Inc.	\$572,575
Hallmark Construction	\$583,750
Joseph Helminski	\$629,892
Omega Construction	\$618,543
Orshall	\$625,238
Plaggmars Construction	\$605,900
Rivertown Contractors	\$587,788
Sugar Construction	\$607,200
Tridon Construction	\$569,863 *Low Bidder
Vell Construction	\$583,500

Tridon Construction was the low bid at \$569,863. Value engineering has reduced that cost to \$545,020. A contract has been prepared in the reduced amount with Tridon Construction for the construction of the Fish Cleaning Station and the Beach Pavilion. The contract has been reviewed by the City Attorney.

At this time Council could take action to enter into a contract with Tridon Construction in the amount of \$545,020 for the construction of the Fish Cleaning Station and Beach Pavilion at First Street Beach.

IX. Notices, Communications, Announcements.

a.) A REPORT FROM THE MANISTEE RECREATION ASSOCIATION.

A regular part of each Council meeting is a report from a cooperating agency, organization or department.

At this time Ms, Vicki Sheffield will report on the activities of the Manistee Recreation Association and respond to any questions the Council may have regarding their activities. No action is required on this item.

*b.) NOTIFICATION REGARDING NEXT WORK SESSION.

A Council work session has been scheduled for Tuesday, March 12, 2013 at 7 p.m. A discussion will be conducted on the CDO White Paper, Project Updates; and such business as may come before the Council. No action is required on this item.

c.) PRESENTATION OF COMMUNITY DEVELOPMENT OFFICE WHITE PAPER.

X. Concerns and Comments.

a.) CITIZEN COMMENT. This is an opportunity for citizens to comment on municipal affairs. Citizens in attendance may be recognized by the Mayor for comments. Citizen comments are not limited to agenda items but should be directed toward municipal services, activities or areas of involvement.

b.) OFFICIALS AND STAFF.

c.) COUNCILMEMBERS.

XI. Adjourn.

MDD:cl

COUNCIL AGENDA ATTACHMENTS:

Council Meeting Minutes – February 19, 2013
Cash Balances Report
Blue Cow Developers Agreement
MEDC CDBG Grant Program Application/Documentation
Lakes to Land Regional Initiative Resolution/Agreement
Harbor Commission Bylaw Amendments
Fish Cleaning Station / Beach Pavilion Contract

PROCEEDINGS OF THE MANISTEE CITY COUNCIL – February 19, 2013

A regular meeting of the Manistee City Council was called to order by her honor, Mayor Colleen Kenny on Tuesday, February 19, 2013 at 7:00 p.m. in the City Hall Council Chambers, 70 Maple Street, followed by the Pledge of Allegiance.

PRESENT: Colleen Kenny, Edward Cote, Robert Hornkohl, Robert Goodspeed, Catherine Zaring, Beth Adams, and Eric Gustad.

ALSO PRESENT: City Manager – Mitch Deisch, City Attorney – Bruce Gockerman, City Clerk – Michelle Wright, City Assessor – Julie Beardslee, Community Development Director – Jon Rose, DPW Director – Jack Garber, Finance Director – Ed Bradford, Public Safety Director – Dave Bachman, Utility Director – Jeff Mikula, and City Engineer – Corey Kandow/Abonmarche.

CITIZEN COMMENTS ON AGENDA RELATED ITEMS.

Cyndy Fuller - 18 Cottage Lane, board member of Historic Vogue Theater, requested Council's support of their Local Revenue Sharing grant request. She also invited them to attend their official ground breaking on Wednesday.

CONSENT AGENDA.

- Minutes
 - February 5, 2013 - Regular Meeting
 - February 12, 2013 - Special Meeting
 - February 12, 2013 - Work Session
- Payroll
 - Feb. 4 – Feb. 17, 2013 - \$ 120,484.52
- Monthly Bills
 - January 10, 2013 - \$ 944,793.33
 - January 25, 2013 - \$ 512,805.94
- Notification Regarding Next Work Session – March 12, 2013
A discussion will be conducted on CDO White Paper, Project Updates; and such business as may come before the Council.
- Consideration of Manistee World of Arts & Crafts Use of Red Szymarek Park.
The Manistee World of Arts & Crafts is requesting the use of Red Szymarek Park for their 42nd Annual Arts & Crafts Show to be held on July 5-6, 2013. They would like Council approval to use the park starting July 3 through July 6 to allow them time to set up.

MOTION by Hornkohl, second by Gustad to approve the Consent Agenda as presented.

With a roll call vote this motion passed unanimously.

AYES: Kenny, Cote, Hornkohl, Goodspeed, Zaring, Adams, and Gustad
NAYS: None

PRESENTATION OF GIFTS OF APPRECIATION TO FORMER COUNCILMEMBERS – SID SCRIMGER, ILONA HAYDON, AND ALAN MARSHALL.

- Sid Scrimger for his service as the Second District City Councilmember. He served this community with loyalty, integrity, dedication and honor from November 2011 to January 2013.
- Ilona Haydon for her service as the Fourth District City Councilmember. She served this community with loyalty, integrity, dedication and honor from November 2007 to January 2013. She also served as Mayor from November 2009 to November 2010.
- Alan W. Marshall for his service as the Seventh District City Councilmember. He served this community with loyalty, integrity, dedication and honor from November 2002 to November 2012.

Mr. Scrimger and Ms. Haydon were unable to attend the meeting. Ms. Haydon asked that a letter be read in her absence.

Mayor Kenny then presented a gift of appreciation to former Councilmember Alan W. Marshall. He stated that it was an honor to serve on the City Council.

Kenny thanked all of them for their service and dedication to the City of Manistee.

CONSIDERATION OF A RESOLUTION AUTHORIZING 2013 REFUNDING BONDS (LIMITED TAX GENERAL OBLIGATION).

The City previously issued capital improvement bonds to finance City Hall renovations. The extremely low interest rate environment and previous bond structure has created an opportunity to refund these bonds at significant savings to the City. Total projected gross savings are in excess of \$220,000.

MOTION by Hornkohl, second by Zaring to adopt a Resolution Authorizing 2013 Refunding Bonds (Limited Tax General Obligation).

With a roll call vote this motion passed unanimously.

AYES: Kenny, Cote, Hornkohl, Goodspeed, Zaring, Adams, and Gustad
NAYS: None

CONSIDERATION OF LOCAL REVENUE SHARING BOARD GRANT APPLICATIONS.

The Local Revenue Sharing Board (LRSB) distributes 2% money from the Little River Casino. The deadline for 2013 Cycle I applications is Friday, March 1, 2013 at 5 p.m. City Staff has prepared grant applications for submission to the Local Revenue Sharing Board.

Grant applications included:

Public Safety Grant Requests:

Police - Century Terrace Surveillance System - \$ 9,130
Fire - Paramedic Tuition - \$12,000

Other Grant Requests:

Fish Cleaning Station - \$25,000
AAY (Teen Center) – Improvements - \$ 5,000
Vogue Theater – Fire Suppression System - \$65,000

MOTION by Hornkohl, second by Cote to authorize the submission of grant applications to the Local Revenue Sharing Board for the first cycle in 2013.

With a roll call vote this motion passed unanimously.

AYES: Kenny, Cote, Hornkohl, Goodspeed, Zaring, Adams, and Gustad
NAYS: None

CONSIDERATION OF APPLICATIONS TO BOARDS AND COMMISSIONS.

The City Clerk has taken action to advertise vacancies on the Board of Review, Brownfield Redevelopment Authority, Compensation Commission, Harbor Commission, PEG Commission and the Zoning Board of Appeals.

All appointments by the Mayor are subject to the Council’s approval, unless otherwise specified by statute or ordinance. Nominations for Council appointments do not require a second. After a member of Council nominates an individual for appointment, Council shall vote on the nomination. A majority vote in favor of placement of the nominee is required for appointment.

The following applications have been received:

BOARD OF REVIEW – One regular member, unexpired term ending 12/31/13. Applicants shall be taxpaying electors of the City who are owners of property assessed for taxes in the City and, at the time of their appointment, are neither elected nor appointed officials of the City; Council appointment.

T. Eftaxiadis, 817 Cherry Street

Councilmember Hornkohl nominated Mr. T. Eftaxiadis – 817 Cherry Street, to the Board of Review as a regular member, for the unexpired term expiring 12/31/13.

With a roll call vote this nomination passed unanimously.

AYES: Kenny, Cote, Hornkohl, Goodspeed, Zaring, Adams, and Gustad
NAYS: None

BROWNFIELD REDEVELOPMENT AUTHORITY – One vacancy unexpired term ending 06/30/14; Mayoral appointment.

None received.

COMPENSATION COMMISSION – Two vacancies, five year terms ending 09/30/17; Mayoral appointment.

Lucy Gagstetter, 620 Eighth Street
Thomas R. Smith, 703 Hopkins Street

Mayor Kenny appointed Ms. Lucy Gagstetter – 620 Eighth Street, to the Compensation Commission for a term ending 9/30/17.

With a roll call vote this nomination passed unanimously.

AYES: Kenny, Cote, Hornkohl, Goodspeed, Zaring, Adams, and Gustad
NAYS: None

Mayor Kenny appointed Mr. Thomas Smith – 703 Hopkins Street, to the Compensation Commission for a term ending 9/30/17.

With a roll call vote this nomination passed unanimously.

AYES: Kenny, Cote, Hornkohl, Goodspeed, Zaring, Adams, and Gustad
NAYS: None

HARBOR COMMISSION – One vacancy, unexpired term ending 10/31/13; Council appointment.

Alex Zaccanelli, 457 Fourth Street

Mayor Pro Tem Zaring nominated Mr. Alex Zaccanelli – 457 Fourth Street, to the Harbor Commission for the unexpired term ending 10/31/13.

With a roll call vote this nomination passed unanimously.

AYES: Kenny, Cote, Hornkohl, Goodspeed, Zaring, Adams, and Gustad
NAYS: None

PEG COMMISSION – One vacancy, three year term ending 12/31/15; Council appointment.

Barry Lind, 532 Fourth Street

Councilmember Hornkohl nominated Mr. Barry Lind – 532 Fourth Street, to the PEG Commission for a three year term ending 12/31/15.

With a roll call vote this nomination passed unanimously.

AYES: Kenny, Cote, Hornkohl, Goodspeed, Zaring, Adams, and Gustad
NAYS: None

ZONING BOARD OF APPEALS – One vacancy (alternate member), unexpired term ending 05/31/15; Mayoral appointment.

None received.

A REPORT FROM THE DEPARTMENT OF PUBLIC SAFETY.

Chief David Bachman presented a video on the activities of the Department of Public Safety and responded to questions the Council had regarding their activities. He also introduced the new Assistant Fire Chief - Heath Darling.

CONTINUED DISCUSSION ON RAMSDELL THEATRE WHITE PAPER.

The Ramsdell Theatre White Paper was presented to Council at their work session of February 12, 2013. Discussion continued this evening after Council had time to think through the previous discussion.

Some discussion points of the Ramsdell Theatre White Paper included:

- Would increasing the number of board members help;
- "Friends of the Ramsdell" group should be re-ignited;
- Fundraising should be on-going;
- SWOT analysis – how many of the opportunities listed have been done;
- Agree that an executive director is needed;
- Partnership with major college – how would this work in this area;
- Any recent discussions with West Shore Community College, was there any interest in pursuing this;
- Are there any major projects coming up in the next few years that money should go towards first;
- Lot of time and money invested in the Ramsdell, would hate to see if fall into disrepair again;
- Funds for the executive director are currently included in the draft budget being worked on right now;
- Council can make a better decision when the budget is presented to them.

CITIZEN COMMENT.

Ed Tegler – 522 Fifth Avenue, member of the Parks & Beautification Commission, spoke about unresolved issues with the First Street Beach/Shelter House.

OFFICIALS AND STAFF.

Deisch stated that the winter weather is creating havoc on City streets; reviewed street related issues.

COUNCILMEMBERS.

None received.

ADJOURN.

MOTION to adjourn was made by Goodspeed, second by Hornkohl. Meeting adjourned at 8:14 p.m.

Michelle Wright MMC / CPFA, MiCPT
City Clerk/Deputy Treasurer

DRAFT

CASH TRANSACTIONS REPORT

DRAFT

Page: 1

MONTH: JANUARY

2/26/2013

City of Manistee

2:24 pm

Account Number	Beginning Balance	Debit	Credit	Ending Balance
Fund: 101 - GENERAL FUND				
001.000 Cash	1,925,336.15	144,031.75	406,365.98	1,663,001.92
001.002 Cash - Escrow	102,492.44	15,344.44	38,412.64	79,424.24
004.000 Cash - Petty	800.00	0.00	0.00	800.00
017.000 MBIA Mi Class Inv	57,124.38	3.91	0.00	57,128.29
Fund: 101	2,085,752.97	159,380.10	444,778.62	1,800,354.45
Fund: 202 - MAJOR STREET FUND				
001.000 Cash	53,531.29	84,036.56	49,298.22	88,269.63
Fund: 202	53,531.29	84,036.56	49,298.22	88,269.63
Fund: 203 - LOCAL STREET FUND				
001.000 Cash	4,717.36	10,327.49	6,416.67	8,628.18
Fund: 203	4,717.36	10,327.49	6,416.67	8,628.18
Fund: 204 - STREET IMPROVEMENT FUND				
001.000 Cash	83,852.34	1,062.84	0.00	84,915.18
Fund: 204	83,852.34	1,062.84	0.00	84,915.18
Fund: 226 - CITY REFUSE FUND				
001.000 Cash	53,090.95	18,835.42	32,864.97	39,061.40
001.030 Cash Mgt Chk	223,822.43	9.50	0.00	223,831.93
Fund: 226	276,913.38	18,844.92	32,864.97	262,893.33
Fund: 243 - BROWNFIELD REDEVELOPMENT AUTHO				
001.000 Cash	10,910.27	0.00	248.75	10,661.52
Fund: 243	10,910.27	0.00	248.75	10,661.52
Fund: 245 - OIL & GAS FUND				
001.000 Cash	650,961.73	9,018.94	365,548.00	294,432.67
001.020 Money Market	254,947.12	104,834.57	0.00	359,781.69
003.000 CD	500,000.00	0.00	0.00	500,000.00
Fund: 245	1,405,908.85	113,853.51	365,548.00	1,154,214.36
Fund: 249 - BUILDING INSPECTOR				
001.000 Cash	14,555.29	549.59	2,514.37	12,590.51
Fund: 249	14,555.29	549.59	2,514.37	12,590.51
Fund: 251 - EPA GRANT - PETROLEUM				
001.000 Cash	-868.91	0.00	16,583.33	-17,452.24
Fund: 251	-868.91	0.00	16,583.33	-17,452.24
Fund: 252 - EPA GRANT - HAZARDOUS				
001.000 Cash	19,498.97	0.00	11,926.20	7,572.77
Fund: 252	19,498.97	0.00	11,926.20	7,572.77
Fund: 275 - GRANT MANAGEMENT FUND				
001.000 Cash	308,922.49	34,023.00	11,831.36	331,114.13
Fund: 275	308,922.49	34,023.00	11,831.36	331,114.13
Fund: 290 - PEG COMMISSION				
001.000 Cash	9,475.41	900.33	3,333.33	7,042.41
Fund: 290	9,475.41	900.33	3,333.33	7,042.41
Fund: 296 - RAMSDELL THEATRE				
001.000 Cash	18,266.44	13,128.88	13,199.63	18,195.69
001.020 Money Market	0.71	0.00	0.00	0.71
004.000 Cash - Petty	500.00	0.00	0.00	500.00
Fund: 296	18,767.15	13,128.88	13,199.63	18,696.40
Fund: 297 - RAMSDELL RESTORATION PROJECT				
001.000 Cash	1,515.73	0.07	0.00	1,515.80
Fund: 297	1,515.73	0.07	0.00	1,515.80

Grant funds drawn in Feb

(-17,452.24)

