

1 **BILL NO. S-22-03-01**

2 **SPECIAL ORDINANCE NO. S-**

34-22

3 **AN ORDINANCE** approving CONSTRUCTION
4 MANAGER CONTRACT / PHASE 1 FRANKE PARK
5 RENAISSANCE PROJECT (\$39,000.00) between
6 MICHAEL KINDER AND SONS, INC. and the City of
Fort Wayne, Indiana, in connection with the Board of
Parks Commissioners.

7 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF**
8 **THE CITY OF FORT WAYNE, INDIANA;**

9 **SECTION 1.** That CONSTRUCTION MANAGER CONTRACT / PHASE 1
10 FRANKE PARK RENAISSANCE PROJECT (\$39,000.00) between MICHAEL
11 KINDER AND SONS, INC. and the City of Fort Wayne, Indiana, in connection with
12 the Board of Public Works, is hereby ratified, and affirmed and approved in all
13 respects, respectfully for:

14
15 the hiring of a construction manager for the Phase 1 Franke Park
16 Renaissance Project. This will be a Construction Manager as
17 Constructor (CMc) contract. The CMc will enter into a contract to
18 provide preconstruction services during the design of the Project
19 and serve as the construction manager/general contractor during
20 the construction of the Project. The CMc will assume the risk of
21 delivering the Project through a Guaranteed Maximum Price (GMP)
22 contract. The CMc will be responsible for construction means and
methods, and will collaborate with the owner to determine
prequalified subcontractors to solicit bids from prequalified
subcontractors to perform the work. The CMc may also compete to
self-perform portions of the work that equals not more than 20% of
the project value;

23 involving a total cost not to exceed THIRTY-NINE THOUSAND AND 00/100
24 DOLLARS - (\$39,000.00). A copy of said Contract is on file with the Office of the
25 City Clerk and made available for public inspection, according to law.
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SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.