CASH TRANSACTIONS REPORT
DRAFT

MONTH: JANUARY
City of Manistee

Account Number	Beginning Balance	Debit	Credit	Ending Balance
Fund: 401 - 2010 CAPITAL IMPROVEMENT BONDS				
001.000 Cash	6,837.88	0.32	0.00	6,838.20
Fund: 401	6,837.88	0.32	0.00	6,838.20
Fund: 430 - CAPITAL IMPROVEMENT FUND				
001.000 Cash	12,272.65	365,563.74	39,151.78	338,684.61
Fund: 430	12,272.65	365,563.74	39,151.78	338,684.61
Fund: 490 - RENAISSANCE PARK				
001.000 Cash	10,455.10	0.40	1,871.96	8,583.54
Fund: 490	10,455.10	0.40	1,871.96	8,583.54
Fund: 508 - BOAT RAMP FUND				
001.000 Cash	10,824.77	0.50	132.07	10,693.20
004.000 Cash - Petty	1.00	0.00	0.00	1.00
Fund: 508	10,825.77	0.50	132.07	10,694.20
Fund: 573 - WATER & SEWER UTILITY				
001.000 Cash	32,932.35	354,026.32	156,624.71	230,333.96
001.002 Cash - Escrow	30,000.00	800.00	1,200.00	29,600.00
004.000 Cash - Petty	300.00	0.00	0.00	300.00
017.000 MBIA Mi Class Inv	488,448.29	32.93	0.00	488,481.22
Fund: 573	551,680.64	354,859.25	157,824.71	748,715.18
Fund: 594 - MARINA FUND				
001.000 Cash	26,528.79	32,387.38	41,841.14	17,075.03
Fund: 594	26,528.79	32,387.38	41,841.14	17,075.03
Fund: 661 - MOTOR POOL FUND				
001.000 Cash	387,243.05	23,805.35	26,954.73	384,093.67
Fund: 661	387,243.05	23,805.35	26,954.73	384,093.67
Fund: 703 - CURRENT TAX COLLECTION				
001.000 Cash	225,975.81	999,110.38	995,059.91	230,026.28
Fund: 703	225,975.81	999,110.38	995,059.91	230,026.28
Fund: 704 - PAYROLL CLEARING FUND				
001.000 Cash	40,626.75	445,934.34	435,126.08	51,435.01
001.005 Cash - NEW Flex \ HRA	9,294.07	15,094.12	15,566.18	8,822.01
001.007 Cash - Federal & State Taxes	1.52	53,514.36	53,514.21	1.67
Fund: 704	49,922.34	514,542.82	504,206.47	60,258.69
Fund: 705 - DELINQUENT TAX COLLECTION				
001.000 Cash	6.01	1,529.46	302.05	1,233.42
Fund: 705	6.01	1,529.46	302.05	1,233.42
Grand Totals:	5,575,200.63	2,727,906.89	2,725,888.27	5,577,219.25

**DEVELOPMENT AGREEMENT
CDBG SIGNATURE BUILDING PROGRAM**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made January 31, 2013, between the **CITY OF MANISTEE**, a Michigan municipal corporation (the "City"), whose address is 70 Maple Street, Manistee Michigan 49660, and Blue Cow, LLC (the "Developer", a Michigan Limited Liability Company whose address is 119 N. Michigan Ave, Big Rapids, Michigan 49307.

RECITALS

Developer desires to purchase the building located at **312 River Street, Manistee, MI to restore the exterior and renovate the first floor for a new restaurant.**

A. The Michigan Economic Development Corporation's (MEDC) CDBG Signature Building Program provides funding for communities and entities desiring to purchase signature buildings in a community's downtown, rehabilitate the structures and develop new businesses within them resulting in the creation of new jobs.

B. The **CITY** has submitted an application to the MEDC for \$330,000 in funding from the CDBG Signature Building Program to assist in the purchase of the building, and will serve as the grant recipient and administrator, and as a pass-thru for the funds to the seller.

D. The CDBG Signature Building Program requires that the necessary building renovation and restoration, the operation of the new business, and the creation of the required equivalent full time permanent jobs, with at least 51% of the jobs being held by persons from low-moderate income households (standards attached as exhibit "A"), be completed within the 2-year term of the grant (which is 2 years from the date of award of the grant) (collectively the "Project").

E. **Developer** commits to the following as conditions of the CDBG Signature Building Program grant:

1. Provide the balance of the funding necessary to purchase the building located at **312 River Street, Manistee, MI.**
2. Provide all the funding necessary to complete the exterior restoration and the first floor interior renovation of the building.
3. Operate a food service business on the first floor of the building.
4. Create, as a result of the new business, the equivalent of nineteen (19) full time jobs with at least 51% of the jobs being held by persons from low-moderate income households as defined by the U.S. Department of Housing and Urban Development, and to verify the jobs created as required by **CITY**.
5. Complete 1-4 above within the 2-year grant term.
6. During its first five years of ownership of the subject property, the Developer agrees to not protest nor appeal the Ad Valorem tax assessment on the subject property.

TERMS

Therefore, in exchange for the consideration in and referred to by this Agreement, the parties agree as follows:

In the event that **Developer** fails to satisfy any of the conditions listed in Paragraph E. above, resulting in the MEDC demanding that the **CITY**, as the grant recipient, repay any or all of the grant; **Developer** agrees that it shall be solely responsible for the repayment and shall hold harmless the **CITY** immediately upon demand or, if the developer has failed to fully repay or reach an agreement for repayment within 75 days notice of MEDC's demand, developer shall upon the **CITY**'s election, immediately convey to the **CITY**, free of all liens, the real property that is the subject of this Agreement and utilized in the Developer's business, including all improvements to the real estate made subsequent to this Agreement

2. **Indemnification.** Pursuant to the requirements of the CDBG Signature Building Program recipients, including private sector beneficiaries, are required to comply with the statutes, acts, rules and regulations specified below:

- Civil Rights and Equal Opportunity statutes as set forth in Title I of the Civil Rights Act of 1964 (Public Law 88-352), Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), the Michigan Civil Rights Act 453 of 1976, the Michigan Fair Employment Practices Act (MCL 423, 301-423, 311), related statutes and implementing rules and regulations.
- Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4831).
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) and implementing regulations.
- All other federal, state and local laws and regulations required by the CDBG Signature Building Program.

In the event any liability or legal action arises due to the Project relative to the above statutes, acts, rules or regulations, or any other applicable law, as a result of the actions or inactions of **Developer**, its members, agents, employees, representatives or contractors, **Developer** agrees to indemnify and hold harmless the **City** and its respective Council members, board members, officers, employees and agents (the "Indemnified Parties" or "Indemnified Party") against any and all liabilities, obligations, damages, penalties, costs and expenses, including reasonable attorneys' fees, paid or incurred by the Indemnified Parties and arising from the action or liability. If any action is brought against the **CITY**, by reason of any such claim, **Developer** will, at its own expense, resist or defend such actions or proceedings through counsel approved by the **CITY** in writing.

3. **Interpretation.** This Agreement is the entire agreement between the parties as to its subject. It shall not be amended nor modified except in a writing signed by the parties. It shall not be affected by any course of dealing and the waiver of any breach shall not constitute a waiver of any subsequent breach of the same or any other provision.

4. **Binding.** This Agreement and the rights and obligations under this Agreement shall not be assigned or otherwise transferred by any party without the consent of the other

parties, which shall not be unreasonably withheld. It shall, however, be binding upon any successors or permitted assigns of the parties.

5. **Dispute Resolution.** Any dispute regarding the rights or liabilities provided in this Agreement, or the relationship between the parties, shall be resolved in the courts of Manistee County, Michigan.

6. **Term.** This Agreement and the obligations of Developer shall not terminate until all obligations of Developer provided for in this Agreement have been fulfilled and all obligations of the CITY owed to the MEDC are satisfied.

WHEREFORE, this Agreement has been executed as of the date first written above.

(Blue Cow, LLC)

By: _____


Constance Freiberg, ITS Member

CITY OF MANISTEE

By: _____

Colleen Kenny, Mayor

By _____

Michelle Wright, Clerk

Personal Guaranty

Constance Freiberg agrees to be liable to CITY for any amount due the CITY from Developer under the terms of this Agreement. By the signature below Constance Freiberg acknowledges that the whole sum that may become due from Developer to the CITY is secured by their personal guaranty and that there are no issues or facts which can or will be raised to defend or set off the amount due as stated in this Agreement. Each of the undersigned agrees to be personally obligated for the obligations of Developer to CITY as this is a guaranty of payment and agrees that they are jointly and severally responsible for obligations owed under the terms of this Agreement immediately on default. No action has to be taken against the Developer first for these guarantors to be liable and responsible. Any legal action may be taken simultaneously against the Developer as well as any guarantors. It is understood that this is an individual and personal guaranty.

Dated: Jan 31, 2013.


Constance Freiberg



Planning & Zoning
Community Development
231.398.2805
Fax 231.723-1546
www.mansiteemi.gov

MEMORANDUM

TO: Mitch Deisch, City Manager 

FROM:  Jon R. Rose, Community Development Director

DATE: February 26, 2013

RE: Michigan Economic Development Corporation's (MEDC) CDBG Signature Building Grant Program – 312 River Street



Mitch, the Main Street/DDA has been working with Blue Cow LLC to purchase the former Tuscan Grill building at 312 River Street. They have an accepted offer on the building that will require funding from the Michigan Economic Development Corporation's (MEDC) CDBG Signature Building Grant Program. The building at 312 River Street has fallen into serious disrepair and if renovations are not made in a timely manner we stand the chance to lose one of the seven lead buildings in our Historic District.

There are three Council Agenda Items that are being submitted for this request.

1. The Grant application requires a Public Hearing to afford an opportunity for citizens to express opinions, ask questions, and discuss the proposed Grant Application.
2. A Development Agreement has been prepared between Blue Cow LLC (Developer) and the City which holds Blue Cow LLC solely responsible for compliance with the requirements of the Grant and will hold harmless the City. Reviewed and approved by the City Attorney.
3. The Developer is asking for a \$330,000 Michigan Economic Development Corporation's (MEDC) CDBG Signature Building Grant to assist with the acquisition of 312 River Street. The application requires a Council Resolution.

This building is the cornerstone to the Manistee County Historic District and an anchor to the Downtown. This building has been vacant for several years and the opportunity to have a developer make needed repairs and bring a new restaurant to Downtown Manistee is greatly needed.

JRR:djb



Authorizing Resolution
Michigan Community Development Block Grant
Michigan Strategic Fund
Part 2 Application

WHEREAS, "The Winkler Block" building, 312 River Street is located in the City of Manistee, and

WHEREAS, application for a Michigan Economic Development Corporation's (MEDC) CDBG Signature Building Grant in the amount of \$330,000 with matching funds from The Blue Cow, LLC and the Manistee Downtown Development Authority in the amount of \$367,497 is requested, and

WHEREAS, the funds will be used to restore "The Winkler Block" building located in both the Manistee Commercial Historic District and the City of Manistee Downtown Development District, and

WHEREAS, "The Winkler Block" building has fallen in to serious disrepair and currently is a blight in the Main Street/DDA District, and

WHEREAS, no project costs (CDBG or non CDBG) will be incurred prior to a formal grant award, completion of the environmental review procedures and formal, written authorization to incur cost has been provided to our CDBG Project Manager, and

WHEREAS, the City Council of the City of Manistee authorized the submission of the Michigan CDBG Application, therefore be it

NOW, THEREFORE, IT IS HEREBY RESOLVED, that the City of Manistee hereby authorizes Mitchell D. Deisch, City Manager to execute the Part 2 Application and all attachments, be it further

RESOLVED that the City of Manistee hereby authorize Mitchell D. Deisch, City Manager to execute the Grant Agreement.

Colleen Kenny, Mayor Dated

ATTESTED:

Michelle Wright, City Clerk Dated

The following aye votes were recorded:

The following nay votes were recorded:

STATE OF MICHIGAN)
) ss
COUNTY OF MANISTEE)

I, Michelle Wright, Clerk of the City of Manistee, Michigan, do hereby certify that the above is a true and correct copy of the Authorizing Resolution Michigan Community Development Block Grant Program, Michigan Strategic Fund - Part 2 Application, which Resolution was adopted by the City Council of the City of Manistee at a Meeting held March 5, 2013.

Michelle Wright, City Clerk Dated

STATE OF MICHIGAN

Community Development Block Grant Part 2 Application

MICHIGAN STRATEGIC FUND
C/O MICHIGAN ECONOMIC DEVELOPMENT CORPORATION
COMMUNITY DEVELOPMENT BLOCK GRANT
300 NORTH WASHINGTON SQ., LANSING, MI 48913
P: 517-373-6213 | F: 517-373-6683
CDBG@michigan.org
Version 2/August 23, 2012

PART 2 APPLICATION

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM MICHIGAN STRATEGIC FUND

PART 2 APPLICATION PROCESS

The Part 2 Application for a Michigan Community Development Block Grant (CDBG) consists of forms and supporting documents necessary to complete the proposed Part 1 Application approved by your Regional Project Manager (RPM) or Community Assistance Team (CA Team) Specialist.

PART 2 APPLICATION ATTACHMENT REQUIREMENTS

Please use this checklist to ensure all components of the Part 2 Application are included.

- Attachment 1 - Unit of General Local Government "UGLG" Identification (Section 2)
- Attachment 2 - UGLG Public Participation Documentation (Section 4, Question 1)
- Attachment 3 - Certification by the UGLG (Section 6)
- Attachment 4 - Statement of Assurances (Section 6)
- Part 1 Changes, if applicable (Section 1)
- Community Development Plan (Section 3, Questions 1-5)
- Published Public Hearing Notice (Section 4, Question 2)
- Brief description of Public Hearing (Section 4, Question 3)
- Authorizing Resolution (Section 5 - must include all 8 bullets)

NOTE: All forms must be signed by the Authorized UGLG Official appointed in the Authorizing Resolution.

APPLICATION SUBMISSION

The completed and signed Part 2 Application should be mailed to the address below. Incomplete Applications may result in delays in processing.

Michigan Strategic Fund
C/O Michigan Economic Development Corporation
Community Development Block Grant
300 N. Washington Square
Lansing, MI 48913

PART 2 APPLICATION

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM MICHIGAN STRATEGIC FUND

SECTION 1 – PART 1 APPLICATION CONFIRMATION

Please confirm whether or not the proposed project described in your Part 1 Application is still accurate. Major changes may require a second approval by your RPM or CATeam Specialist. Please contact your RPM or CATeam Specialist if the proposed project has changed.

1. Part 1 Application Project Information and Description:

- Is still accurate and takes into consideration all requirements from the State Historic Preservation Office (SHPO).
- Has changed. Briefly explain the changes below and attach the Part 1 Application Project Information and Description with proposed changes.

Attached: Yes No N/A

2. Part 1 Application Budget:

- Is still accurate and takes into consideration all requirements from the SHPO.
- Has changed. Briefly explain the changes below and attach a Part 1 Application Budget with proposed changes.

Attached: Yes No N/A

3. FOR JOB CREATION PROJECTS ONLY – Part 1 Job Forms:

- Are still accurate.
- Have changed. Briefly explain the changes below and attach the Part 1 Application Job Forms (Attachments 1, 3, 4 and 5) with proposed changes.

Attached: Yes No N/A

4. Please confirm one of the following with regard to the status of the proposed project's environmental review:

- The required environmental notice has been published.

PART 2 APPLICATION

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM
MICHIGAN STRATEGIC FUND

OR;

The required environmental notice has not been published.

Actual or anticipated published date 03/06/2013

Actual or anticipated last day for public comments at the local level 03/21/2013

Actual or anticipated last day for public objections at the state level 04/01/2013

PART 2 APPLICATION

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM MICHIGAN STRATEGIC FUND

SECTION 2 - UGLG IDENTIFICATION FORM	
<p>Complete all items on the UGLG Identification Form (Attachment 1).</p> <p>Attached: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	

ATTACHMENT 1			
UGLG IDENTIFICATION FORM			
IDENTIFICATION OF UGLG		FUNDING SOURCES	
UGLG	City of Manistee, MI	CDBG	\$ 330000
Street/PO Box	70 Maple Street	CDBG/RLF	\$
City	Manistee	Other State	\$
County	Manistee	Other Federal	\$
State/Zip	MI 49660	UGLG	\$
Contact Name:	Mitch Deisch	Private	\$ 552497
Contact Telephone Number	231-723-2558	Other	\$ 90000
Contact E-mail Address	mdeisch@manisteemi.gov	Total	\$ 972497
UGLG's fiscal year end	06/31/2013	Census Tract(s) project is located in (census tract locator):	
AUTHORIZED UGLG OFFICIAL			
Signature:			
Name and Title: Mitch Deisch, City Manager	Telephone	231-723-2885	Date

PART 2 APPLICATION

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM MICHIGAN STRATEGIC FUND

SECTION 3 - COMMUNITY DEVELOPMENT PLAN

All UGLGs applying for funds under the CDBG Program are required to identify their community development and housing needs in accordance with the provisions set forth in Title 1 of the federal Housing and Community Development Act of 1974, as amended.

In order to comply with requirements outlined in federal legislation, it is not necessary for an UGLG to prepare an elaborate community development plan. It is expected that most UGLGs can satisfy this requirement in a two to three page narrative summary plan adopted by their governing body. Please summarize the following major elements of your adopted plan:

1. A statement assessing the needs and problems of the UGLG, including the needs of low and moderate income persons. In all applications, the assessment must address both overall community development and housing needs regardless of the category under which funding is requested.

From City of Manistee Strategic Plan Update of January, 2013:

Preface: Financial Challenges. We are doing what we can during these uncertain economic times to be proactive and fiscally prudent in charting a course for the future. We need to realize that the broad scope of services the City provides will be increasingly challenged to ensure that we are directing shrinking resources toward essential government services that have the greatest return for our community. We will also continue to develop measures for our strategies and goals so that we can understand and monitor progress.

Preface: Collaboration. We must continue and accelerate to lead in developing "win-win" partnerships with our neighbors and identify ways to share services and resources so that our quality of life can be sustained with services that can be more efficiently delivered through partnerships.

Goal 6.1: To focus on the long term housing needs of the entire population by partnering with the Manistee Housing Commission, Manistee-Benzie Community Mental Health, Downtown Development Authority and other communities to develop a housing strategy that responds to current and projected housing issues, including those involving homelessness prevention, housing for low income individuals and families and senior housing.

From Manistee Downtown Development Strategic Planning Retreat Report of January 2013:

Background: Manistee certainly has a beautiful downtown and historic district. However, much like the rest of the state and country, the ongoing economic recession has presented significant challenges for the Manistee MSDDA. Positive progress is being made – such as a declining vacancy rate on River Street (currently approx. 16%, down from 22% the previous year), the non-profit revitalization project for the Vogue Theatre, a concerted effort towards business recruitment and property redevelopment and an influx of new and excited volunteers. While the "sky is the limit" in terms of what projects could be undertaken to further enhance downtown the MSDDA must gather more volunteers to help continue its existing efforts; making sure it is not taking on more projects than it can accomplish successfully. Main

PART 2 APPLICATION

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM MICHIGAN STRATEGIC FUND

Street, as one of its core principles, stresses quality over quantity.

2. A summary list of possible long-term activities (two years or more) to address the identified needs and problems.

From City of Manistee Strategic Plan Update January 2013:

Strategy 6.1.1: To work cooperatively with the Manistee Housing Commission supporting their efforts to address low to moderate income housing needs, homelessness as well as other projects to assist them in providing needed services for City and area residents.

3. A summary of contemplated short-term activities (one to two years) to address the identified needs and problems.

There are multiple short-term activities currently being discussed to address these needs and problems, including:

- a. multiple property owners considering downtown housing development, including the use of MSHDA rental-rehab program, indicating an increase in low-moderate income housing.
- b. The strategic recruitment of commercial businesses into the downtown, based on the market opportunities outlined in the Manistee DDA's market analysis of 2012. This would decrease the downtown vacancy rate, creating a more positive business climate and "critical mass".
- c. additional "placemaking" projects are being contemplated in the downtown area, including the creation of a "town square" public commons area, addition of downtown vegetation, changes to traffic patterns resulting in a more pedestrian-friendly district, and more.

4. A description of the effect the proposed CDBG project will have on the UGLG.

The proposed CDBG project would have multiple positive effects on the UGLG, specifically the Downtown area:

- a. A primary historic commercial structure within the City's historic district would be saved, preserved and rehabilitated into a contributing commercial operation in downtown Manistee, filling an identified market opportunity (dining), therefore retaining a portion of the \$12million+ leaving our local trade area annually for this business use.
- b. 22 full-time equivalent positions will be created, providing employment opportunities for the Manistee-area population. Northwest MichiganWorks will be utilized to assist with the hiring processes, ensuring that a majority of those hired are low-moderate income individuals.
- c. This business use and property has been identified by the Manistee Downtown Development Authority as a "catalyst project" (Strategic Planning Retreat, January 2013) resulting in an improved business climate in Downtown Manistee. This has many positive effects, including a more appealing investment climate, which means additional interest and opportunities for housing development, including upper-floor low-moderate income apartments.

5. A plan for minimizing the displacement of persons as a result of grant assisted activi-

PART 2 APPLICATION

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM MICHIGAN STRATEGIC FUND

ties and to assist persons actually displaced by such activities

There will be no persons displaced as a result of grant assisted activities, as the property slated for acquisition is currently 100% vacant and has been for over four years.

PART 2 APPLICATION

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM MICHIGAN STRATEGIC FUND

SECTION 4 - UGLG PUBLIC PARTICIPATION DOCUMENTATION

All UGLGs applying for funds under the Michigan CDBG Program are required to adhere to public participation provisions set forth in Title I of the Housing and Community Development Act of 1974, as amended.

A public hearing on the proposed project is required. The UGLG's Part 1 Application and Part 2 Application must be completed and available for review at the public hearing. In order to document that public participation requirements have been met, Section 4 must include the following as attachments:

1. Certification by a duly authorized UGLG official that the public participation requirements have been accomplished (Attachment 2);

Attached: Yes No

2. A copy of the published public notice as described in the certification above. A minimum five (5) days notice is required.

Attached: Yes No

3. A brief description of the public hearing(s) including the date of hearing(s), number of citizens attending the hearing(s) and a summary description of substantive comments made at the hearing(s).

Attached: Yes No

PART 2 APPLICATION

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM MICHIGAN STRATEGIC FUND

ATTACHMENT 2 – UGLG PUBLIC PARTICIPATION DOCUMENTATION

1. The UGLG has furnished its citizens with information concerning the amount of funds available and being applied for, and the proposed community development and housing activities to be undertaken. This includes the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans for minimizing displacement of persons.
2. The UGLG has published a public notice in such manner to afford affected citizens an opportunity to examine and submit comments on the proposed application and community development and housing activities.
3. One or more public hearings have been held to obtain the views of citizens on the proposed application and community development and housing needs.
4. Citizens have been provided reasonable access to the proposed application and related information on community development and housing needs.
5. The UGLG will provide its citizens with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of funds if funds are received.
6. The UGLG provided for and encouraged citizen participation, with particular emphasis on participation by persons of low and moderate income, residents of slum and blight areas and of areas in which Section 106 funds are proposed to be used, and in the case of grantees described in Section 106(a), provided for participation of residents in low and moderate income neighborhoods as defined by the local jurisdiction. Opportunities to participate must be made available by advertising in publications, which are distributed in the slum and blight areas and the low and moderate income neighborhoods.
7. The UGLG provided citizens with reasonable and timely access to local meetings, information, and records relating to the applicant's proposed use of funds, as required by regulations of the Secretary, and relating to the actual use of funds under this title.
8. The UGLG provided for technical assistance to groups representative of persons of low and moderate income that request such assistance in developing proposals with the level and type of assistance to be determined by the grantee.
9. The UGLG provided for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and review of program performance, which hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodation for the handicapped. Review of program performance shall apply to previously funded CDBG grants.
10. The UGLG has identified how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate. If 51% of the expected participants are non-English speaking, the hearings will be advertised in a non-English publication available to those residents. A person fluent in their language must be available to discuss the project and respond to their questions at the hearings.

Signature and Title of Authorized UGLG Official

Date

PART 2 APPLICATION

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM MICHIGAN STRATEGIC FUND

SECTION 5 – AUTHORIZING RESOLUTION

The UGLG's Authorizing Resolution must be adopted after completion of the public participation requirements. Attach an authorizing resolution containing the following elements:

Attached: Yes No

1. Identification of the proposed project;

2. Identification of the funding request and the commitment of the UGLG's matching funds;

3. Statement that the proposed project is consistent with the UGLG's community development plan as described in the Part 2 Application;

4. Statement that at least 51% of the beneficiaries of the proposed project will be low and moderate income persons;

OR;

Statement that the proposed project will clearly eliminate objectively determinable signs of blight and will be strictly limited to eliminating specific instances of blight (spot blight);

5. Statement that no project costs (CDBG and non-CDBG) will be incurred prior to a formal grant award, completion of the environmental review procedures and formal, written authorization to incur costs has been provided by your CDBG Project Manager;

6. Local authorization to submit the Michigan CDBG Application; and

7. Identification, by name and title, of the person authorized to sign the Part 2 Application and all attachments;

8. Identification, by name and title, of the person authorized to sign the Grant Agreement.

PART 2 APPLICATION

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM
MICHIGAN STRATEGIC FUND

SECTION 6 – CERTIFICATION AND STATEMENT OF ASSURANCES

Complete and execute the Certification (Attachment 3) and Statement of Assurances (Attachment 4).

Attached: Yes No

PART 2 APPLICATION

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM
MICHIGAN STRATEGIC FUND

ATTACHMENT 3 –

CERTIFICATION BY THE APPLICANT UGLG

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

TITLE I, HOUSING AND COMMUNITY DEVELOPMENT

ACT OF 1974, AS AMENDED

MICHIGAN ECONOMIC DEVELOPMENT CORPORATION – COMMUNITY DEVELOPMENT

I, (UGLG official) Mitchell Deisch, of (name of UGLG) City of Manistee certify that the City of Manistee (name of UGLG):

1. Possesses legal authority to submit a grant application;
2. Has in a timely manner:
 - a. furnished its citizens information concerning the amount of funds available and being applied for, and the proposed community development and housing activities to be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans for minimizing displacement of persons as a result of proposed activities and for assisting persons actually displaced;
 - b. published a public notice (a copy of which is attached) in such manner to afford citizens an opportunity to examine and submit comments on the proposed application and community development and housing activities;
 - c. held one or more public hearings to obtain the views of citizens on the proposed application and community development and housing needs; and
 - d. made the proposed application available to the public.
3. Will conduct and administer the grant in conformity with Public Law 88-352 and Public Law 90-284, and will affirmatively further fair housing;
4. Has developed the proposed application so as to give maximum feasible priority to activities which will benefit low and moderate income families or aid to the prevention or elimination of slum or blight; or to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to health or welfare of the community where other financial resources are not available to meet such needs;
5. Has developed a community development plan that identifies community development and housing needs and specifies both short and long term community development objectives that have been developed in accordance with the primary objective and requirements of the Title I Housing and Community Development Act of 1974, as amended;

PART 2 APPLICATION

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM MICHIGAN STRATEGIC FUND

6. Will not attempt to recover any capital costs of public improvements assisted in whole or in part with Title I funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (A) Title I funds are used to pay the proportion of such fee or assessment that related to capital costs of such public improvement that are financed from revenue sources other than Title I funds; or (B) for purposes of assessing any amounts against properties owned and occupied by persons of low and moderate income who are not persons of very low income, and (name of local unit) certifies that it lacks sufficient Title I funds to comply with the requirements of clause (A).
7. Will adopt a policy of prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstrations within its jurisdictions.
8. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
9. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
10. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
11. Will comply with other provisions of Title I of the Housing and Community Development Act of 1987, as amended, and with other applicable laws.

Signature and Title of Authorized UGLG Official

Date

PART 2 APPLICATION

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM MICHIGAN STRATEGIC FUND

ATTACHMENT 4 – STATEMENT OF ASSURANCES

MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

MICHIGAN ECONOMIC DEVELOPMENT CORPORATION – COMMUNITY DEVELOPMENT

The UGLG hereby assures and certifies that it has complied or shall comply with Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301), and related statutes and implementing rules, regulations, and guidelines applicable to projects financed under the Michigan CDBG program. Specific assurances and certifications include but are not limited to the following:

1. Compliance with grant and financial management guidelines in 24 CFR Part 85, Administrative Requirements for Grants to State and Local Governments, and U.S. Office of Management and Budget Circular No. A-87, Cost Principles for State and Local Governments.
2. Compliance with Civil Rights and Equal Opportunity statutes as set forth in Title I of the Civil Rights Act of 1964 (Public Law 88-352), Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), the Michigan Civil Rights Act 453 of 1976, the Michigan Fair Employment Practices Act (MCL 423, 301-423, 311), related statutes and implementing rules and regulations.
3. Compliance with Labor Standards statutes as set forth in the Davis-Bacon Fair Labor Standards Act (40 U.S.C. 276a-276a-5), related statutes and implementing rules and regulations.
4. Compliance with Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4831).
5. Compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) and implementing regulations.
6. Compliance with OMB Circular No. A-133, Audits of States, Local Governments and Non-Profit Organizations and implementing rules and regulations.
7. Compliance with Section 504 of the Rehabilitation Act of 1973, as amended, and implementing rules and regulations 24 CFR Part 8.
8. Authorized state officials and representatives will have access to all books, accounts, records, reports, files, and other papers, things, or property pertaining to the project in order to make audits, examinations, excerpts and transcripts; each contract or subcontract also shall provide for such success to relevant data and records pertaining to the development and implementation of the project.

The UGLG agrees to assume all of the responsibilities for environmental review, decision making and action as specified and required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and Section 104 (f) of Title I of the Housing and Community Development Act and implementing regulations 24 CFR Part 58.

Signature and Title of Authorized UGLG Official

Date

**City of Manistee
Notice of Public Hearing
Michigan Economic Development Corporation's (MEDC)
CDBG Signature Building Grant Program
Request for 312 River Street**

The City of Manistee will conduct a Public Hearing as part of their regularly scheduled City Council Meeting on March 5, 2013 at 7:00 p.m. in the Council Chambers, City Hall, 70 Maple Street, Manistee, Michigan to afford an opportunity for all citizens to express opinions, ask questions, and discuss a proposed grant application for \$330,000 to the Michigan Economic Development Corporation's (MEDC) CDBG Signature Building Grant Program to assist in the purchase and rehabilitation of the building at 312 River Street, Manistee, Michigan. Copies of the application are available in the City Clerk's Office, City Hall, 70 Maple Street, Manistee, Michigan.

Comments may be submitted in writing through March 5, 2013 or made in person at the Public Hearing. Citizen's views and comments on the proposed grant are welcome.

City of Manistee
Jon R. Rose
Community Development Director
70 Maple Street, P.O. Box 358
Manistee, MI 49660-0358
231.398-2805

Run Ad: Next Issue of News Advocate

Special Notice - Classified Ads

Please send an affidavit to:

Jon Rose
City of Manistee
P.O. Box 358
Manistee, MI 49660

STATE OF MICHIGAN

Signature Building

Community Development Job Creation

Community Development Block Grant (CDBG)
Part 1

MICHIGAN Strategic Fund
c/o Michigan Economic Development Corporation
Community Development Block Grant
300 North Washington Sq., Lansing, MI 48913
P: 517-373-6213 | F: 517-373-6683
CDBG@michigan.org | www.MichiganAdvantage.org/CAT
Version 1/June 1, 2012

DOWNTOWN SIGNATURE BUILDING JOB CREATION PART I APPLICATION
MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT
MICHIGAN STRATEGIC FUND

PART 1 GUIDELINES

PART 1 APPLICATION PROCESS

Please complete the Part 1 Application as well as Attachments 1 – 5. If any questions are not addressed, or attachments are not included, review of the Part 1 and the proposed project timeline may be jeopardized.