Council Member

APPROVED AS TO FORM AND LEGALITY

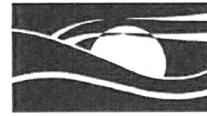


Carol Helton, City Attorney

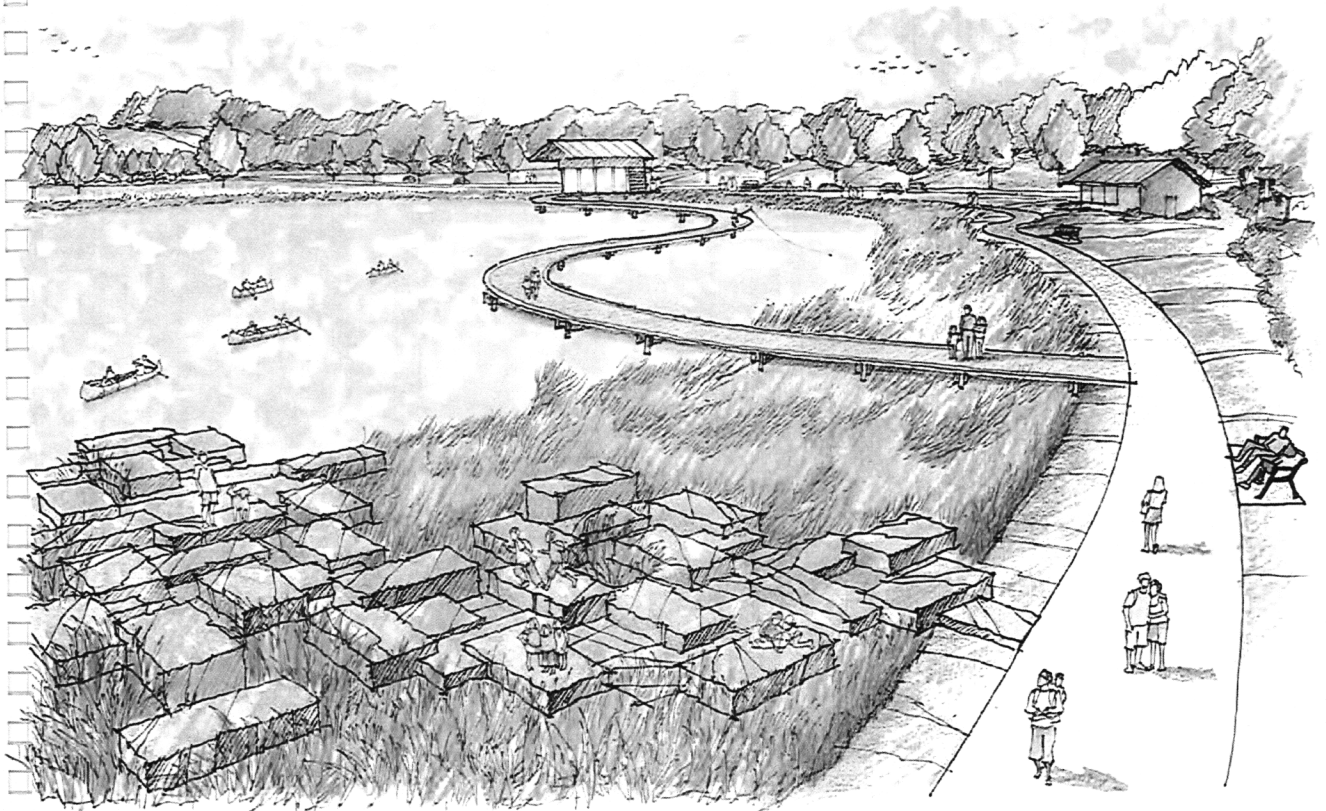
CMc PROPOSAL FOR

FRANKE PARK RENAISSANCE PROJECT PHASE 1

3900 SHERMAN BLVD., FORT WAYNE, IN



FORT WAYNE
PARKS AND
RECREATION



KINDERANDSONS.COM | 260.744.4359

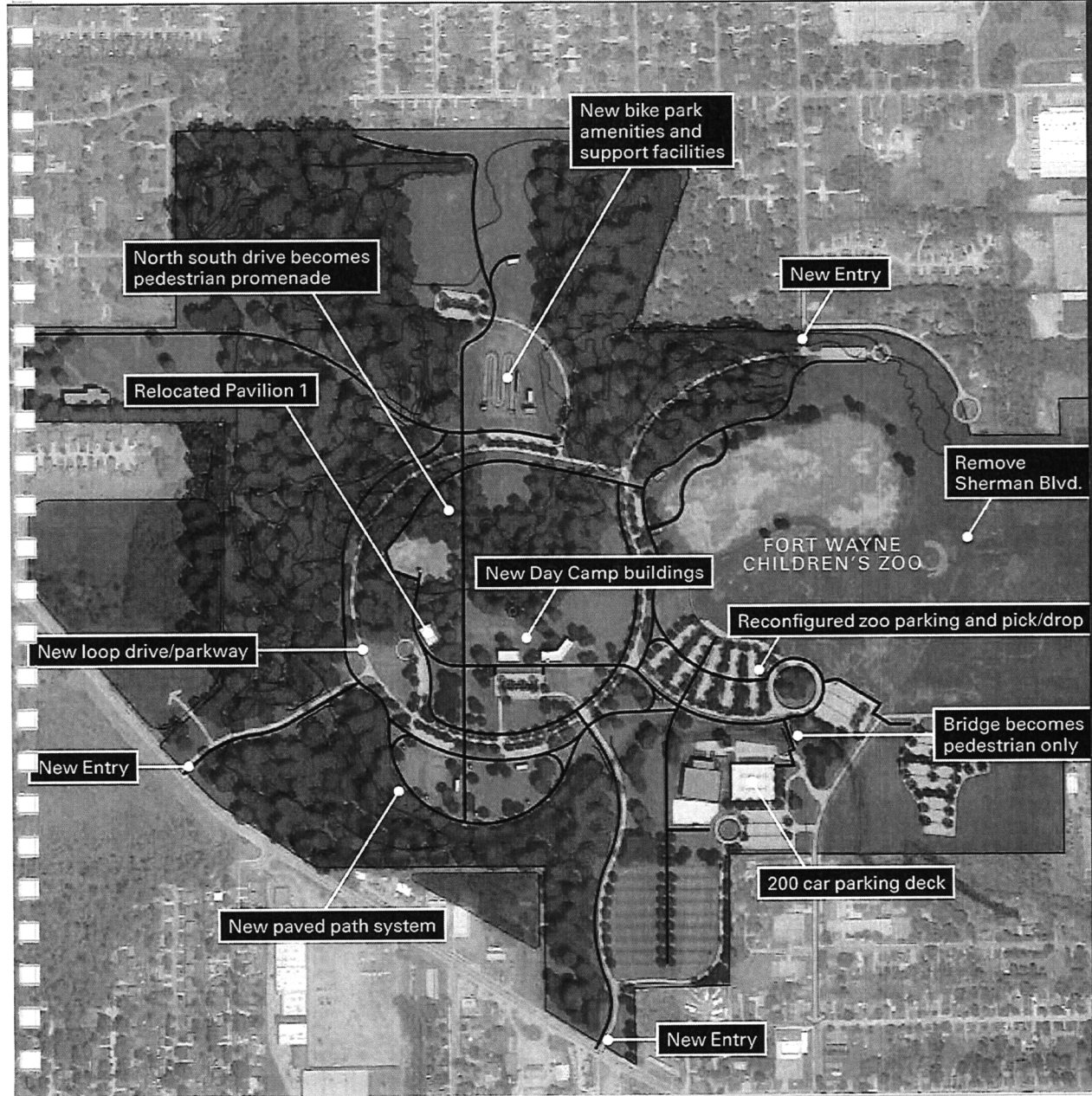
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CONFIDENTIALITY STATEMENT

The sections of this proposal marked with the legend "Confidential Information" contain commercial and/or financial information (e.g., pricing and rates) that MKS considers to be proprietary, confidential and/or trade secrets. Release of this Confidential Information would cause us substantial competitive harm and would compromise the integrity of this procurement process by giving our competitors an unfair advantage. MKS is furnishing this proposal with the understanding that the Owner will not disclose this Confidential Information to any third parties other than those engaged by the Owner to assist with the evaluation of this proposal and who have agreed to be bound by this restriction. MKS requests to be notified in writing at least five (5) days prior to any disclosure that contravenes this restriction. © Copyright 2022 MKS / All Rights Reserved

TAB 1 CORPORATE COMMITMENT





February 4, 2022

Steve Schuhmacher
Fort Wayne Parks & Recreation
705 E State Blvd
Fort Wayne, IN 46805

Re: Franke Park Renaissance Project Phase 1, CMc, Response to RFP for CMc Services

Dear Mr. Schuhmacher,

The Franke Park Renaissance Project Phase 1 is an exciting launching point for the renovation of Fort Wayne's beloved park. The thorough process of research, development and community engagement led by Fort Wayne Parks & Recreation has created a Master Plan and 8 Guiding Principles guaranteed to yield great results. To take one of the most significant cultural and ecological resources of the city and transform it into an even greater asset, void of its previous challenges and with a modern vision is a dream we can't help but feel passionate about. At MKS, it is impactful projects like these that fuel us, and our vast experience working on, and adjacent to, active public amenities make our team the best partner for your construction project.

Our team brings an extensive CMc portfolio to your project - experience that adds tremendous value in delivering the outcome you expect and deserve. Our commitment is to exceed your expectations through innovation, transparency, responsiveness, technology and careful consideration of the community's experience. We consider ourselves an extension of Fort Wayne Parks & Recreation staff. That means we manage your project as if we were the owners. We work collaboratively with all stakeholders reviewing potential options and agree as a team on the best way to create budget and schedule certainty while accommodating the public.

When reviewing our team qualifications and proposal, please consider the unique value that MKS, the 130 year old, locally grown and family-owned firm, brings to the Franke Park Renaissance Project Phase 1.

MKS is a corporation licensed in Allen County, Indiana: Contractor License Number 258. Our team is committed to providing our proposed key personnel for the full duration of your project, providing the depth of resources, experience, and dedication to deliver your project successfully. We will continue to aggressively pursue the project throughout the RFP/selection process. MKS hereby acknowledges Addenda #1, #2 & #3. We look forward to taking the next step in the selection process and partnering with Fort Wayne Parks & Recreation.

Sincerely,

Bill Kinder
CEO and Principal-In-Charge, MKS
5206 Decatur Road
Fort Wayne, Indiana 46806
260.744.4359
bkinder@kinderandsons.com

TAB 2 STAFF & KEY PERSONNEL



TAB 2

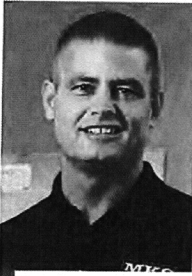
STAFF & KEY PERSONNEL

a. Provide a staffing plan matrix in the format provided in Attachment D (for each respective Project), identifying the anticipated time commitment (hours) of each staff person by name and title for the duration of the Project.

As issued in Quest #8092884 - Addendum no. 2. Attachment D has been removed from the required documents to be submitted with this proposal.

b. Provide pertinent detail regarding the proposed staff and their proposed role indicating the projects they have worked on, the dates of their involvement on each project, their role on each project, the number of years in the industry and the number of years with the company.

Full resumes for key staff, and abbreviated resumes for support roles are included on the following page.



BILL KINDER
Owner/CEO
Project Executive

EXPERIENCE
26 years industry
21 years at MKS

EDUCATION
B.S. Building Construction
Engineering Technology
Purdue University

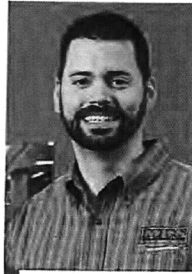
Bill Kinder is the CEO and Co-Owner of MKS along with his brother, Doug. Bill's experience is second-to-none in the region as it relates to Design-Build and Construction Management processes. Bill's presence is not just high level; he takes tremendous pride in being involved in the critical details of all projects from conception through close-out. Bill's "type A" personality is evident in the work that MKS performs and the outcome of our client's praise. His reputation of treating each project like it is his own is always apparent.

RELEVANT PROJECT EXPERIENCE

- **Fort Wayne International Airport West Terminal Expansion**
Project Executive Involvement: 5/21 to Present
- **Brotherhood Mutual Insurance Additions & Renovations**
Project Executive Involvement: 7/19 to 4/21
- **Indiana Tech Warrior Park**
Project Executive Involvement: 5/18 to 8/19
- **Civic Center Parking Garage**
Project Executive Involvement: 8/19 to 6/20

SIGNIFICANT PROJECTS INCLUDE:

Boys and Girls Clubs Fort Wayne, YWCA Expansion, Turnstone Pediatric Wing, Fort Wayne International Airport Expansion, Peabody Retirement Community, Health Center, Indiana Tech Law School, Indiana Tech Dormitories, Manchester University Pharmacy School, Brotherhood Mutual Insurance, Indiana Institute of Technology, NE Indiana Innovation Center, Parkview Heart Center, Manchester College Student Union, Pathway Community Church Northrop High School, Snider High School, Blackhawk Christian School, MPS Egg Farms Headquarters, Auburn City Steakhouse



DAVID MICHAEL
Senior Project Manager

EXPERIENCE
15 years industry
15 years at MKS

EDUCATION
B.S. Building Construction
& Engineering Technology
Purdue University

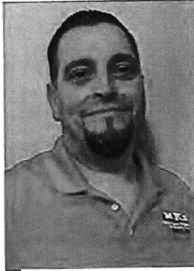
David Michael oversees the operations of project management from staffing and resources to scheduling and client service. He is typically highly involved in the largest and most complex projects. David has an eye for detail and big picture clarity to ensure every project has what it needs to be successful. His goal is for complete owner satisfaction on every project and is always looking for little ways to improve project delivery.