PART 1 ATTACHMENT REQUIREMENTS

Please use this checklist to ensure all components of the Part 1 are included.

- Attachment 1 (Unit of General Local Government "UGLG" Identification Form)
- Attachment 2 (Budget, Question 10 under UGLG and Overall Project Budget)
- Attachment 3 (Estimated Employment Creation and/or Retention Form, Question 9 under National Objective)
- Attachment 4 (Documentation of Benefit to Low and Moderate Income Persons Form, Question 9 under National Objective)
- Attachment 5, if applicable (Employment Agreement, Question 9 under National Objective)
- Detailed map (Question 5 under UGLG & Project Specifics)
- Appraisal and/or preliminary engineering estimates (Questions 13, 14 & 15 under UGLG and Overall Budget)
- Documentation showing taxes are current and no non-mortgage liens (Question 4f under Project Information and Description)
- Engineering plans or specifications, if applicable (Question 4 under Project Information & Description)

PART 1 SUBMISSION

Return to your CATeam Specialist the completed Part 1 Application, along with all attachment requirements above, electronically in Word format (no PDFs).

DOWNTOWN SIGNATURE BUILDING JOB CREATION PART I APPLICATION
MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT
MICHIGAN STRATEGIC FUND

ATTACHMENT 1			
UGLG IDENTIFICATION FORM			
IDENTIFICATION OF UGLG		FUNDING SOURCES	
UGLG	City of Manistee, MI	CDBG/State	\$ 330000
Street/PO Box	70 Maple St.	CDBG/RLF	\$
City	Manistee	Other State	\$
County	Manistee	Federal	\$
State/Zip	MI 49660	Local Unit	\$
Chief Elected Official Name	Colleen Kenny	Private	\$ 552497
Chief Elected Official Title	Mayor	Other	\$ 90000
Chief Elected Official Email		Total	\$
UGLG Contact Name	Mitch Deisch		\$972497
UGLG Contact Title	City Manager	UGLG's DUNS Number (DUNS#)	
UGLG Contact Address	70 Maple St.	10-348-3145	
UGLG Telephone Number	231-723-2558	UGLG's Federal Identification Number 38-6004570	
UGLG Fax Number	231-723-1546		
UGLG E-Mail Address	mdeisch@manisteemi.gov		
PROJECT IS BEING QUALIFIED BASED ON JOB CREATION (At least 51% of all created jobs must be held by low and moderate income persons)			
COMPANY		COMPANY CONTACT	
Business Entity Legal Name	Blue Cow, LLC	Contact Name	Chuck Freiberg
Street Address	119 N. Michigan Ave.	Contact's Title	Co-Founder
City, State, Zip	Big Rapids, MI 49307	Telephone Number	231-679-0112
Company DUNS# (DUNS#)	029737340	Fax Number	231-796-8097
SIC #		E-mail Address	bluecowcafe@att.net
STATE GOVERNMENT REPRESENTATIVE			
Senator Name	Booher	Senate District	35
Representative Name	Franz	House District	101

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UGLG INFORMATION AND CAPACITY

PLEASE NOTE:

Costs for preparing the Part 1 Application (preliminary costs) may be incurred at the UGLG's own risk without written authorization from the MSF but may not be included in the project budget as match.

1. If known, identify consultants, include names and contact information, who will be responsible for design/construction engineering work:

Contact information provided: Yes N/A, consultant not yet known
 N/A, consultant not anticipated

Name: [REDACTED]
Business Address: [REDACTED]
Phone #: [REDACTED]
E-mail: [REDACTED]

2. If known, identify consultants, include names and contact information, who will be responsible for administering the proposed project:

Contact information provided: Yes N/A, consultant not yet known
 N/A, consultant not anticipated

Name: [REDACTED]
Business Address: [REDACTED]
Phone #: [REDACTED]
E-mail: [REDACTED]

Refer to Application Guide for guidance on Administrative costs.

PLEASE NOTE:

Costs for consultants to be funded with non-CDBG funds may be incurred at the UGLG's own risk with written authorization from the MSF and may be included in the project budget as match.

Costs for consultants to be funded with CDBG funds may be incurred with written authorization from the MSF once the Grant Agreement has been executed and may be included in the project budget. CDBG Procurement requirements apply to all CDBG funded activities.

CDBG funds may be jeopardized or withdrawn if written authorization from the MSF has not been provided prior to signing a design, administrative or other contract for expenses other than the preliminary costs for completing the Part 1

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Application. Refer to Application Guide for further details with regard to when project costs can be incurred.

3. Has the UGLG received CDBG grants in the past five years and/or have any open CDBG grants? This includes grants provided by the MSF and all MSHDA CDBG programs.
 Yes No

If yes, identify the projects and identify/describe all findings regarding those projects:
The City of Manistee received a CDBG grant in 2008-2009 via the MSHDA façade improvement grant program. All funding was disbursed, compliance requirements were met and the project was closed out.

4. Does the UGLG have a full time downtown development professional to administer the project?
 Yes No

If yes:

Name: Travis Alden, MSDDA Director

Business Address: 11 Cypress St.

Phone #: 231-398-3262

E-mail: tbalden@manisteedowntown.com

UGLG AND PROJECT SPECIFICS

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5. Attach a detailed map showing the location of the building and any other project activities.

Attached: Yes No

UGLG CONFLICT OF INTEREST

6. Will local officials and staff be a party to any contract involving the procurement of goods and services assisted with CDBG funds?

Yes No

If yes, describe:

7. Will any person who is an employee, agent, consultant, officer, elected or appointed official of the UGLG obtain a financial interest or benefit from a CDBG assisted activity or have an interest in any contract, subcontract or agreement with respect thereto, or in the proceeds hereunder, either for themselves or for those with whom they have family or business ties, during their tenure or for one year thereafter?

Yes No

If yes, describe:

8. Please indicate below whether or not the UGLG associated with this Part 1 Application has a contractual relationship with one of more of the following entities,

Michigan Economic Development Corporation

Yes No

Michigan Department of Licensing & Regulatory Affairs

Yes No

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Michigan Department of Treasury

Yes No

Paul E. Hodges, III

Yes No

Michigan Regional Council of Carpenters

Yes No

Business Leaders for Michigan

Yes No

Michigan Association of Realtors

Yes No

Prairie & Tireman, LLC

Yes No

JPFS, LLC

Yes No

Butzel Long

Yes No

PNC Financial Services Group

Yes No

If yes to any of the above, please describe the nature of relationship.

UGLG AND COMPLIANCE REQUIREMENTS

9. Will the project relocate jobs from one labor market area to another?

Yes No

Will the project result in the demolition or conversion of residential dwelling units, both occupied and vacant?

Yes No

Will the project result in special fees (i.e. tap in/hook up fees, special assessments)?

Yes No

If yes to any of the above, please provide a brief explanation and contact your CATeam Specialist for guidance.

UGLG AND OVERALL PROJECT BUDGET

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10. Complete Attachment 2 (Project Budget). Include all funding sources and identify all project activities. There must be separate line items for engineering and/or architecture, administration, acquisition, demolition, building construction, and contingencies.

Attached: Yes No

11. List the type and dollar amount of any local, state, or federal incentives associated with this project including grants, loans, tax abatements and tax increment financing. Tax incentives should NOT be included on the project budget.

\$15,000 - local MSDDA façade improvement grant

\$70,000 - Local MSDDA revolving loan (1.5% below prime interest rate)

12. Identify any program income from previously awarded CDBG grants (i.e. Local CDBG Revolving Loan funds) to be included in the proposed project.

N/A

13. Attach independent cost estimates or multiple estimates with material detail for all activities. Businesses that are selecting their own contractors will be required to show costs are reasonable either by documenting project quotes from independent, third parties or providing multiple estimates for the project activities.

Attached: Yes No

14. Provide an appraisal and documentation of the building's SEV as support of the acquisition cost.

Attached: Yes No

15. Does the proposed project involve administrative costs using CDBG funds?

Yes No

If yes, is a cost estimate attached?

Yes No

Refer to Application Guide for guidance on Administrative costs.

PLEASE NOTE:

Costs for preparing independent cost estimates may be incurred at the UGLG's own risk without written authorization but may not be included in the project budget as match.

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ATTACHMENT 2

PROJECT BUDGET

UGLG: City of Manistee

Project Title: 312 River Street

Project Cost Elements	Project Funding Sources (Identify all other sources)					
Activities	CDBG	Private	UGLG	DDA	Other	Total
Architecture & Engineering	\$	\$	\$	\$	\$	\$
Property/Easement Acquisition	\$ 330000	\$ 270000	\$	\$	\$	\$
Demolition	\$ 0	\$ 0	\$ 0	\$ 0	\$	\$
Building Construction/Rehab	\$	\$ 282497	\$	\$ 85000	\$	\$
Administration	\$ 0	\$ 0	\$ 0	\$ 5000	\$	\$
Contingency	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$
Total	\$ 330000	\$ 552497	\$ 0	\$ 90000	\$	\$ 972497

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BUILDING INFORMATION

1. Is the building a signature, troubled building?

Yes No

Describe:

The building at 312 River Street is a signature building for our downtown and community in multiple ways. First of all, it is one of the "pivotal buildings" as part of our downtown national and local designated historic district. The relatively large size and architectural style of the building make it the anchor on our downtown's East side. Furthermore, it serves as the gateway to our Main Street area and historic district as travelers turn on to River Street from US-31. Division Street, a secondary commercial road in our DDA district, terminates onto River Street directly in front of this building.

The building is troubled in that it has sat vacant for almost four years now, it was last an operating restaurant which closed "for the season" at the end of December 2008 and never reopened. It is currently bank-owned through foreclosure and is falling into disrepair. Most of the kitchen equipment left in the building is no longer usable, and various aspects of the building - floors, roof, etc. are in need of significant repair in order for a business to occupy it.

Considering the deteriorating condition of the building, the current ownership situation, and the opportunity present with the Blue Cow, LLC wishing to acquire the property to open a high-quality restaurant (one of the highest priorities as established by the MSDDA's 2012 market analysis) we strongly believe this is our best chance to not only preserve/rehabilitate this signature building in our downtown, but also to address a significant market need in our community. Combined with the additional projects going on in downtown Manistee, such as the Vogue Theatre project, the likely synergy and extremely positive impact on the downtown is significant.

2. Is the building located within a traditional downtown? See the Application Guide for the definition of a traditional downtown.

Yes No

3. Is the building a significant structure within the Downtown Development Authority or other like-district?

Yes No

If yes, what type of district?

DDA District, Local/National Historic District, Michigan Main Street Area

4. Is the building mixed use?

Yes No

If no, explain:

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Although currently vacant, the past and proposed future use of the building is for a restaurant on the first floor and a banquet/reception facility on the upper floor.

5. Is the building multi-story?

Yes No

If no, explain:

Two stories above grade, although the full basement walks out to the Riverwalk level along the Manistee River Channel.

6. Is it a zero lot line building?

Yes No

If no, explain:

Traditional zero-lot downtown commercial building, although there is a "driveway" along the East façade of the building, providing access to the loading doors on the lower (riverwalk) level.

7. Is the building in a historic district or historically registered?

Yes No

8. How long has the building been vacant?

4 years - since January 2009.

N/A - building is occupied

9. Does the building have sufficient parking for a rehabilitated building or will parking be created as a part of the project?

Yes No

Describe:

While there is not parking on the property itself, a city-leased and managed parking lot is located directly across River Street from the proposed project site. Furthermore, multiple City-owned parking lots are located within a 1- and 2-block radius from the project, as well as ample on-street parking.

10. Will the reuse of the building address an underserved market?

Yes No

Describe:

Through the Michigan Main Street program, the Manistee Main Street DDA conducted a comprehensive market analysis of Downtown Manistee, including local and regional trade areas. Eating & Drinking establishments were identified as one of the top market opportunities for potential business expansion & recruitment, identifying a market opportunity (leakage to other areas) of over \$12 Million annually. This illustrates a significant market gap - and therefore opportunity - for the proposed

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reuse of the building:

11. Has a structural analysis been completed on the building?

Yes No

If yes, is it attached?

Attached: Yes No

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PROJECT INFORMATION AND DESCRIPTION

1. Describe the overall proposed project. Include all work activities, including but not limited to, leases, property/easement acquisitions, infrastructure improvements, demolition, building construction or rehabilitation, and machinery and equipment purchase/installation for which the grant and other matching funds will be used.

The property will be acquired by Blue Cow, LLC for the purpose of opening a full-service restaurant. The owner will invest extensively into rehabilitation of the property, not only because certain finishes and layouts are desired, but also due to the fact that the property has fallen into disrepair over the period of vacancy. Rehab activities include roof repair, flooring replacement, new layout of kitchen area, new fixtures, significant cleaning, exterior façade work and more.

The proposed Blue Fish Kitchen, located at 312 River Street, Manistee, MI contains 6000 square feet on ground level and 6500 square feet on the second level. The intent is to rehabilitate the restaurant in two phases - both taking place during the two-year grant period - focusing on the street level floor first and then developing the second level banquet space. Itemized work shall be:

- Removal and replacement of existing carpeting and wood laminate flooring with carpet, tile and wood. Some portions of carpeting can simply be cleaned.
- Wall removal and reconstruction of kitchen
- Ceiling tile water damage repair & replacement
- Exterior roofing repair
- Repair of exterior moldings and architectural details
- HVAC maintenance & repair, including repair of HVAC leaks in kitchen area
- Installation of new lighting in kitchen area
- Interior & exterior painting (exterior paint specified in Michigan Main Street Design Service)
- Installation of new door hardware and weather stripping
- Installation of new ceiling fans and lighting in dining areas
- Steam cleaning of kitchen
- Hood cleaning and recharging of fire suppression system
- Reconfigure of bar, rehabilitation of bar surfaces, relocation of server station
- Replacement of hot water heaters
- Installation of reverse osmosis water filtration system,
- Installation of new window treatments
- Purchase and installation of waiting area furnishings
- Repair of exterior masonry and water penetration by windows
- Televisions & A/V Equipment
- Installation of historically-complimentary exterior signage and removal of awnings
- Repairs to interior elevator (ADA Accessibility)
- The purchase and/or rehabilitation of a complete commercial restaurant's worth of equipment, totaling over \$38,000.

The purchase and/or rehabilitation of restaurant "front of house" equipment totaling over \$56,000.

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2. Provide the history of the problems associated with this property and explain how this project will help alleviate those problems.

The property was significantly rehabilitated with a cost of over \$1.5 Million in 1998-1999 into LightHouse Brewing Company. Those property/business owners had as part of their business model the distribution of their bottled beer products; however that never came to fruition so the owners sold the property. The new ownership operated the restaurant under the name "Topos" for a number of years as a restaurant, not a brewery. In fact, all of the brewing equipment was removed from the property and sold. Topos was successful and was purchased by a real estate developer (based in the Grand Haven/Muskegon area) in 2006 and the restaurant was re-named The Tuscan Grille. This business was also successful until the economy took a downturn in 2007-2008. The owner's assets and equity were largely made up of real estate holdings throughout Western Michigan, which all declined significantly in value during that time. The property at 312 River Street was foreclosed on by the bank due to lack of payments in early 2009 and has been bank-owned ever since. The physical property itself was in great condition in 2009, but over the last four years it has fallen into disrepair as it has not been adequately maintained by the bank ownership. The proposed buyers not only have a successful track record of restaurant business ownership, but this type of ownership is crucially important for the preservation of this iconic building in Downtown Manistee. Discussions have been had with one of the prior managers of the Tuscan Grille about gross sales numbers and the like. The sales numbers the Tuscan Grille did during its last couple of years are more than adequate for these new buyers to have a successful business. Moreover, the market analysis recently completed for Downtown Manistee indicates a significant market opportunity.

3. Describe the property to be acquired with CDBG funds. Include the following:

- a) The location and a brief description of the property including the number of occupied and vacant occupiable residential dwelling units.

312 River Street - a zero-lot historic commercial property constructed in 1894. Historically known as the "Winkler Block" the property serves as the primary anchor building on the East side of Manistee's central business district. Three floors (including basement) each approx. 6,000 sqft. The property was substantially rehabilitated in 1998-1999 as the Lighthouse Brewing Company and was operated as a restaurant under various ownership entities until it closed in December 2008. 100% of the property has been vacant since that time. Both the street level and upper level are built out as restaurant dining space, each level with its own bar area and kitchen. The basement had been used for storage and various mechanicals. There is a deck on the street level that overlooks the riverwalk and Manistee River Channel on the North side of the building. The property is visible from US-31, primarily when driving Southbound.

- b) The identification of who will be acquiring the property
Blue Cow, LLC currently owns and operates the Blue Cow Café in downtown Big Rapids, Michigan. The restaurant has been open and successful for over four years, and the

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owners are looking to expand and open a second location (different name, some comparable menu items, same high quality and exceptional standards) and they believe Downtown Manistee is the right location for them, in particular this property.

- c) The identification of who will be selling the property
GHB RE Holdings, LLC. Coldwell Banker ALM is listing Agent.
- d) The proposed purchase price of the property
\$600,000
- e) Provide documentation that the taxes are current and that there are no non-mortgage liens on the property.

Attached: Yes No

4. Other than the preliminary cost estimates, describe the status of any engineering plans or specifications. If engineering plans or specifications have been completed, please provide copies.

In late spring 2012, the Manistee Main Street DDA commissioned a rough analysis of the property and report of probable rehabilitation costs from Ray Minervini, of the Minervini Group in Traverse City. That report is attached.

If completed, are they Attached? Yes N/A

PLEASE NOTE:

Costs for engineering and/or architectural plans to be funded with non-CDBG funds may be incurred at the UGLG's own risk with written authorization from the MSF and may be included in the project budget as match.

Costs for engineering and/or architectural plans to be funded with CDBG funds may be incurred with written authorization from the MSF once the Grant Agreement has been executed and may be included in the project budget. CDBG Procurement requirements apply to all CDBG funded activities.

CDBG funds may be jeopardized or withdrawn if written authorization from the MSF has not been provided prior to signing an engineering and/or architectural contract for expenses other than the preliminary costs for completing the Part 1 Application.

5. List and describe the status of any local, state and federal permits required for

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implementation of the proposed project.

N/A

6. Describe all leases, easements, and property option/purchase agreements needed in order to complete the project activities. Include the anticipated seller, buyer, property description/location and cost.

The buyers have signed an option to purchase agreement with the seller for an all-inclusive purchase price of \$600,000.

PLEASE NOTE:

Costs for acquiring real property, to be fully funded with non-CDBG monies, may be included in the project budget as match and may be incurred at the UGLG's own risk once the environmental review and Uniform Act requirements have been completed and written authorization to incur these costs has been provided by the MSF.

Costs for acquiring real property, to be partially or fully funded with CDBG monies, may be included in the project budget and may be incurred with written authorization from the MSF once the environmental review and Uniform Act requirements have been completed and the Grant Agreement has been executed by all parties.

CDBG funds will be jeopardized or withdrawn if written authorization from the MSF has not been provided prior to signing option/purchase/lease/easement agreements.

7. Are there tenants at this property address?

Yes No

If so, are they residential or business?

Residential Business N/A

Please provide the following for each tenant:

Name:

Business Address:

Phone #:

E-mail:

8. In the below space, provide a project timeline that includes the anticipated start and

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completion dates for the following activities (attachments are not acceptable).

Activities	Start Date	End Date
Engineering and/or design		
Property acquisition, if applicable	01/15/2013	04/01/2013
Bidding, if applicable		
CDBG funding construction	n/a	n/a
Match funded construction	4/01/2013	5/31/2013
Job Creation	5/15/2013	11/15/2013

PLEASE NOTE:

When completing the timeline, please refer to Application Guide with regard to when project costs can be incurred.

NATIONAL OBJECTIVE

9. Complete Attachments 3 and 4 to explain how the business will meet the National Objective of benefitting low and moderate income persons. Include the anticipated number of jobs to be created and the anticipated number of jobs to be held by low and moderate income persons.

Attached: Yes No

Explain how the business intends to target low and moderate income persons for employment. This explanation or Employment Plan may include use of a Michigan Works! Agency for targeting low and moderate income persons for employment (Attachment 5). If a Michigan Works! Agency is not used, describe below a plan for targeting low and moderate income persons.

Attachment 5 Attached: Yes No

OR;

Description of plan for targeting low and moderate income persons:



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ATTACHMENT 3

ESTIMATED EMPLOYMENT CREATION AND/OR RETENTION FORM

UGLG (Community): CITY OF MANISTEE, MI

Business Name:
Blue Cow LLC DBA Blue Fish Kitchen

Business DUNS# (DUNS#):
029737340

Business's department of Licensing & Regulatory Affairs (LARA) six digit ID Number (LARA) or County registration.

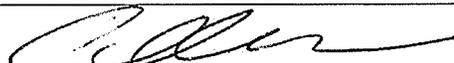
Employment Category	Present Number of Permanent FT and FTE Jobs (Number)/Average hourly wage rate of existing jobs	Permanent FT and FTE Jobs to be Created During Project Period (Number)	Lowest Starting/Average Starting Hourly Wage Rates (Created Jobs Only)
Managerial	0 #/\$	2#	\$10.00/\$22.00/\$
Professional	#/\$	#	/\$
Technical	#/\$	#	/\$
Sales	#/\$	#	/\$
Clerical	#/\$	#	/\$
Craftsmen*	#/\$	4#	\$10.00/\$14.00/\$
Operators**	#/\$	#	/\$
Laborers***	#/\$	#	/\$
Service Worker	#/\$	16#	\$7.40/\$10.00 /\$
Totals	#/\$	22#	\$7.40/\$15.00/\$

*Skilled **Semi-Skilled *** Unskilled

List of Fringe benefits to be provided for created jobs: performance incentives

Authorized Company Official

Certification is made that the above data is the most accurate available based on current information and knowledge.

Signature: 

Name: CONSTANCE FREIBERG Title: SOLE MEMBER Date: 1/31/13

DEFINITIONS AND INSTRUCTIONS FOR COMPLETION OF ESTIMATED EMPLOYMENT CREATION/RETENTION FORM

For purposes of the Downtown Façade Job Creation Program, the following definitions apply:

Full-Time Job (FT) - An employee who has 2080 hours of paid employment on an annual basis or one that is paid for 40 or more hours per week.

Full-Time Equivalent Job (FTE) - A combination of employees that individually have less than 2080 hours of paid employment on an annual basis or work less than 40 hours per week, that are converted to full-time equivalent (FTE) jobs by dividing the total annual hours worked by 2080 hours or dividing the total weekly

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hours worked by 40 hours.

New Job - A new FT or FTE permanent job that did not exist prior to this project and came about as a result of this project. The jobs are intended to be permanent and sustainable. Jobs that exist prior to the start of the project or result independently from the project will not be considered.

Instructions for completing Attachment 3:

Present Number of Permanent FT & FTE Jobs (#/\$) - Identify the present number of all FT and FTE permanent private sector jobs and the average hourly pay rate of existing jobs.

Permanent FT & FTE jobs to be created during the project period (#) - Identify the number of new FT or FTE jobs that did not exist prior to this project and came about as a result of this project. The jobs to be created are intended to be permanent and sustainable. Jobs that exist prior to the start of the project or result independently from the project should not be considered.

ONLY NEEDED FOR RETENTION PROJECTS - Permanent FT & FTE jobs to be retained during the project period. Identify the number of FT and FTE jobs to be retained as a result of the CDBG funded project that would not otherwise exist in the absence of the project.

Lowest Starting and Average Starting Hourly Wage Rates (\$/\$) - Identify the lowest starting hourly wage rate and the average hourly wage rates of the jobs to be created/retained.

Employment Categories are defined as follows:

- a) Managerial – occupations requiring administrative personnel who set broad policies, exercise overall responsibility for execution of these policies and direct individual departments or special phases of a firm's operations.
- b) Professional – occupations requiring either college graduation or experience of such kind and amount as to provide a comparative background.
- c) Technical – occupations requiring a combination of basic scientific knowledge and manual skills which can be obtained through approximately two years of post high school education, such as is offered in many technical institutions and junior colleges, or through equivalent on-the-job training.
- d) Sales – occupations engaging wholly or primarily in sales.
- e) Clerical – includes all clerical-type work regardless of level of difficulty, where the activities are primarily non-manual.
- f) Craftsman (skilled) – manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work; exercise independent judgment and usually require extensive training.
- g) Operators (semi-skilled) – workers who operate machines or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require limited training.
- h) Laborers (unskilled) – workers in manual occupations which generally require no special training.
- i) Service worker – all workers in service type industries.

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ATTACHMENT 4

DOCUMENTATION OF BENEFIT TO LOW AND MODERATE INCOME PERSONS FORM

The UGLG City of Manistee and company Blue Cow LLC agree that #22 jobs will be created as a result of this project and that at least 51% of the jobs will be held by low and moderate income persons. For reference, income limits can be viewed at income limits. Each party recognizes that the purpose for making an application for a CDBG grant is to create employment opportunities benefiting low and moderate income persons. Each party recognizes that should **job creation** goals for low and moderate income persons not be met, the project shall fail to qualify under the low and moderate income national objective. Each party recognizes that the MSF retains the right to require the applicant or the company to repay the full amount of any grant funds awarded should the project fail to qualify under this national objective.

Authorized Official of UGLG (Community)

Applicant: City of Manistee

Signature: Mitchell D. Deisch

Name: Mitchell D. Deisch Title: City Manager Date: 2/13/13

Telephone Number: 231-398-2801 Email Address: mdeisch@manistee.mi.gov

Authorized Representative of Company

Legal Business Name: Blue Cow LLC

Street Address: 119 N Michigan Ave

City, State and Zip Code: Big Rapids, MI 49307

Signature: Charles Freiberg

Name: Charles Freiberg Title: General Manager

Telephone Number: 231-796-0100 Email Address: BlueCowBR@gmail.com

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ATTACHMENT 5

EMPLOYMENT AGREEMENT

The Blue Cow LLC (hereinafter the "Grantee"), the Blue Cow LLC (hereinafter the "Employer") and Michigan Works Agency (hereinafter the "Michigan Works! Agency") agree to be bound by the following First Source Hiring Guidelines as required by the terms of the Michigan CDBG Program Grant Agreement.

1. GENERAL TERMS

A. These guidelines shall take effect when the Grantee, the Michigan Works! Agency and the Employer sign this agreement.

B. The Grantee and Employer wish to assure continuing employment opportunities for economically disadvantaged and low and moderate-income persons in the local area.

C. The Grantee and Employer wish to avail themselves of the employment and training services of the Michigan Works! Agency in order to assure continuing employment opportunities.

D. The Grantee and Employer wish to use the Michigan Works! Agency as a first source for: employee recruitment, screening, referral, placement services and for the development of On-the-Job Training (OJT) and customized training contracts.

E. The Michigan Works! Agency will provide the employment and training services listed in Section I, D above according to the terms set out in these guidelines.

2. RECRUITMENT AND SCREENING

A. The Michigan Works! Agency will recruit and screen applicants who are eligible for services under the Workforce Investment Act (WIA) according to qualifications agreed upon with the employer.

B. The positions covered by these guidelines for which the Michigan Works! Agency will provide the services listed herein are those that: (1) are created as a result of internal promotions, terminations

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and expansion of Employer's work force; and (2) include those entry level positions that are not managerial, high technical, professional or supervisory and do not require more than two years of post school training.

C. At least twenty (20) Grantee working days prior to anticipated hiring dates, the Employer will notify the Michigan Works! Agency of its need for new employees to fill positions covered by these guidelines, as defined in Section II, B.

D. Notification required by Section II, C above shall at least include the following information: the number of employees required listed by job title, hiring dates, rates of pay, hours of work, anticipated duration of employment, and a description of the work to be performed. Complete job descriptions, including minimum qualifications stated in quantifiable and objective terms, shall be attached to these guidelines as "Attachment 1" and incorporated into them by reference when available.

E. The employer will also notify the Michigan Works! Agency of all job vacancies that are not covered by these guidelines, i.e., those positions that do not meet the criteria of Section II, B above. Notification shall include the qualifications, the rates of pay, anticipated hiring dates and the dates by which referrals are required for all available positions.

3. REFERRAL

A. The Michigan Works! Agency will refer WIA-eligible and qualified low and moderate-income applicants to the Employer in response to the notification of need for new employees described in Sections II, D and E above.

B. The Michigan Works! Agency will notify the Employer of the number of applicants available for referral no later than ten (10) working days prior to the anticipated hiring date. The Michigan Works! Agency will make every reasonable effort to refer at least one qualified applicant for each job opening.

C. In the event the Michigan Works! Agency cannot refer the total number of qualified personnel requested, the Employer will be free to fill directly the remaining positions for which no applicants have been referred.

4. TRAINING

DOWNTOWN SIGNATURE BUILDING JOB CREATION PART I APPLICATION
MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT
MICHIGAN STRATEGIC FUND

A. The Michigan Works! Agency will in its discretion provide On-the-Job (OJT) contracts to the Employer for positions covered under these guidelines as described in Section II, B above. The terms of the OJT contracts will be negotiated by the Michigan Works! Agency and the Employer.

B. The Employer will make a good faith effort to develop a customized training program for WIA-eligible applicants upon such terms and at such costs as will be negotiated by the Michigan Works! Agency and the Employer.

5. PLACEMENT

A. The Employer will make all decisions in hiring new employees and will give first consideration in hiring to those applicants referred by the Michigan Works! Agency. The Employer is not bound to hire from among the Michigan Works! Agency referrals.

B. The Michigan Works! Agency will track the retention of employees placed under the terms of these guidelines for ninety (90) days. The Employer will cooperate in the Michigan Works! Agency (Workforce Development Board's follow-up efforts.

C. The Michigan Works! Agency will monitor the Employer's performance under these guidelines. The Employer will cooperate in the Michigan Works! Agency (Workforce Development Board's) monitoring efforts.

6. REPORTING

A. The Michigan Works! Agency will provide to the Employer and the Grantee semi-annual reports of the number of applicants referred by the Michigan Works! Agency to the Employer to date. The semi-annual reports will be due to the Employer and the Grantee at dates commencing 1, 2011, and every 6 months thereafter.

B. The Grantee will provide to the Grant Administrator semi-annual reports of the number of applicants referred by the Michigan Works! Agency to the Employer to date, the number of applicants hired by the Employer to date, and the number of jobs available to or held by low and moderate-income persons to date. Such reports will be due to the Grant Administrator at a schedule identified in the Michigan CDBG Program Grant Agreement.