RELEVANT PROJECT EXPERIENCE

- **Fort Wayne International Airport West Terminal Expansion**
P.M. Involvement: 5/21 to Present
- **Brotherhood Mutual Insurance Additions & Renovations**
P.M. Involvement: 7/19 to 4/21
- **Indiana Tech Warrior Park**
P.M. Involvement: 5/18 to 8/19
- **Turnstone Plassman Athletic Center**
P.M. Involvement: 8/14 to 7/15

SIGNIFICANT PROJECT EXPERIENCE

Turnstone Pediatric Wing, YWCA Expansion, Boys and Girls Clubs Fort Wayne, Brotherhood Mutual - Multiple, Indiana Tech Law School, Indiana Tech Academic Center, Indiana Tech Dormitories, Indiana Tech Law School, Indiana Tech Multiple Residence Halls, Ancilla College - Manchester University Academic Building, North Manchester Aquatic & Fitness Center, Indiana Tech Athletic Center, NE Indiana Innovation Center, Pathway Community Church, IPFW Residence Halls, Parkview Heart Institute, Taylor University Wengatz Hall Dormitory, North Webster Library, MPS Egg Farms Headquarters, Indiana Tech Multiple Residence Halls, Ancilla College - 2 Residence Halls & Dining Commons, Trine University Ice Arena, Trine University Basketball Northrop High School, Blackhawk Christian School



ADAM PEQUINOT
Project Superintendent

EXPERIENCE
22 years industry
10 years at MKS

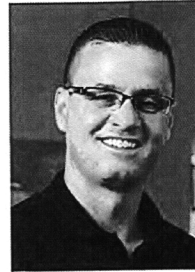
EDUCATION
OSHA 30 Trained, Procore Technologies, CPR Trained, Hilti Powder Actuator Tool Certification, First Aid Trained

Adam's role as a Project Superintendent, will be as an on-site representative of Michael Kinder & Sons, overseeing the day-to-day operations of trade disciplines. Adam ensures that the project is running smoothly between the trades and keeps the site organized, safe and secure.

RELEVANT PROJECT EXPERIENCE

- **Fort Wayne International Airport West Terminal Expansion**
Project Involvement: 5/21 to Present
- **Brotherhood Mutual Insurance Additions & Renovations**
Project Involvement: 7/19 to 4/21

SIGNIFICANT PROJECTS INCLUDE:
Micropulse (Multiple), Depuy (Multiple), Wright Medical, ProFed Credit Union, Columbia City Aquatic Center, Columbia City Alley Project, Columbia City High School (Concrete), Whitko Career Academy



DOUG KINDER
Owner/President
Preconstruction Manager

EXPERIENCE
30 years industry
27 years at MKS

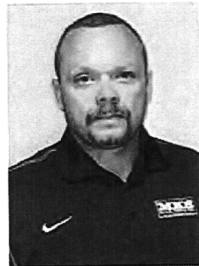
EDUCATION
B.S. Civil Engineering
Purdue University

Doug Kinder is President and Co-Owner of MKS along with his brother, Bill. Doug has had experience in all aspects of construction during his 29 years in the industry, but his passion is pre-construction and estimating. His ability to accurately estimate projects from a napkin sketch through design completion, while always managing design, budget, and schedule in tandem, is unparalleled. Doug has a proven track record with our clients which has led to 95% of all MKS contracts becoming repeat clients.

RELEVANT PROJECT EXPERIENCE

- **Fort Wayne International Airport West Terminal Expansion**
Preconstruction Involvement: 5/21 to present
- **Fort Wayne Community Schools Arlington Elementary/Lincoln Elementary**
Preconstruction Involvement: 5/21 to present
- **Civic Center Parking Garage**
Preconstruction Involvement: 8/19 to 6/20

SIGNIFICANT PROJECTS INCLUDE:
Civic Center Parking Garage, Micropulse (Multiple), Depuy (Multiple), Wright Medical, ProFed Credit Union, Columbia City Aquatic Center, Columbia City Alley Project, Whitko Career Academy



SHAWN MORENO
Field Operations Coordinator/
Safety Manager

EXPERIENCE
24 years in industry
2 years at MKS

EDUCATION
Purdue University, B.S. Building Construction, Engineering Tech.

Shawn Moreno assists with safety strategies across the field. He focuses on helping them succeed in their safety performances during all projects. He ensures that all job sites are running properly and

have all the correct and necessary signage/ materials needed to stay safe and effective. He also works with each field person on proper routine and new training programs. His attention to detail and effective communication with clients, office staff, and field staff are what make him vital to our team.

TRAINING & AFFILIATIONS:
OSHA 30 Trained, 10 years on Safety Committee, Hilti Adhesive Anchoring Systems Certified, PREMIER Pro Series Mast Climbing Certified, Qualified Rigger & Signal Person, Top Notch Union Construction & Labor Management Member



ZACH KESSIE
VP Business Development

EXPERIENCE
16 years industry
11 years at MKS

EDUCATION
Purdue University, B.S. Building
Construction, Engineering Tech.

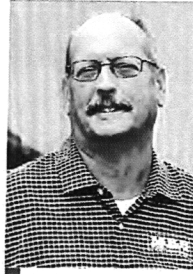
Zach oversees the business development department at MKS and is a senior management leader with 16 years of construction experience. Zach's awareness of industry standards pairs well with his strength in strategic planning and supporting client relationships, ensuring a seamless operation. He also has a passion for people. He helps to pull the team together in a fun and productive manner that results in a highly motivated team and pride in workmanship.

RELEVANT PROJECT EXPERIENCE

- **Fort Wayne International Airport West Terminal Expansion**
Preconstruction Involvement: 5/21 to present
- **Fort Wayne Community Schools Arlington Elementary/Lincoln Elementary**
Preconstruction Involvement: 5/21 to present
- **MPS Egg Farms Headquarters & Warehouse**
Preconstruction Involvement: 5/21 to 1/22
- **Westminster Village Senior Living Community**
Preconstruction Involvement: 5/21 to 1/22

SIGNIFICANT PROJECTS INCLUDE:

Boys and Girls Clubs Fort Wayne, Brotherhood Mutual - Multiple, Blackhawk Christian School, McKenney Harrison, Montpelier, Akron Elementary, Bishop Dwenger - Multiple, Central Noble, Claypool Elementary, Bloomingdale Elementary, Manchester Early Learning Center, Columbia City High School, Brotherhood Mutual - Multiple, North Webster Library, MPS Egg Farms Headquarters, Auburn City Steakhouse, Whitko Career Academy.



MIKE PETERS
Chief Estimator

EXPERIENCE
40 years industry
27 years at MKS

EDUCATION
B.S. Civil Engineering
Purdue University

Mike is the Chief Estimator at MKS. He has a true passion for estimating, and enjoys the challenge of determining all elements needed to build a project, and what the cost would be. Mike has bid a wide range of projects, and is proud to have been the low bidder on two large FWCS projects. In college, Mike didn't realize estimating was a career. He started as a project manager and worked his way up to Estimator, Senior Estimator, and most recently, Chief Estimator. When bidding a project, Mike focuses on accuracy. Mike's favorite thing about estimating is that, "every job is a different job with its own design and unique circumstances - it is never boring to me."

RELEVANT PROJECT EXPERIENCE

- **Fort Wayne International Airport West Terminal Expansion**
Preconstruction Involvement: 5/21 to present
- **Fort Wayne Community Schools Arlington Elementary/Lincoln Elementary**
Preconstruction Involvement: 5/21 to present
- **Civic Center Parking Garage**
Preconstruction Involvement: 8/19 to 6/20
- **Westminster Village Senior Living Community**
Preconstruction Involvement: 5/21 to 1/22

SIGNIFICANT PROJECTS INCLUDE:

Northrop, Snider, Bloomingdale Elem, Harris Elementary, Dwenger HS Chapel, Montpelier, Akron, MPS Egg Farms, MidWest America Federal Credit Union - multiple new branches and renovations

TAB 3 PROJECT EXPERIENCE & APPROACH



TAB 3

PROJECT EXPERIENCE AND APPROACH

a. Provide a narrative outlining your approach to this Project recognizing that you will be working on and adjacent to existing facilities at an active Public Park. Discuss your experience with City Funded projects. Within the narrative also include prior experience as a CMc.

PROJECT APPROACH

The MKS team has experience delivering renovation and expansion projects during concurrent operations in an active public facility. Our experience helps mitigate the impact on the public while engaging your stakeholders to ensure expectations are being met. MKS provides a longstanding local presence and deep relationships, with the right mix of CMc experience.

Our approach is straightforward—ensure the least impact to the public and stakeholders. We start with a commitment to project safety. We strive every day to provide and communicate high-quality and innovative solutions from the beginning of preconstruction through construction and commissioning. **Finally, creating a budget and schedule certainty underpins our approach.**

| FOUR KEYS TO CMc PROJECT SUCCESS | |
|---|---|
| Foster an active planning mindset | <ul style="list-style-type: none"> • Develop fluid phasing, logistics, and work plan(s) that meet the needs of the park, public and other stakeholders while ensuring flexibility to address irregular operations and unexpected safety or security mandated changes. |
| Drive for Communication & Collaboration Synergies | <ul style="list-style-type: none"> • Work closely with the Fort Wayne Parks & Recreation and Design team to develop construction documents which assure the best value, efficiencies in schedule, and the greatest level of constructability. • Promote integration of construction knowledge during the design phase to determine the most efficient means to construct while still achieving design goals • Maintain integration of construction knowledge during building phase to meet or exceed expectations. |
| Provide Predictable Budget & Scheduling Through Data | <ul style="list-style-type: none"> • Forecast far into the construction schedule, empower project team to have greater input into the overall construction schedule and be proactive in making important data-driven construction decisions. |
| Focus on Execution | <ul style="list-style-type: none"> • Execute the project as planned and to utilize proven tools and methods; track and achieve preset performance standards for Schedule, Quality, Budget and Safety. |

In addition to the **FOUR KEYS TO CMc PROJECT SUCCESS** listed above, our approach to delivering this project will incorporate the following best practices:

- Establish goals and stakeholder objectives
- Evaluate site and existing conditions
- Provide early development of concept schedules and budgets
- Develop project phasing and temporary provisions (development and coordination)
- Identify and mitigate risk
- Provide thoughtful constructability reviews with ongoing design collaboration
- Conduct Ongoing drawing and specifications review
- Deliver thoughtful value engineering solutions
- Keep trend logs & related budgetary updates
- Commit to early procurement and identify the right trade partners for your project
- Provide quality management and inspection matrices
- Implement site specific safety planning (CCSD)

EXPERIENCE WITH PUBLICLY FUNDED PROJECTS

MKS has completed numerous publicly funded projects, whether they are local city funded projects, state funded or federally funded. We excel at meeting the maticolous requirements of working on publicly funded projects.

Through this experience, we know publicly funded projects have unique features such as budget constraints, small business utilization and reporting, achieving supplier/subcontractor diversity requirements, certified payroll for workforce diversity, etc. The team's combined portfolio of public work experience includes everything from civil infrastructure to processing plants and support buildings. Our project managers and preconstruction personnel have experience working under the government's exceptionally high standards for risk management and quality control. This experience gives us great confidence that we will meet Fort Wayne Parks and Recreation's expectations for performance and compliance.

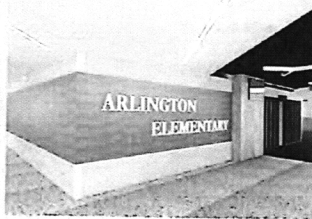
PRIOR CMc EXPERIENCE

As a well-versed company for over 130 years, MKS has had over \$100s of millions worth of Construction Management experience. We have found this delivery method to be a specialty of our team with high volume projects, such as the Franke Park Renaissance project. In using CMc on our past projects we have demonstrated our ability to establish budget verification, team integration and detailed schedules early on to assure owners a clear project outcome. See examples of past projects where MKS performed Construction Management services.

RELEVANT CMc EXPERIENCE



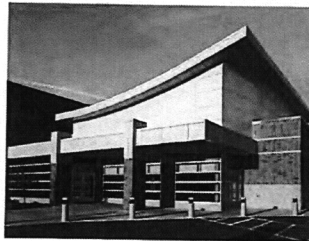
FORT WAYNE INTERNATIONAL AIRPORT WEST TERMINAL EXPANSION
FORT WAYNE, INDIANA



FORT WAYNE COMMUNITY SCHOOLS ARLINGTON/LINCOLN ELEMENTARY
FORT WAYNE, INDIANA



MPS EGG FARMS HEADQUARTERS & WAREHOUSE
NORTH MANCHESTER, INDIANA
NEW 21,000 SF OFFICE & WAREHOUSE



WESTMINSTER VILLAGE SENIOR LIVING COMMUNITY
MUNCIE, IN
MULTI-PHASE PROJECT THAT INCLUDED 52,000 SF OF ADDITIONS AND RENOVATIONS



CIVIC CENTER PARKING GARAGE
FORT WAYNE, IN
OVER 200+ NEW PARKING SPACES

b. Provide a narrative specifically detailing your approach to your pre-construction phase services. Indicate your process and method of ensuring you provide timely information in support of design activities to help ensure cost schedule and constructability criteria may be incorporated into design progress. Identify what your expectations of the Owner and the Design team are during this phase. CMC shall state any document or Project Management Software you intend to utilize for the project and how the Owner, Project Team, and Subcontractors will interact with the software.

and constructability criteria into the final design. From our work at the Fort Wayne International Airport and Fort Wayne Community Schools Arlington/Lincoln Elementary Schools projects and others, our team has demonstrated the ability to deliver complex construction while facilitating ongoing public operations. We are adept at establishing a transparent flow of information between construction and design; all while assuring the goals of the City of Fort Wayne and of Fort Wayne Parks & Recreation are well maintained throughout the entire project.