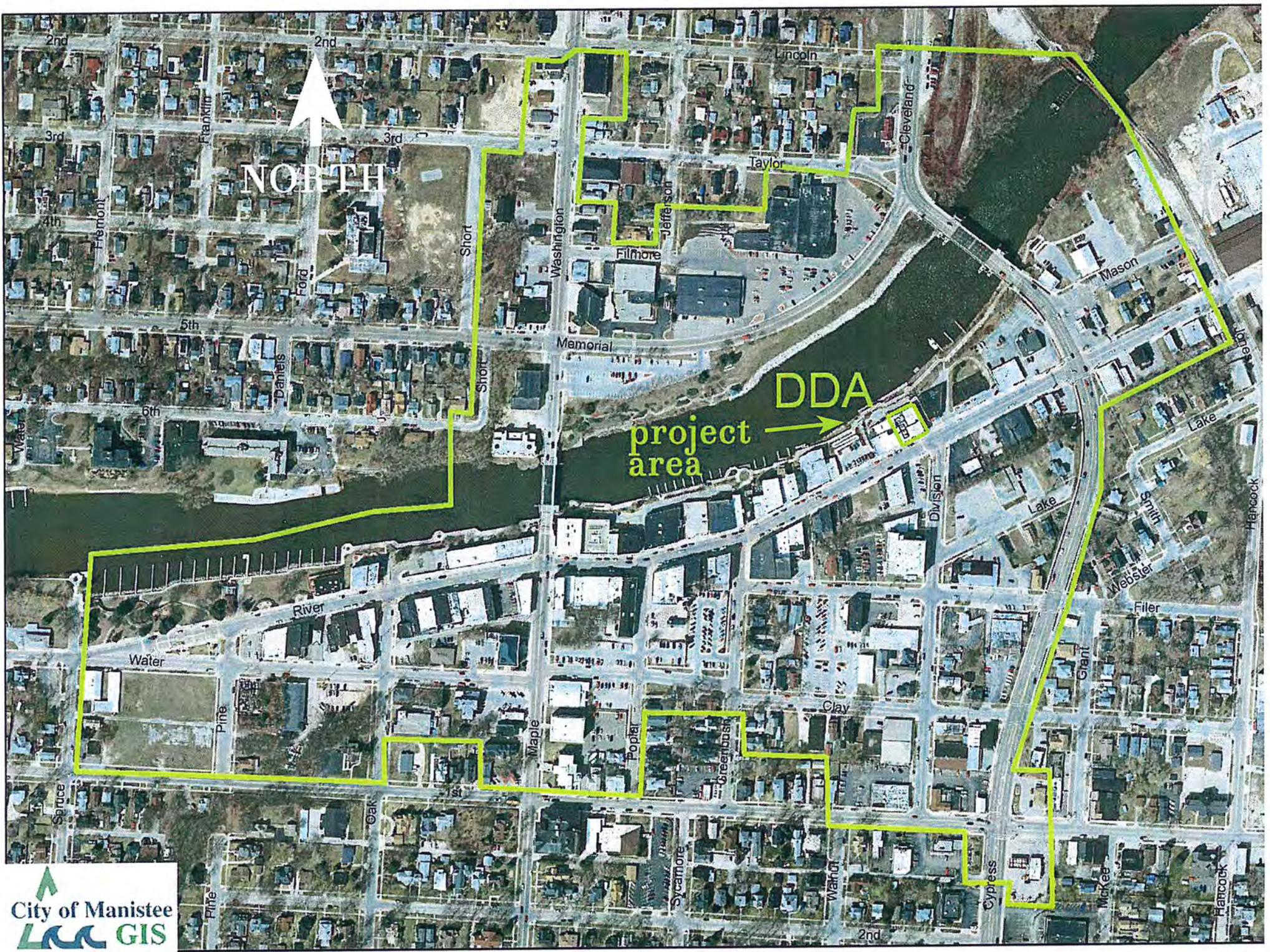
The Grantee, the Michigan Works! Agency, and Employer hereby consent to abide by these guidelines.

Signature:

Date:

DOWNTOWN SIGNATURE BUILDING JOB CREATION PART I APPLICATION
MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT
MICHIGAN STRATEGIC FUND

Name and Title of Authorized Representative of Michigan Works! Agency:	
Signature:	Date:
Name and Title of Authorized UGLG (Community) Official:	
Signature: <i>Charles Freiberg</i>	Date: <i>1-31-2013</i>
Name and Title of Authorized Representative of Employer: <i>Charles Freiberg, General Manager</i>	



NORTH

DDA
project area

MAM CONTRACTING, INC.
TUSCAN GRILL BUDGET

DESCRIPTION	RENOVATION ESTIMATE	ASSUMPTIONS / NOTES
Demolition and dumpsters	\$ 5,000	Misc removals prior to replacements; partial dining room wall removal
Abatement	-	No ACM/LBP observed; recommend survey
Permanent utilities	-	Existing utilities appear adequate for same use as before; recommend electrical inspection
Utility connections	-	In place; consult w/ electrical inspector
Concrete - saw cut / demo	-	N.A.
Brick & masonry - repairs / tuck point	35,000	All exterior walls
Interior framing changes	10,000	Reconfigure 1st floor "east" enclosed dining area per discussion w/ DW
Windows - store front repairs	12,500	Repair/reconfigure due to water damage
Windows - exterior sill repair	5,000	Repair scaling to minimize future water damage
Doors & hardware modifications	2,500	As needed
Grease trap	5,000	Steam clean, repair/recondition
Plumbing	10,000	Clean and reconnect
HVAC	-	Consult w/ HVAC inspector
Fire protection	-	Have it inspected and re-certified by fire suppression firm
Electrical	2,500	Supplemental wiring and repairs
Ceilings repairs	5,000	Suspended ceiling and drywall ceiling repairs
Insulation	-	N.A.
Concrete finish	-	N.A.
Drywall repairs	5,525	Various locations
Bar modifications	2,500	Upstairs, as needed per discussion
Flooring	7,000	Downstairs, repairs; upstairs TBD at a future date (not essential now)
Finished carpentry / trim	10,000	Misc repairs and enhancements throughout building
Painting	15,500	Throughout building
Kitchen equipment (refurb)	20,000	Rough estimate ONLY; obtain quote from equipment vendor
Bathroom refurbish	5,250	Fixtures replacements as needed
Electrical fixtures	5,000	Replacement fixtures as needed
Security / Access Control	-	N.A.
Deck repairs	7,500	Clean and seal
Load dock improvements	-	Potential future work item
Parking	-	N.A.
Accessibility & ADA	-	Available throughout
Sitework & landscape	5,000	Enhance access from Riverwalk and boat dock
Architectural / design consulting	10,000	Misc
Engineering	3,500	Misc
Legal	10,000	Misc
Site supervision	15,000	As needed
Site cleanup	10,000	As needed
Permits	5,000	As needed
Contingencies (7%)	\$ 16,049	
GRAND TOTAL:	\$ 245,324	

Travis Alden

From: "Edward Bradford" <ebradford@manisteemi.gov>
Date: Friday, February 15, 2013 1:32 PM
To: "Travis Alden" <tbalden@manisteedowntown.com>
Subject: RE: 312 River St. tax info
Travis,

I can get you something on the DDA next week.

Both the summer and winter real 2012 taxes for 312 River Street Parcel #51-452-704-19 have been paid.

The personal property parcel 51-490-371-00 for summer and winter have also been paid.

We received the bond payment.

Ed

Edward Bradford
Chief Financial Officer
City of Manistee
70 Maple Street
PO Box 358
Manistee, MI 49660

231 398-2804
231 723-5410 (Fax)

www.manisteemi.gov

[facebook.com/CityofManistee](https://www.facebook.com/CityofManistee)



MEMORANDUM

Planning & Zoning
Community Development
231.398.2805
Fax 231.723-1546
www.mansiteemi.gov

TO: Mitch Deisch, City Manager 

FROM:  Jon R. Rose, Community Development Director

DATE: February 26, 2013

RE: Lakes to Land Regional Initiative



Mitch, the City of Manistee Planning Commission has begun work on updating the Master Plan. A component of the update will be public input. While the majority of work on the plan will be done in house, assistance is available from Lakes to Land Regional Initiative.

The Lakes to Land Regional Initiative is an Alliance for Economic Success led program which is a collaborative effort among several municipalities along the lakeshore in Benzie and Manistee Counties. This grant funded program has engaged Becket Raeder to provide consultant services in developing Community Master Plans which encourage collaboration and build upon common issues.

The Lakes to Land Regional Initiative will assist with the public involvement and facilitate public input as well as assist in the plan development.

The City Attorney has reviewed and approved the Agreement to Partner Collaborative Master Plan and Implementation Strategy.

JRR:djb



Resolution
Agreement to Partner
Collaborative Master Plan and Implementation Strategy

WHEREAS, the quality of life and economic well-being of the City of Manistee is of paramount concern to the City Council; and

WHEREAS, a master plan and implementation strategy, developed with the input of all interests, can serve as a guide for achieving the quality of life and economic well-being goals of our governmental unit; and

WHEREAS, a collaborative master plan and implementation strategy, that provides a guide for the future of our governmental unit as well as for neighboring townships, will serve to identify issues and opportunities that cross community borders and are of mutual concern; and

WHEREAS, a collaborative master plan and implementation strategy can also provide greater focus and unity around shared goals and objectives and create economies of scale for attaining shared goals, and

WHEREAS, a collaborative master plan and implementation strategy can also identify opportunities for potential service sharing and other forms of collaboration that may be cost effective and sustain or improve services within the boundaries for our City and within the boundaries of the region formed by participating Townships;

NOW, THEREFORE BE IT RESOLVED THAT the City of Manistee proceeds to enter into the Agreement to Partner to develop a collaborative master plan and implementation strategy.

Colleen Kenny, Mayor

Dated

ATTESTED:

Michelle Wright, City Clerk Dated

Agreement to Partner Collaborative Master Plan and Implementation Strategy

The purpose of this “Agreement to Partner” is to formalize the intent of certain neighboring municipalities in Manistee County and Benzie County to partner in developing a collaborative master plan and implementation strategy to guide the direction of each municipality as well as the region formed by the participating municipalities.

In entering into this Agreement the partners in no way diminish the independent qualities of their respective municipalities. The partners believe that the quality of life and economic well-being of their individual municipalities will be enhanced through a collaborative effort that identifies opportunities that cross municipality boundaries.

This Agreement is a non-binding agreement that commits the partnering municipalities to work on a best efforts basis to develop a collaborative master plan and implementation strategy that:

- Respects, sustains and nurtures the independent identities, cultures and features of each municipality that also establishes plans and implementation strategies involving issues and opportunities that cross municipality borders and are of mutual concern.
- Fully engages all stakeholders in the development of the collaborative master plan and provides equal access to all to join developing the plan and strategy.
- Identifies and quantifies the assets, resources, facilities, and strengths, weaknesses, opportunities and threats for each municipality and the region formed by the participating municipalities.
- Contains goals, objectives, roles, responsibilities, schedules and an identification of sources of financial and technical assistance for attaining the strategic goals for the individual municipalities as well as for the collaboration, including an economic development strategy.
- Will be guided with the assistance of a consultant that specializes in the development of master plans and implementation strategies.
- Will support and make optimal use of existing plans and related documents as well as the capabilities and contributions of locally-based individuals and organizations.

The partners to this Agreement request that the Alliance for Economic Success (AES) assist in developing and administering a request for proposals so that the participating municipalities can select a qualified consultant to facilitate completion of the plan and strategy. The partners also request that the AES assist in identifying, seeking and securing funding from grant and foundation sources to support the costs of the project, including consultant costs.

We, the undersigned, commit our municipality as a partner to this Agreement.



MANISTEE HARBOR COMMISSION

BYLAWS AND RULES OF PROCEDURE

Section 1. NAME.

The name of the Commission shall be the "Manistee Harbor Commission."

Section 2. PURPOSE.

The purpose of the Commission shall be to implement and carry out provisions of Chapter 266 of the Manistee Code of Ordinances. (As may be amended from time to time.)

Section 3. MEMBERSHIP OF THE COMMISSION.

The membership of the Commission shall consist of seven (7) members appointed by the City Council, one of whom shall be the Harbormaster. They shall serve three (3) year terms. The City Manager shall be a non-voting ex-officio member of the Commission.

Section 4. OFFICERS.

4.1 Selection: The Commissioners shall elect a chair, and a vice-chair. The election shall take place during the first meeting of each calendar year ~~in January~~. Officers shall be selected by majority vote of the Commissioners. Recording Secretary services will be provided by the Executive Secretary in the City Manager's Office.

4.2 Tenure: The Officers shall take office **upon selection** ~~at the start of the next regular meeting following their selection~~ and shall hold office for a term of one year, or until their successors are selected and assume office.

Section 5. OFFICER DUTIES.

5.1 CHAIR. The Chair shall:

- a.) Preside at all meetings.
- b.) Appoint committees.
- c.) Periodically meet with City department staff.
- d.) Appoint an acting recording secretary for a meeting in which the recording secretary is absent.
- e.) Perform such other duties as may be ordered or authorized by the Harbor Commission.

5.2 VICE-CHAIR. The Vice-Chair shall:

- a.) Act in full capacity of the Chair in the absence of the Chair.
- b.) In the event of a vacancy in the position of Vice-Chair, the Harbor Commission shall then select a successor to the office of Vice-Chair from its membership for the unexpired term.

5.3 SECRETARY. The Secretary shall:

- a.) Execute documents in the name of the Harbor Commission as authorized by the Harbor Commission.
- b.) Be responsible for the minutes of each meeting and shall have them appropriately distributed.
- c.) Track attendance and make reports to the City Manager as specified in Section 6.3 of these bylaws.
- d.) Perform such other duties as the Harbor Commission may determine.

Section 6. VACANCIES, REMOVAL, ABSENCES.

6.1 Vacancies: Vacancies shall be filled for unexpired terms in the same manner as original appointments.

6.2 Removal: A member may be removed from office by the appointing City Council for neglect of official duty or misconduct in office after being given a written statement for reasons and an opportunity to be heard thereon.

6.3 Absences: In order to maintain the maximum participation of all appointed Harbor Commission members at all scheduled meetings, the following is the attendance guide and Board member replacement policy for “excused” or “unexcused” absences:

- a) When appointed, each Commission member should state his/her willingness and intention to attend each scheduled meeting of the Harbor Commission.
- b) In the event of unplanned personal matters, business trips, family vacation trips, changed job requirements, sickness, or other physical disabilities that prohibit the Board member from attending the scheduled meeting; the Commission Chair or staff liaison to the Harbor Commission should be notified as soon as possible prior to the time of the scheduled meeting of their inability to attend. The Commission member upon this notification will receive an “excused absence” for the involved scheduled meeting.
- c) If any Commission member is absent from three (3) consecutive scheduled meetings without an “excused absence” for any of the three (3) meetings, the Commission member shall be reported in writing to the City Manager. The City Manager will contact the Commission member in writing and question his/her continued ability or interest in being on the Commission, giving the member a chance to rectify the attendance issue or submit a resignation.
- d) There will be no limit on the number of consecutive “excused absences” for any Commission member. However, if the Commission member is repeatedly absent for

at least 50% of the yearly scheduled meetings, that member will also be reported in writing to the City Manager. The City Manager will contact the Commission member in writing and question the member's continued ability or interest to be on the Commission. The Commission member will be considered for appointment nullification when the absences total six in the calendar year.

- e) The appointment nullification action would be initiated by the City Manager and forwarded on to the City Council for official action.

Section 7. MEETINGS.

7.1 Regular Meetings: ~~Meetings shall be held monthly to conduct the business of the Commission~~ As directed in Chapter 266 of the Manistee Code of Ordinances the Commission shall meet at least quarterly during each year, and more frequently as needed. The date and time of each meeting will, where practicable be agreed upon by the consensus of the Commission members and such City staff as may be assigned to meet with the Commission. Meeting times and locations shall be posted and open to the public with time set aside at each meeting to receive public comment. All actions taken by the Commission shall be recorded by the Secretary and filed with the Manistee City Clerk. All meetings and Commission business shall comply with the Open Meetings laws of the State of Michigan.

Meetings can be cancelled by the Chair if there are no agenda items or if it is predetermined that a quorum will not be present. Special meetings may be called by or at the request of the Chair or any two members. Meetings shall be held after due notice to all members and the public.