PRECONSTRUCTION PHASE SERVICES

Our work during preconstruction and our considerable experience on public projects, will position us to make a positive impact on your project from day one. As we continue to learn more about your goals for the Franke Park Renaissance Project, and by using an integrated Team approach, MKS will work extensively with all stakeholders and the design team to evaluate options and finalize the design, producing a well vetted and value-engineered set of Construction Documents. We will provide timely information that supports all design activities and that incorporates cost, schedule,

Our team is engaged from the start of preconstruction through project closeout. As we transition into construction, our team continues to use Target Value Delivery to achieve the project's budget goals.

THERE IS NO HAND-OFF ONCE CONSTRUCTION BEGINS; THE SAME TEAM THAT DEVELOPS OUR CONSTRUCTION PLAN IN PRECONSTRUCTION DELIVERS YOUR PROJECT.

OUR PRECONSTRUCTION CAPABILITIES OFFER NUMEROUS BENEFITS TO YOUR PROJECT

| | PRECONSTRUCTION CAPABILITY | BENEFIT TO FORT WAYNE PARKS & RECREATION |
|----|--|---|
| 1 | Cost Estimating | Minimizes contingency |
| 2 | Budget Validation | No surprises |
| 3 | Target Value Design Workshops | Optimizes how every dollar is spent |
| 4 | Life Cycle Cost Analysis | Saves you money in the long run |
| 5 | Constructability Reviews | Avoids change orders/provides a higher quality product |
| 6 | Benchmarking | Validates project is in line with similar projects locally and nationally |
| 7 | Cost Modeling | Cost/benefit analysis of various building systems |
| 8 | In-House MEP Systems and Cost Analysis | Reduces schedule by having in-house resources |
| 9 | Owner Furnished Equipment Coordination | Eliminating work by avoiding change orders |
| 10 | Cash Flow Analysis | Ability to forecast when funds are needed |
| 11 | Bid Management | Provides best value competitive bids from qualified subcontractors |
| 12 | Scheduling | Optimizes early phasing for speed to market |
| 13 | Phasing and Site Logistics Planning | Minimizes disruption, efficiently builds your project, and safely maintains visitor accessibility |

ESTABLISH PROJECT GOALS & OBJECTIVES

To gain a greater understanding of the goals for the Franke Park Renaissance Project, from all stakeholders, we will host an initial discovery meeting with the Fort Wayne Parks & Recreation team. **We take that feedback and conduct more discovery sessions with the team and the balance of stakeholders while continuing to refine your project goals and objectives, including: safety, communication process and platforms, schedule, quality, budget and use of technology.** We continuously track progress throughout design, pre-construction, and construction. This hands-on, collaborative approach facilitates the start of a productive working relationship by creating open lines of communication that are maintained throughout the life of the project and beyond.

Site Evaluation and Existing Conditions

During discovery, we thoroughly investigate existing infrastructure and site conditions, analyze and confirm operational constraints, and then incorporate our findings into scheduling, phasing, and sequencing plans. Getting the discovery phase right helps us be more effective during early procurement and our constructability reviews that support your project's overall design.

Construction during concurrent operations in a functioning public area are complex and difficult to deliver successfully - keeping as many areas

open to the public, with safety and security, while maintaining a positive experience for the public means:

- bringing the right mix of experience
- knowing what technology to apply and when
- a team with a dedicated solutions-driven mindset and an unwavering commitment to customer satisfaction among all stakeholders

The MKS team gets it!

Develop Concept Schedules and Budgets Early

We develop a comprehensive project schedule that identifies all project stages, phases, and activities. We map these events to a timeline that pinpoints key dates and tracks progress. Our project schedule reflects events and activities through preconstruction to project close-out, including submittal and procurement, with key milestone dates identified. The schedule provides a level of detail reasonably necessary to define clear interfaces and sequences of work that provides reliable analysis of the critical path(s). **We involve our key suppliers and trade partners when producing the project schedule and our phasing plan to ensure commitment to material delivery and start/finish milestone dates.**



CONDITIONS OF SATISFACTION (COS)

Establishing a unique CoS prior to construction is how we measure success moving forward. Periodic updates with objective measurement and data capture determines if the conditions are being met. We listen to all stakeholders when creating the CoS using a "one team, one goal" approach to remove communications silos.

We know construction projects succeed when there is a clear understanding of roles and responsibilities. The following table outlines how we view Fort Wayne Parks & Recreation's role in design and construction, as well as our role as your CMC.

| MEETING EXPECTATIONS DURING PRECONSTRUCTION | |
|--|---|
| ROLE | RESPONSIBILITY |
| FORT WAYNE PARKS & RECREATION | <ul style="list-style-type: none"> • Approves, makes decisions throughout project phases • Ensures that FWPR required decisions are made in a timely manner • Provides key input on requirements related to planning, art program, technology, finance, operations, maintenance, security, and safety • Coordinates all work to be undertaken with FWPR and external stakeholders necessary for the timely and quality execution of the program • Manages the design consultant contract |
| DESIGN CONSULTANT | <ul style="list-style-type: none"> • Provides execution for all phases of design to produce a final design that achieves project objectives, scope, schedule, safety in design, and budget • Leads and coordinates sub-consultants and specialty consultants • Serves as single point of contact to construction manager and project manager in project controls |
| CONSTRUCTION MANAGER AS CONSTRUCTOR (CMc) | <ul style="list-style-type: none"> • Provides management during project planning (preconstruction) and construction phases for cost, schedule, work package planning and sequencing, quality, safety, and constructability • Performs design reviews and provides recommendations for design alternates to identify and resolve constructability issues and to assist in maintaining budget and schedule • Manages strategic procurement including local and DBE participation • Manages the construction and field activities • Develops policies, procedures, and execution plans to deliver the project • Ensures integration and execution of project-specific controls systems |

PROJECT MANAGEMENT TOOLS

MKS uses Procore as our primary software platform to manage projects, control project costs and prepare reports. Procore offers a broad suite of project management functions, available in real-time to owners, designers, consultants, and trade partners. All information in Procore is delivered via a robust, secure, cloud-based platform available remotely through a browser or mobile app: Reporting, Request For Information, Submittal, Change and Drawing Management.

Procore allows the entire project team to stay involved with the project. Whether providing job site pictures, sharing documents, or requesting approval for project submittal, this information hub keeps everything easily accessible. Tracking design, accessing drawings and submittal is a critical step to ensure on time delivery. Each submittal is tracked along with responsibility and

due date designations providing accountability through the entire procurement process.

This software also provides an avenue to share and manage our Critical Path Method Schedule, which is built in our scheduling software P6, to the entire project team regardless of software. A daily report module provides a central location for our field management team to document daily site activities, crew sizes, material deliveries, and schedule milestones. Procore allows the entire project team to stay connected and informed with up-to-date information.

Weekly project meetings are held to ensure each team member remains informed throughout the entire project. In addition, emphasis is placed on reviewing project milestones and schedules. Each of these meetings are fully documented to allow everyone involved access to the meeting minutes which are distributed via Procore.

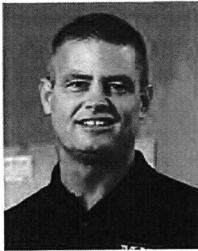
c. Provide a list of projects in preconstruction and/or construction along with the projected substantial completion dates for each, that will be ongoing during the same timeframe of this Project and provide assurance to the Owner that you have the company resources necessary to successfully complete this Project given these other project demands.