7.2 Quorum: Four members shall constitute a quorum for the transaction of business. Whenever a quorum is not present at a meeting, those present may adjourn the meeting to another day or hold the meeting for the purpose of considering such matters as are on the agenda. No action taken at such a meeting shall be final or official unless and until ratified and confirmed at a subsequent meeting when a quorum is present by acting to approve the minutes of the meeting at which the quorum was not present.

7.3 Order of Business: The Chair or their designee shall prepare an agenda for each meeting and the order of business shall follow in an orderly manner according to the agenda. A designated period for public comment shall be allowed. A time limit for discussion and/or comment may be set by the Chair.

7.4 Parliamentary Procedure: Parliamentary procedure in Harbor Commission meetings, when needed, shall be governed by Roberts' Rules of Order.

Section 8. EXPENSE REIMBURSEMENT.

Commissioners shall be reimbursed by the City of Manistee for all pre-approved out of pocket expenses incurred in carrying out the official business of the Commission. The City Manager or his designee shall be responsible for the preapproval process.

Section 9. CONFLICT OF INTEREST.

In the event that business being carried out by the Commission may have a personal or financial impact on a member of the Commission or their immediate family, or any corporation or business of which a Commissioner is an officer or director, the Commission member must disclose the conflict of interest and refrain from voting on that particular business. If any question of whether or not a conflict exists cannot be determined by the Commission, then the matter of the question shall immediately be referred in writing to the Manistee City Attorney for consultation and recommendation.

Section 10. CHANGES OR AMENDMENTS.

Bylaws shall be reviewed annually during the first meeting of the year. All changes or amendments to the Bylaws must be approved by the majority of the Commissioners. Such changes or amendments must be presented to the Commission in writing for consideration and may not be voted upon until the following regularly scheduled meeting. Upon approval by the Commission, the Bylaws, showing the proposed amendment, shall be submitted to the Manistee City Council for final approval.

The foregoing Bylaws were duly adopted at a regular meeting of the Manistee Harbor Commission held 9/16/91; amended 5/06/96; amended 4/4/06; amended 8/3/09 amended 5/10/11; amended 2/19/13.

Cynthia J. Lokovich, Secretary Dated

Approved by the Manistee City Council:

Mayor Colleen Kenny Dated



Planning & Zoning
Community Development
231.398.2805
Fax 231.723-1546
www.mansiteemi.gov

MEMORANDUM

TO: Mitch Deisch, City Manager 

FROM:  Jon R. Rose, Community Development Director

DATE: February 27, 2013

RE: Fish Cleaning Station and Beach Pavilion Contract



Mitch, bids were opened on February 6, 2013 for the Fish Cleaning Station and Beach Pavilion construction that is to take place this spring. Twelve bids were received in response to the project.

Adams Construction	\$747,150
BCI Construction	\$639,600
Cole Inc.	\$572,575
Hallmark Construction	\$583,750
Joseph Helminski	\$629,892
Omega Construction	\$618,543
Orshall	\$625,238
Plaggmars Const.	\$605,900
Rivertown Contractors	\$587,788
Sugar Construction	\$607,200
Tridon Construction	\$569,863 * Low Bidder
Vell Construction	\$583,500

Tridon Construction was the low bid for \$569,863. Value engineering has reduced that cost to \$545,020. A Contract in the reduced amount has been prepared and Reviewed by the City Attorney with Tridon Construction for the construction of the Fish Cleaning Station and Beach Pavilion at First Street Beach.

At the Council Worksession on February 12, 2013 City Council was brought up to date on the project and funding was discussed.

JRR:djb

SECTION 00 4100

BID FORM

THE PROJECT AND THE PARTIES

TO:

City of Manistee, Owner
70 Maple Street
Manistee, Michigan 49660

FOR:

City of Manistee Fish Cleaning Station and 1st Street Beach Pavilion

BID DUE DATE: February 6, 2013

SUBMITTED BY: (Bidder to enter name and address)

Bidder's Full Name Tridonn Construction Company
Address 1461 Evanston Avenue
City, State, Zip Muskegon, MI 49442

OFFER

Having examined the Place of The Work and all matters referred to in the Instructions to Bidders and the Contract Documents prepared by Abonmarche for the above mentioned project, we, the undersigned, hereby offer to enter into a Contract to perform the Work for the Sum of:

Combined Bid for Fish Cleaning Station and 1st Street Beach Pavilion: *94/100* dollars
Five Hundred Sixty Nine Thousand Eight Hundred Sixty Three & 00/100
(\$ 569,863.00), in lawful money of the United States of America.

We have included the required security deposit as required by the Instruction to Bidders.

We acknowledge visiting the site before making an offer to City Manistee:

Bidder: Tridonn Construction Company

All applicable federal taxes along with permit fees are included and State of Michigan sales taxes are included in the Bid Sum.

Performance Assurance Bonds: (Both Buildings)

Bonding Company: The Hartford

Bond Cost: \$ 5,040.00. (Included in base bid price above)

All Cash and Contingency Allowances described in Section 01 2100 are included in the Bid Sum.

ACCEPTANCE

This offer shall be open to acceptance and is irrevocable for one-hundred twenty days from the bid closing date.

If this bid is accepted by City of Manistee within the time period stated above, we will:

Execute the Agreement within thirteen days of receipt of acceptance of this bid.

Furnish the required bonds within seven days following the date the Agreement is entered.

Indicate that work will commence at the appointed time.

If this bid is accepted within the time stated, and we fail to commence the Work or we fail to provide the required Bond(s), the security deposit shall be forfeited as damages to City of Manistee by reason of our failure, limited in amount to the lesser of the face value of the security deposit or the difference between this bid and the bid upon which a Contract is signed.

In the event our bid is not accepted within the time stated above, the required security deposit shall be returned to the undersigned, in accordance with the provisions of the Instructions to Bidders; unless a mutually satisfactory arrangement is made for its retention and validity for an extended period of time.

CONTRACT TIME

If this Bid is accepted, we will: Begin Construction on 03/04, 2013.

Substantial Completion: June 28, 2013.

Totally Complete the Work (Including Punch List Items for both Buildings) July 15, 2013.

CHANGES TO THE WORK

When Architect establishes that the method of valuation for Changes in the Work will be net cost plus a percentage fee in accordance with General Conditions, our percentage fee will be:

Overhead: 4-1/2 %
Profit: 4-1/2 %
Bond: 1 %

On work deleted from the Contract, our credit to City of Manistee shall be Architect-approved net cost plus -0- ZERO % profit and overhead percentage.

ADDENDA

The following Addenda have been received. The modifications to the Bid Documents noted below have been considered and all costs are included in the Bid Sum.

FISH CLEANING	Addendum # <u>1</u> Dated <u>01/17/2013</u>	PAVILION	Addendum # <u>1</u> Dated <u>01/17/2013</u>
	Addendum # <u>2</u> Dated <u>01/31/2013</u>		Addendum # <u>2</u> Dated <u>01/22/2013</u>
	Addendum # <u>3</u> Dated <u>02/04/2013</u>		Addendum # <u>3</u> Dated <u>01/24/2013</u>
	Addendum # <u>4</u> Dated <u>02/05/2013</u>		Addendum # <u>4</u> Dated <u>01/31/2013</u>
			Addendum # <u>5</u> Dated <u>02/04/2013</u>

BID FORM SUPPLEMENTS

The following information is included with Bid submission:

The following Supplements are attached to this Bid Form and are considered an integral part of this Bid Form:

- Document 00 4323 - Supplement A - Alternatives: Include the cost variations to the Bid Sum applicable to the Work as described in Section 001230.
- Document 00 4327 - Separate Prices: Include a listing of separate prices as specifically requested in the Contract Documents
- Document 00 4323 - Supplement A - Alternatives: Include the cost variations to the Bid Sum applicable to the Work as described in Section 01 2300.
- Document 00 4400 - Supplement J - Non-Collusion Affidavit
- Document 00 4410 - Supplement K - Non-Asbestos Affidavit

We agree to submit the following Supplements to Bid Forms within 24 hours after submission of this bid for additional bid information:

- Document 00 4336 - Subcontractors: Include the names of all Subcontractors and the portions of the Work they will perform.

BID FORM SIGNATURE(S)

The Corporate Seal of
Tridonn Construction Company

(Bidder - print the full name of your firm)

was hereunto affixed in the presence of:

Ross M. Falkowski

(Authorized signing officer, Title)

(Seal)

Ross M. Falkowski
Business Development/Project Manager

(Authorized signing officer, Title)

If the Bid is a joint venture or partnership, add additional forms of execution for each member of the joint venture in the appropriate form or forms as above.

END OF BID FORM

SECTION 00 4323

ALTERNATES FORM

PARTICULARS

The following is the list of Alternatives referenced in the bid submitted by:

(Bidder) Tridonn Construction Company

TO: City of Manistee.

Dated February 6, 2013 and which is an integral part of the Bid Form.

ALTERNATIVES LIST

The following amounts shall be total stand alone costs for each particular alternate listed and shall not be costs to be added or deducted from the base bid amount. Refer to Section 01 2300 - Alternates.

Fish Cleaning Station

<u>Alternate #1:</u> (Add) Roof overhang, foundation piers, and wood supports at Fish Cleaning on South Elevation.	\$ <u>3,930.⁰⁰</u>
<u>Alternate #2:</u> (Add) Starboard fish cutting table and frames.	\$ <u>NO BID</u>
<u>Alternate #3:</u> (Add) Anti-graffiti clear coating over all exterior block.	\$ <u>575.⁰⁰</u>
<u>Alternate #4:</u> (Add) Cost of walk-in freezer #2.	\$ <u>12,300.⁰⁰</u>
<u>Alternate #5:</u> (Add) Anti-slip coating to freezer #2	\$ <u>288.⁰⁰</u>
<u>Alternate #6:</u> (Add) Anti-slip coating to freezer #1.	\$ <u>288.⁰⁰</u>
<u>Alternate #7:</u> (Deduct) 2 Stainless fish cleaning tables.	\$ <u>(5,950.⁰⁰)</u>
<u>Alternate #8:</u> (Add) Cost of additional sidewalks	\$ <u>5,100.⁰⁰</u>
<u>Alternate #9:</u> (Add) Cost of Topsoil and Seeding.	\$ <u>2,860.⁰⁰</u>

1st Street Beach Pavilion

<u>Alternate #10:</u> (Add) Anti-graffiti clear coating over all exterior block.	\$ <u>1,900.⁰⁰</u>
<u>Alternate #11:</u> (Add) Cost of installing public utilities to building.	\$ <u>11,220.⁰⁰</u>
<u>Alternate #12:</u> (Add) Water service from main to building.	\$ <u>14,190.⁰⁰</u>

Voluntary Alternate: (Add) (Deduct) \$ _____

Voluntary Alternate: (Add) (Deduct) \$ _____

END OF ALTERNATE SUPPLEMENT

SECTION 00 4327

SEPARATE PRICES BREAK-OUT FORM

PARTICULARS

The following is the list of Separate Prices referenced in the bid submitted by:

(Bidder) Tridonn Construction Company

TO CITY OF MANISTEE

February 6, 2013 and which is an integral part of the Bid Form.

Fish Cleaning Station:

Site Work:	\$ <u>17,480.⁰⁰</u>
Architectural Work:	\$ <u>195,000.⁰⁰</u>
Plumbing Work:	\$ <u>19,606.⁰⁰</u>
HVAC Work:	\$ <u>3,311.⁰⁰</u>
Electrical Work:	\$ <u>12,490.⁰⁰</u>

1st Street Beach Pavilion

Site Work:	\$ <u>11,140.⁰⁰</u>
Architectural Work:	\$ <u>228,367.⁰⁰</u>
Plumbing Work:	\$ <u>32,771.⁰⁰</u>
HVAC Work:	\$ <u>12,228.⁰⁰</u>
Electrical Work:	\$ <u>37,450.⁰⁰</u>

END OF FORM

SECTION 00 4336

PROPOSED SUBCONTRACTORS FORM

PARTICULARS

Herewith is the list of Subcontractors referenced in the bid submitted by:

(Bidder) Tridonn Construction Company

To (Owner) City of Manistee

Dated February 6, 2013 and which is an integral part of the Bid Form.

The following work will be performed (or provided) by Subcontractors and coordinated by us:

LIST OF SUBCONTRACTORS

Fish Cleaning Station & 1st Street Beach Pavilion

Demolition Contractor Tridonn Const.

Site Excavation Contractor Swickorski Bros. Excavating

Site Utilities Contractor Swickorski Bros. Excavating

Paving Contractor Reith - Riley

Site Concrete Contractor - Curbs, Sidewalks, Slabs Tridonn Const.

Structural Steel Contractor Porter Steel

Building Concrete Contractor - Foundation and Slabs Tridonn Const.

Roofing Contractor Versatile Roofing

Framing Contractor Tridonn Const.

Masonry Contractor Bay Masonry

Metal Doors, Frames, Door Hardware Contractor White Lake Glass

Windows & Glazing Contractor White Lake Glass

Gypsum Board Finishing Contractor Ritsema Associates

Painting Contractor Briske Painting

Plumbing Contractor Bob's Plumbing

HVAC Contractor ~~Custom Sheet Metal~~ Bishop Heating

Electrical Contractor Krolczyk Electric

END OF SUPPLEMENT FORM

SECTION 00 4400

SUPPLEMENT J - NON-COLLUSION AFFIDAVIT

STATE OF MICHIGAN

COUNTY OF MUSKEGON

The undersigned bidder or agent, being dually sworn, on oath says that he will not, nor will any other member, representative, or agent of the firm, company, corporation or partnership represented by him, enter into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting, nor to prevent any person from bidding not to induce anyone to refrain from bidding, and that his bid is made without reference to any other bid and with out any agreement, understanding, or combination with any other person in reference to such bidding in any way or manner whatever.

Ross M. Falkowski

Bidder or Agent

Ross M. Falkowski

FOR: Tridonn Construction Company

Firm or Corporation

Corporation

Subscribed and sworn to before me this

6th day of February, 2013.

Mark J. VanderMeulen

Notary Public

Mark J. VanderMeulen

My commission expires: 04/01/14

END OF SUPPLEMENT J

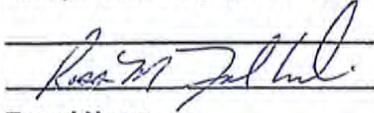
SECTION 00 4410

SUPPLEMENT K - NON-ASBESTOS AFFIDAVIT

STATE OF MICHIGAN

COUNTY OF MUSKEGON

The undersigned bidder or agent, being duly sworn, on oath says that he will not, nor will any other subcontractor, representative, or agent of the firm, company, corporation or partnership represented by him, purchase equipment containing asbestos, or install asbestos containing material for this facility.



Typed Name

Ross M. Falkowski

Typed Title

Business Development/Project Manager

Bidder or Agent

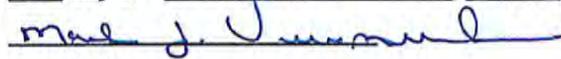
FOR: Tridonn Construction Company

Firm or Corporation

Corporation

Subscribed and sworn to before me this

6th day of February, 2013.