Our team commitments on other projects is shown in the matrix below. Upon review of the team's known workload throughout the Franke Park Renaissance Project Phases 1, we see no issues with financial or staff resources available to complete the project.

| CURRENT PROJECTS | | PERSONNEL INVOLVED | J | F | M | A | M | J | J | A | S | O | N | D |
|------------------|------------------------|----------------------|---|---|---|---|---|---|---|---|---|---|---|---|
| MKS | MPS/Hello Nature | Doug Kinder | | | | | | | | | | | | |
| | Foelinger Foundation | Adam Pequinot | | | | | | | | | | | | |
| | FWCS Arlington/Lincoln | David Michael | | | | | | | | | | | | |

Preconstruction
 Construction
 In Progress Work

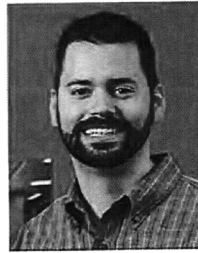
d. Provide a narrative prepared by the individuals of the proposed project team including the Project Executive, Project Manager, Project Superintendent, and Pre-construction Estimator describing their approach to this Project. Each of these individuals must provide a written narrative of their commitment to this Project and their individual expectations. (No marketing responses-proposed staff must respond please limit each person's response to no more than 1 page each)



**BILL KINDER,
PROJECT EXECUTIVE**

As the project executive, my goal is to make Phase 1 a success. This starts with a solid foundation in the beginning of the preconstruction process until the final completion of the project. Safety, and

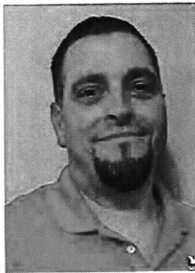
communication are my priorities during this project. My role is to ensure all team members are in the right position to execute each task during the project. I am committed to leading the team throughout the entirety of this project to make sure we meet your expectations.



**DAVID MICHAEL,
SENIOR PROJECT
MANAGER**

As project manager, I will lead the project as the primary contact for our team. My role in the project is to ensure all team members are communicating and

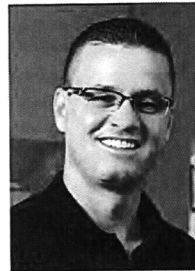
collaborating from start to finish. I will be involved with Doug Kinder during the preconstruction process, working on items such as building baseline schedule, developing work packages, and performing a constructability review of drawings. Once construction is underway, I will lead progress meetings and provide detailed reporting of items such as schedule updates, budget updates and outstanding issues.



**ADAM PEQUINOT,
PROJECT SUPERINTENDENT**

As the superintendent, my role will be to lead the daily field operations on site. My priority on the jobsite is to provide a safe environment for our construction team and the public. This effort will begin in the preconstruction process when I work with the

project management team to develop a site logistics plans that exceeds the owners expectations. Once construction begins, I will work with the project management team to coordinate daily work activities on site.



**DOUG KINDER
PRECON MANAGER,
ESTIMATOR**

My expectation for this project is to deliver the greatest value for the budget. I will lead the preconstruction effort for our team. My role will include attending preconstruction/

design meetings so I can provide continual feedback on design and cost impacts as they are discussed. I will also work with our estimating team to build detailed project estimates at each stage of the design. I will ultimately be responsible to lead bid day as our team procures final subcontracting bids. I am committed to building the foundation of success through our preconstruction efforts.

TAB 4 SCHEDULING



TAB 4

SCHEDULING

- a. Provide a comprehensive Project Schedule for the Project. This schedule should reflect design phase activities, permitting and all construction phase activities as well as closeout activities. Include innovative strategies and/or concepts that you may use to improve the project schedule and increase the efficiency of the Project.

The preliminary schedule is listed on page 25.

SCHEDULING

MKS understands the milestones and bid packages as currently envisioned and has expanded the milestones with a preliminary project schedule. We integrate the current milestones and any milestones identified in the future into a realistic project schedule that meets your objectives. Early collaboration and partnering with the design team and Fort Wayne Parks & Recreation's representatives means documents are reviewed for risk, value, and constructability. We help ensure an efficient set of construction documents, phasing plans, reliable budgets and that a solid schedule is in place. **The schedule drives completion of the scope as quickly as possible, minimizing disruptions to the parks programs and the public.**

We work with the design team and the Fort Wayne Parks & Recreation to enhance and modify phasing plans; ensuring all facilities, public entities, stakeholders, and users needs are met. When the phasing plans are approved and drawings are complete, the team works with Fort Wayne Parks & Recreation, facilities, stakeholders and select trade partners to integrate the results into a final phasing plan and master CPM schedule.

PROCESS FOR A TIMELY COMPLETION

One of the key components to timely completion is having a thorough understanding of park operations, including park personnel, city organizations, and all stakeholders affected by the project. Combining the information into a sequential construction phasing and scheduling plan facilitates workflow that minimizes impact to day-to-day operations and to the public. Our ability to both plan and communicate that

plan to all stakeholders sets us apart and has allowed us to develop a strong track record of success. One example of our ability to effectively communicate the project plan to client staff and multiple stakeholders is the Westminster Village project. This was an eighteen month, \$15m multi-phase project consisting of major renovations and three additions to an active, long-term care retirement community including critical areas such as main dining area, assisted living unit and the building management systems. Our team maintained safe living and working conditions for the Westminster resident community and their guests, operations staff, and our construction trade partners throughout the entire project

Pre-planning phasing, logistics and schedule is imperative because it defines the basis for the overall construction plan and flow of work that we use to communicate to all stakeholders. **Attaching these products to specific and identifiable features of work via "work plan" packages communicate the "when, where, why and how" of those features of work.**

As previously described in **TAB 3**, we focus our preconstruction efforts on the discovery, constructability review, value engineering, and procurement activities that allow the expansion to proceed at optimal efficiency.

We focus on long-lead item procurement during preconstruction to avoid unnecessary delays during construction. We will continually refine the Fort Wayne Parks & Recreation schedule as project plans and designs evolve.

Below, we have summarized our process for a timely completion. Our strategies to improve the project schedule and increase the efficiency of the Project are noted.

PRECONSTRUCTION

The cornerstone of our preconstruction approach is to employ a proactive engagement and open communication with the entire project team. During preconstruction, our schedule continues to evolve as design progresses and input is collected from team members, operations, and stakeholders. Shortly after Notice To Proceed our bid schedule for each phase is finalized for an Initial GMP with key trades. We communicate the schedule to the project team and to any preconstruction trade partners, select BHS subcontractors and outside industry resources. If acceptable, we add contingency float to address any unforeseen conditions identified in the planning, risk identification, and constructability processes.

The preconstruction process defined allows us to identify long lead items and possibly start procurement for select items. **Often, we can shorten the schedule (and thus the related overhead costs) by identifying these early procurement items and making provisions to purchase and procure them ahead of the initial NTP** vs the construction NTP. See **TAB 5** for additional information on how bid strategies and early procurement can assure schedule and price certainty.

BID PERIOD

Our project team assures all operational testing, commissioning, inspections, punch lists, permitting, occupancy (temporary occupancy), and even phased occupancy, are considered in the bid schedule. Additionally, all the constructability reviews, value engineering collaboration and the resulting documents, logistic plans and phased drawing exhibits are included in the bid packages which serve to protect the project team from any schedule or phasing related claims. The bid schedule assures that all bidders incorporate these constraints and requirements. These requirements become part of the bid packages so all parties are vested in the overall success of the scheduling and phasing of your project.

After the issuance of CDs, a final bid schedule is issued with the bid package for the overall FGMP. This schedule is communicated to the project team and to BHS and any preconstruction trade partners and outside industry resources. An overall baseline schedule is developed with the inputs from the Bidding Process.

The baseline schedule is the basis from which the timeline for the overall project is based. Trade partners and vendors are required to adhere to the baseline schedule. Their bids, however, are tied, and held to the highest of the previous milestone requirements issued in both IGMP and FGMP. See **TAB 5** for additional information on project costs and proposed bidding strategies.