Notary Public

Mark J. VanderMeulen

My commission expires: 04/01/14

END OF SUPPLEMENT K



**Bid Bond
SURETY DEPARTMENT**

KNOW ALL MEN BY THESE PRESENTS,
That We, **Tridonn Construction Company**, of 1461 Evanston Avenue, Muskegon, MI 48442, as Principal, hereinafter called the Principal, and the **Hartford Accident and Indemnity Company**, a corporation created and existing under the laws of the State of Connecticut, whose principal office is in Hartford, Connecticut, as Surety, hereinafter called the Surety, are held and firmly bound unto

City of Manistee

as Obligee, hereinafter called the Obligee, in the sum of Five percent of attached bid

Dollars (\$ 5%),

for the payment of which sum, well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal has submitted a bid for Fish Cleaning Station and 1 Street Beach Pavilion

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or contract documents with good and sufficient surety for the faithful performance of such contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 6th day of February 2013

TRIDONN CONSTRUCTION COMPANY

Attest *Lisa DeShaffer*.....
(If Corporation)

By *Ross M. Falkowski*.....(SEAL)
/Ross M. Falkowski
Business Development/Project Manager

Witness *[Signature]*.....
Attorney-in-fact

HARTFORD ACCIDENT AND INDEMNITY COMPANY
By *[Signature]*.....(SEAL)
Michael A. Johnson

(Approved by The American Institute of Architects,
A.I.A. Document No. A-310, Feb., 1970 Edition)

POWER OF ATTORNEY

Direct Inquiries/Claims to:
THE HARTFORD
 BOND, T-4
 One Hartford Plaza
 Hartford, Connecticut 06155
 call: 888-266-3488 or fax: 860-757-5835
 Agency Code: 81-151488

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, up to the amount of unlimited:

Michael A. Johnson, Michael W. Johnson, Michelle L. Som, Susan L. Kennert
 of
Muskegon, MI

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on January 22, 2004 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



Wesley W. Cowling

Wesley W. Cowling, Assistant Secretary

M. Ross Fisher

M. Ross Fisher, Assistant Vice President

STATE OF CONNECTICUT }
 COUNTY OF HARTFORD } ss. Hartford

On this 3rd day of November, 2008, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

Scott E. Paseka
 Scott E. Paseka
 Notary Public
 My Commission Expires October 31, 2012

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of *FEBRUARY 6, 2013* Signed and sealed at the City of Hartford.



Gary W. Stumper

Gary W. Stumper, Assistant Vice President

RESOLUTION OF THE BOARD OF DIRECTORS

I, Mark J. VanderMeulen, do hereby certify that I am the duly elected and qualified Corporate Secretary and keeper of the corporate records and seal of TRIDONN CONSTRUCTION COMPANY, a corporation organized and existing under the laws of the State of Michigan, and that the following is a true and correct copy of a certain resolution duly adopted at a meeting of the Board of Directors thereof, convened and held in accordance with the law and the by-laws of said corporation on the 10th day of February 2012, and that such resolution is now in full force and effect:

RESOLVED, that Ross M. Falkowski, Business Development/Project Manager of this Corporation is hereby authorized and directed to sign bonds and contracts on behalf of the corporation except when the Board of Directors shall instruct the same to be done by some other officer or agent.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Corporation, the 6th day of February 20~~12~~¹³.



Mark J. VanderMeulen
Corporate Secretary

CITY OF MANISTEE- FISH CLEANING STATION AND BEACH PAVILION
BID TABULATIONS February 06, 2013 @ 2:00 p.m.

CONTRACTOR	Fish Cleaning Station Addendums #1-#4	Beach Pavilion Addendums #1-#5	BID BOND	NON-COLLUSION AFFIDAVIT	BASE BID
SUGAR CONSTRUCTION	X	X	X	X	\$ 607,200. ⁰⁰
BCI CONSTRUCTION	X	X	X	X	\$ 639,600. ⁰⁰
JOSEPH HELMINSKI	X	X	X	X	\$ 629,892. ⁰⁰
OMEGA CONSTRUCTION	X	X	X	X	\$ 618,543. ⁰⁰
RIVERTOWN CONTRACTORS	X	X	X	X	\$ 587,788. ⁰⁰
VELL CONSTRUCTION	X	X	X	X	\$ 583,500. ⁰⁰
ORSHAL	X	X	X	X	\$ 625,238. ⁰⁰
HALLMARK CONSTRUCTION	X	X	X	X	\$ 583,750. ⁰⁰

CITY OF MANISTEE- FISH CLEANING STATION AND BEACH PAVILION

CONTRACTOR	Fish Cleaning Station Addendums #1-#4	Beach Pavilion Addendums #1-#5	BID BOND	NON-COLLUSION AFFIDAVIT	BASE BID
ADAMS CONSTRUCTION	X	X	NO	NO	\$ 747,150.00
TRIDON CONSTRUCTION	X	X	X	X	\$ 569,863.00
COLE INC.	X	X	X	X	\$ 572,575.00
PLAGGMARS CONST.	X	X	X	X	\$ 605,900.00

Michelle Wright CITY CLERK


 Paul Lane Community Development

 ENGINEER

DRAFT AIA® Document A101™ - 2007

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

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

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

«City of Manistee »« »
«70 Maple Street »
«Manistee, MI 49660 »
« »

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

«Tridonn Construction Company, Inc. »« »
«1461 Evanston Avenue »
«Muskegon, MI 49442 »
« »

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

«Fish Cleaning Station & 1st Street Beach Pavilion»
«81 & 110 Lakeshore Drive S. »
«Manistee, MI 49660»
«Construction of new Fish Cleaning Station & Beach Pavilion Buildings
»

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

«Abonmarche Consultants, Inc. »« »
«95 W. Main Street »
«Benton Harbor, MI 49022 »
« »

The Owner and Contractor agree as follows.

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

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

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

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

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

« »

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

« »

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

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than «120 » («one hundred twenty ») days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

« »

Portion of Work

Substantial Completion Date

N/A

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

« »

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be \$545,020.00 \$ Five hundred forty-five thousand twenty dollars, subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

«See Exhibit A »

§ 4.3 Unit prices, if any:
(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Table with 3 columns: Item, Units and Limitations, Price Per Unit (\$0.00). Row 1: N/A

§ 4.4 Allowances included in the Contract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Table with 2 columns: Item, Price. Row 1: N/A

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

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

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

« »

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 10th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 10th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than sixty (60) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

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

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

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

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of «ten » percent («10 » %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of «ten » percent («10 » %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

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

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

« »

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

§ 5.2 FINAL PAYMENT

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

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

« »

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

«N/A »

« »

« »

« »

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

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

Arbitration pursuant to Section 15.4 of AIA Document A201–2007

Litigation in a court of competent jurisdiction

Other (Specify)

« »

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

« » % « »

§ 8.3 The Owner's representative:

(Name, address and other information)

«Jon Rose »

«Community Development Director »

«City of Manistee »

«70 Maple Street »

«Manistee, MI 49660 »

«231-398-2805 »

§ 8.4 The Contractor's representative:

(Name, address and other information)

«Ross Falkowski »

«Business Development/Project Manager »

«Tridonn Construction Company »

«1461 Evanston Ave. »

«Muskegon, MI 49442 »
«o. 231-777-2681
c. 231-206-4281 »

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

« »

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Specifications	Supplementary Conditions	Jan. 2013	00 7300-1 through 00 7300-5

§ 9.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

« »

Section	Title	Date	Pages
Exhibit "B"			

§ 9.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

« »

Number	Title	Date
Exhibit "C"		

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
Exhibit "D"		

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

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

« »

- .2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

« »

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of insurance or bond

Limit of liability or bond amount (\$0.00)

Per Specifications

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

OWNER (Signature)

« »« »

(Printed name and title)

CONTRACTOR (Signature)

« »« »

(Printed name and title)

A
B

D

EXHIBIT A
11-0820 11-0580 / 1ST STREET BEACH PROJECTS

SCHEDULE OF ALTERNATES			
<u>Base Bid</u>			\$ 569,823.00
<u>Alternates as Described in Contract Documents</u>			
A1 Front Roof Overhang	\$ 3,950.00		
A3 Anti-Graffiti Coating - Fish Cleaning Station	\$ 575.00		
A6 Anti Slip Floor Freezer #1	\$ 288.00		
A10 Anti-Graffiti Coating - Beach House	\$ 1,900.00		
A11 Utilities to Site - Sewer	by city		
A12 Water Service to Site - Water	by city		
<u>Additional Alternates Accepted by Owner</u>			
BH - Substitute mesh at ceiling	\$ (700.00)		
FCS - delete cooler cleanout	\$ (2,203.00)		
Roofing Alternate - Both Buildings	awaiting cost		
BH - Changing room door alternate	awaiting cost		
BH - Reduce Technology Allowance	\$ (5,000.00)		
Building Permit Fee Reduction	\$ (1,700.00)		
FCS - Delete Building Sign Allowance A.	\$ (4,000.00)		
<u>Total Alternate Effect</u>			\$ (6,890.00)
<u>Final Contract Price</u>			\$ 562,933.00

EXHIBIT B

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00 0120	PROJECT SCHEDULE

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00 4100	BID FORM
00 4323	ALTERNATES FORM
00 4327	SEPARATE PRICES BREAK-OUT FORM
00 4336	PROPOSED SUBCONTRACTORS FORM
00 4400	SUPPLEMENT J - NON-COLLUSION AFFIDAVIT
00 4410	SUPPLEMENT K - NON-ASBESTOS AFFIDAVIT

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00 5000	CONTRACTING FORMS AND SUPPLEMENTS
00 7300	SUPPLEMENTARY CONDITIONS

SUMMARY

01 1000	SUMMARY
---------	---------

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01 2100	ALLOWANCES
01 2300	ALTERNATES

ADMINISTRATIVE REQUIREMENTS

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01 3114	MECHANICAL AND ELECTRICAL COORDINATOR
01 3216	CONSTRUCTION PROGRESS SCHEDULE

QUALITY REQUIREMENTS

01 4000	QUALITY REQUIREMENTS
---------	----------------------

TEMPORARY FACILITIES AND CONTROLS

01 5000	TEMPORARY FACILITIES AND CONTROLS
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EXHIBIT B

01 5713 TEMPORARY EROSION AND SEDIMENT CONTROL
01 5813 TEMPORARY PROJECT SIGNAGE

PRODUCT REQUIREMENTS

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02 4100 DEMOLITION

DIVISION 03 - CONCRETE

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03 2000 CONCRETE REINFORCING
03 3000 CAST-IN-PLACE CONCRETE
03 3511 CONCRETE FLOOR FINISHES
03 4500 PRECAST ARCHITECTURAL CONCRETE

DIVISION 04 - MASONRY

04 2000 UNIT MASONRY

DIVISION 05 - METALS

05 1200 STRUCTURAL STEEL FRAMING

DIVISION 06 - WOOD, PLASTICS, AND COMPOSITES

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EXHIBIT B

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08 9100	LOUVERS

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10 4400	FIRE PROTECTION SPECIALTIES

DIVISION 11 - EQUIPMENT

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---------	-----------------------

DIVISION 12 - FURNISHINGS

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---------	-------------

DIVISION 22 - PLUMBING

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22 1005	PLUMBING PIPING
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11-0580-3	Feb 04, 2013	1
11-0580-4	Feb 05, 2013	1

END OF LIST OF ADDENDA

DRAFT AIA® Document A201™ - 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«Fish Cleaning Station & 1st Street Beach Pavilion»

«81 & 110 Lakeshore Drive S

Manistee, MI 49660

Construction of new Fish Cleaning Station & Beach Pavilion 81 & 110 Lakeshore Drive S

Manistee, MI 49660

~~And Construction of new Fish Cleaning Station & Beach Pavilion Buildings»~~

THE OWNER:

(Name, legal status and address)

«City of Manistee »« »

«70 Maple Street

Manistee, MI 49660 »

THE ARCHITECT:

(Name, legal status and address)

«Abonmarche Consultants, Inc. »« »

«95 W. Main Street

Benton Harbor, MI 49022 »

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ADDITIONS AND DELETIONS:

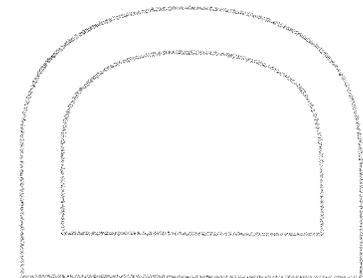
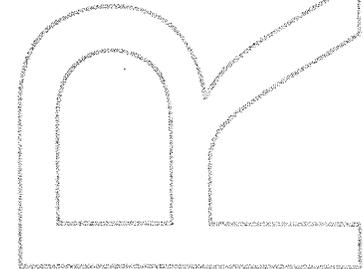
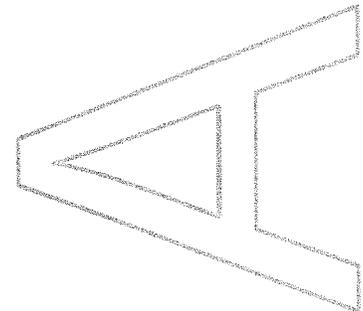
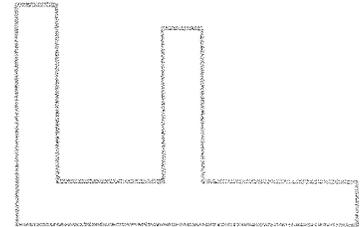
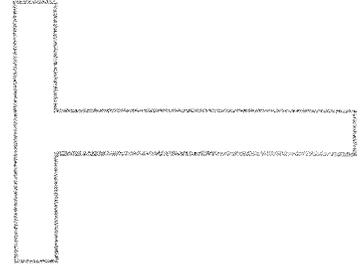
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

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

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

§ 3.4 LABOR AND MATERIALS

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

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

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

§ 3.5 WARRANTY

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

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct,

but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule 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, and shall provide for expeditious and practicable execution of the Work.

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

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled

to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

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

other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the

Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

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

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 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 Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

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

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

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

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be

furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the

Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

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

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

§ 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

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

§ 9.7 FAILURE OF PAYMENT

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

§ 9.8 SUBSTANTIAL COMPLETION

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

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

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

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor 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 and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed 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 Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

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

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

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

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

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

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

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

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

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's

risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect 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 the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

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

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

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 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.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 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.

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 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 Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (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 Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.6 INTEREST

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

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement 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 Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

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

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

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

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor 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 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

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

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of 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.

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

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

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

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

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

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The

party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 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).

§ 15.4.4.2 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.

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

EXHIBIT A
11-0820 11-0580 / 1ST STREET BEACH PROJECTS

SCHEDULE OF ALTERNATES			
<u>Base Bid</u>			\$ 569,823.00
<u>Alternates as Described in Contract Documents</u>			
A3 Anti-Graffiti Coating - Fish Cleaning Station	\$ 575.00		
A6 Anti Slip Floor Freezer #1	\$ 288.00		
A10 Anti-Graffiti Coating - Beach House	\$ 1,900.00		
<u>Additional Alternates Accepted by Owner</u>			
BH - Substitute mesh at ceiling	\$ (1,400.00)		
BH - Gable truss substitution	\$ (1,500.00)		
FCS - substitute cooler cleanout	\$ (2,203.00)		
FCS - delete railings	\$ (425.00)		
FCS - delete benches	\$ (4,120.00)		
FCS - delete mesh at ceiling	\$ (1,200.00)		
BH - substitute steel door at janitor	\$ (966.00)		
Reduce lights over signage by 4 (2 each building)	\$ (560.00)		
BH - Changing room door alternate	\$ (2,072.00)		
BH - Reduce Technology Allowance	\$ (5,000.00)		
Waive Building permit for both buildings	\$ (1,700.00)		
FCS - Delete Building Sign Allowance	\$ (4,000.00)		
BH- Felt instead of Ice & Water Shield at roof	\$ (800.00)		
BH - divert sidewalk cost to Streets Budget	\$ (1,620.00)		
<u>Total Alternate Effect</u>			\$ (24,803.00)
<u>Final Contract Price</u>			\$ 545,020.00

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01 4000	QUALITY REQUIREMENTS
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01 5000	TEMPORARY FACILITIES AND CONTROLS
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- C1.2 SITE UTILITIES & GRADING PLAN**
- S1.1 FOUNDATION PLANS**
- S1.2 FRAMING PLANS**
- A1.1 FLOOR PLANS**
- A1.2 REFLECTED CEILING PLANS**
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1ST STREET BEACH PAVILION - 11-0820

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EXHIBIT D

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11-0820-2	January 22, 2013	2
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11-0580-1	January 17, 2013	3
11-0580-2	January 31, 2013	2
11-0580-3	Feb 04, 2013	1
11-0580-4	Feb 05, 2013	1

END OF LIST OF ADDENDA