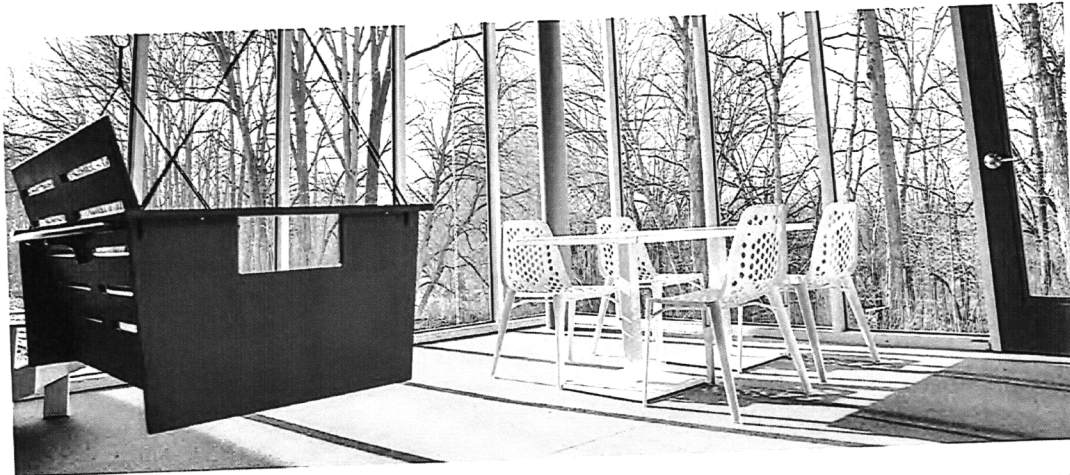
CONSTRUCTION

During construction the Baseline Schedule, that includes resource loading, is updated weekly and accurately reports actual progress. Packages are prepared for review by the Fort Wayne Parks & Recreation and the design team on a monthly basis. Refinements, contingency planning, and accelerated schedule recovery plans (if needed) are made, as necessary, to ensure milestone dates are met. Any sub-vendors are held accountable via the bid schedule included in their bid packages. In the event of any shortcomings, the trade partner or sub-vendor is required to develop a recovery plan.

INNOVATIONS

Our project team has extensive experience working with the requirements necessary to complete phased occupancies, early beneficial use, and temporary occupancy requirements that are necessary to facilitate the needs of an active park, while keeping operations up and running. We have identified **three innovative strategies** that we can use to improve the project schedule and efficiency:

| INNOVATION | BENEFIT TO FORT WAYNE PARKS & RECREATION |
|--|--|
| <p>Collaborative Work Plans</p> | <p>Same page communication and no false starts. Our work plans incorporate early pre-planning of logistics and phasing in combination with work sessions with both design, operations, and any impacted stakeholders. The results are a well-thought-out execution plan that records the efforts of all inputs and adds the “what, where and how” into a work plan package. One benefit is stakeholders can easily take these packages, which include the logistics, timing and phasing, and utilize them to communicate with their respective teams including “off shift” team members. Stakeholders are also given the opportunity to share their constraints and concerns with the rest of the team.</p> |
| <p>Phased Occupancy</p> | <p>Mitigates impact to operations and adds efficiencies. Phased occupancy also has schedule and budget maximizing characteristics. Our micro-phasing plan and phased occupancy that results, has significant mitigating effects compared to the impacts the public would otherwise experience. The possible delay of permits for the new roadway & bridge work will not impact surrounding work.</p> |
| <p>Floating Available Work</p> | <p>Assures progress and subcontractor engagement in uncertain times. This innovation provides flexibility. We know that Franke Park and the Fort Wayne Children’s Zoo operations running smoothly while keeping the business safely operating is of paramount importance and trumps many construction activities. By having a well defined phasing and logistic master plan we can develop an efficient and lean schedule that allows us to identify schedule activities and micro-phases that are not on the critical path. If an unexpected shutdown is required on the critical path work, we are always able to keep work flowing, and local contractors engaged, by flipping to available work micro-phases. This has benefits even if the critical path becomes impacted.</p> |



FRANKE PARK RENAISSANCE PROJECT PHASE 1 - RFP NO. 8092884

EARLY PROJECT PLANNING & SCHEDULING

It is impossible to overstate the importance of early project planning, collaboration, and phasing and how important it is to follow-on activities and processes. **This is where our experience in big picture and detailed planning is applied to provide the basis for process implementation, including: phasing, temporary measures, temporary walls, badging, way-finding signage, trade partner management, minimizing public impacts, and compliance with operational parameters.** We listen and track the goals and objectives of all stakeholders, allowing us to start early, provide the basis for all future activities—phasing, schedule, bidding, contracting, shared risk with trade partners.

b. Describe your approach to managing punch-lists, TCO/CO and warranty work. Also discuss your collaborative approach to working with Owner's and other contractors/vendors. CMc shall state the name of the Project Scheduling software that will be utilized throughout the duration of the project.

CLOSE-OUT, PUNCH LISTS, WARRANTY, OCCUPANCY AND TEMPORARY OCCUPANCY

We are thinking about close-out at the start your project and consider it dynamic process that continually improves. From the point we draft an early submittal register to facilitate early procurement items, to the day we sign final trade partner and vendor checks, our process assures that smooth and predictable close-out is a shared project team goal.

We use a close-out register as a best practice, starting with a matrix based on early procurement items, O&M manuals, warranties, extra stock requirements, inspection reports or any other close-out related category. Register items are expanded through review and vetting of CDs, specifications, and internal initiatives. Internal initiatives include lien releases, surety releases, labor or union releases, signature of finalization letters, sub-tier financial audits, and financial close-out concurrence signoffs.

Our register also helps us effectively address close-out of early trade partner work. For example, if a trade partner or vendor completes their contract in advance, our close-out register records work completion and individual close-out requirements.

Because our close-out register is developed in preconstruction, and continues to evolve

through the bidding period, vendor, trade partner selection and traditional close-out, we can actively collect close-out documents and warranty assurance prior to any final checks.

To facilitate many of our proposed micro-phases, and the cost-schedule savings that our proposed logistics can achieve, it is important to have a streamlined inspection process that assures Temporary Certificate of Occupancy and Certificate of Occupancy documents are achieved on time and as planned. **Both the internal punch list inspections, city and other entity inspections, and authorities having jurisdiction inspections (AHJ) will receive clear communication from the MKS team including weekly updates of the close-out register, a weekly update of the three-week look-ahead schedule, and clear communication concerning potential inspection schedule impacts for delayed items.**

We develop a detailed list of corrections and address each item in advance to eliminate punch list work after substantial completion. We complete punch lists prior to approaching other entities for review and approval of our work. We use a combination of the close-out matrix discussed above and a comprehensive well-maintained submittal register integrated with Procore software. Park representatives, the city, the architect and other entities are able to access all punch list and close-out items on laptops and handheld devices, including internal punch lists previously developed, punch list items that have been addressed and corrected, and comments by other team entities.

Procore also provides our clients with the ability to add their own items or comments in real time as they walk through the project with a pad or handheld device. All parties can check the status of their items and can locate the items in the physical location on the project drawings with a simple click. Pictures of either existing punch list items or already corrected punch list items are already tagged to the location pin and are also accessible by a single click.

Our selected on-site project management staff is knowledgeable in treating close-out of individual micro-phased areas as if the area is its own individual project. We cannot meet schedules and hit overall occupancy dates without a well thought out and well tracked plan to achieve building occupancy and public use. Our on-site management team treats the phasing-out and

closeout of any individual micro-phase in the same manner since we need to use these spaces efficiently to facilitate future micro-phases and the overall efficiency of the project budget and schedule.

OCCUPANCY SCHEDULE

Our team works to create a detailed occupancy schedule that supports Fort Wayne Parks & Recreation's start-up plan. The schedule acknowledges the role of key authorities having jurisdictions such as the fire marshal, building inspector and other local code compliance officials to achieve occupancy permits. We obtain final occupancy permits and transmit operations and maintenance documentation as part of our close-out package.

WARRANTY PROGRAM

The key to a successful warranty and service program is communication and immediate response. MKS approaches post-construction warranty services by focusing on doing the job right the first time. However, our team responds immediately to any problem during the warranty period. While completing the project, special emphasis is placed on ensuring that all systems work correctly after completing numerous tests. All concealed systems are tested and documented prior to completion and cover-up.

We log warranty call-back requests, differentiating between maintenance and warranty issues.

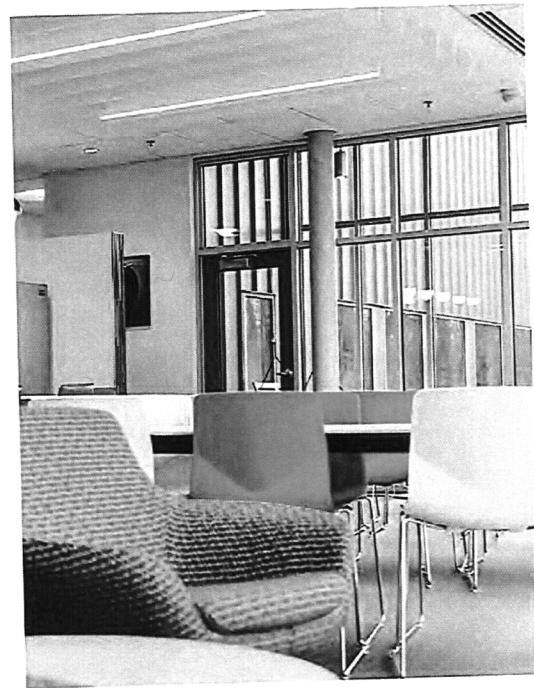
Again, we are committed to delivering a prompt response, either directly or engaging the appropriate trade partner during the warranty period.

- All warranty costs are tracked and require issue resolution as part of our warranty.
- Our project team participates in an inspection of our work 11 months after the date of acceptance.
- MKS attempts to satisfy the warranty and post-construction issues during the contractual warranty period in accordance with the specific terms and conditions of our construction contract with the owner.
- Our goal is to resolve each warranty call within 7 days if possible; we require the same commitment from our trade partners.

COLLABORATIVE APPROACH

Our construction management philosophy is grounded in a partner-oriented team approach. Key personnel stay involved throughout the process to ensure continuity from award through construction close-out. We believe a high performing team starts with shared experience, and the cohesiveness that derives from setting and achieving goals together, overcoming adversity through innovative, collaborative problem solving, and learning how to celebrate victories along the way.

Communication, transparency, and planning—along with safety and quality—are the areas we focus on to make your project a success. We hold daily, weekly, and monthly meetings with trade partners and vendors to ensure that specific information about your project—look-a-head schedules and critical logistics is communicated with all stakeholders. We make sure Fort Wayne Parks & Recreation is notified at least ten (10) working days before all critical activities to avoid surprises and operational impacts. All stakeholders are invited to our planning meetings, and meeting minutes are distributed accordingly.



PROJECT SCHEDULING

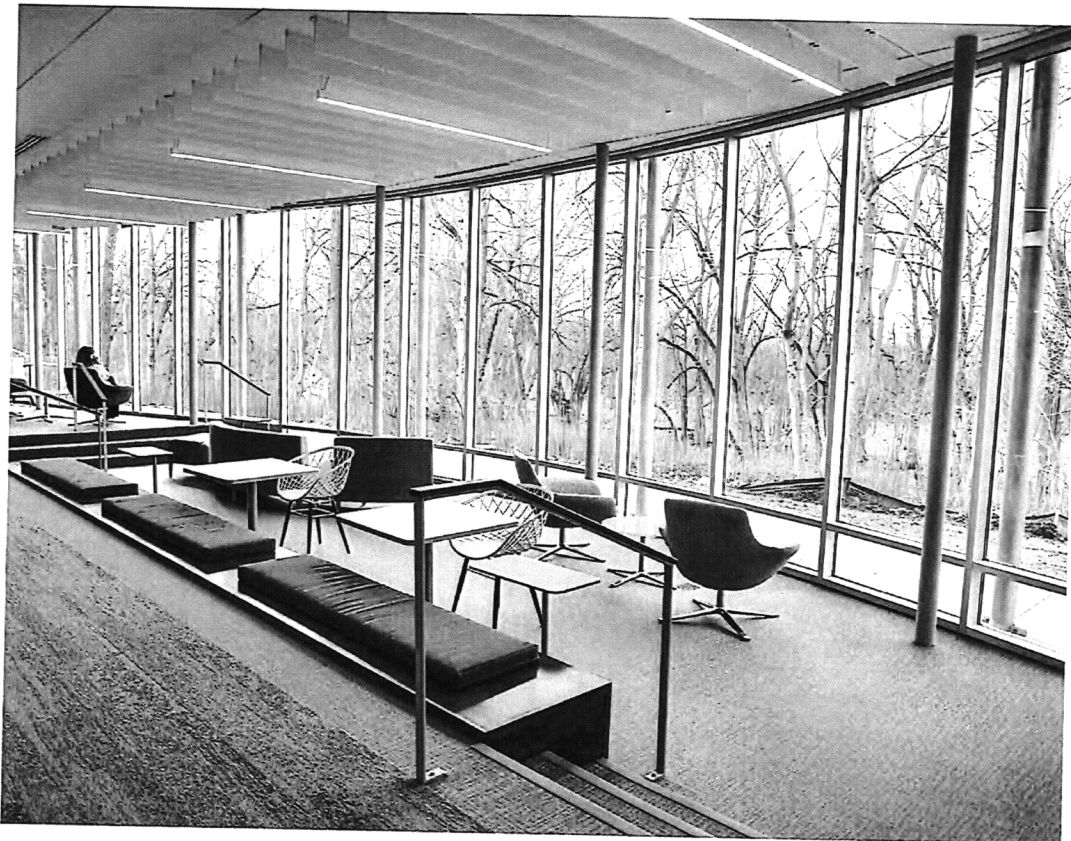
Procure will serve as the database to track the status of all items from inception to closure. Procure is a web-based project management software allowing the entire team to stay involved with the project. Whether providing job site pictures, sharing scheduling documents or requesting approval for project submittals, this information hub keeps everything easily accessible. **Tracking design, accessing drawings and submittal is a critical step to ensure on time delivery.** Each submittal is tracked along with responsibility and due date designations providing accountability through the entire procurement process.

Procure also provides an avenue to share and manage our Critical Path Method schedule to the entire project team. A daily report module provides a central location for our

field management team to document daily site activities, crew sizes, material deliveries, and schedule milestones. Weekly project meetings are held to ensure each team member remains informed throughout the entire project. In addition, emphasis is placed on reviewing project milestones and schedules. Each of these meetings are fully documented to allow everyone involved access to the meeting minutes which are distributed via Procure.

c. Provide a site logistics plan describing your approach to the Project.




Our site logistics plan is listed on page 26.

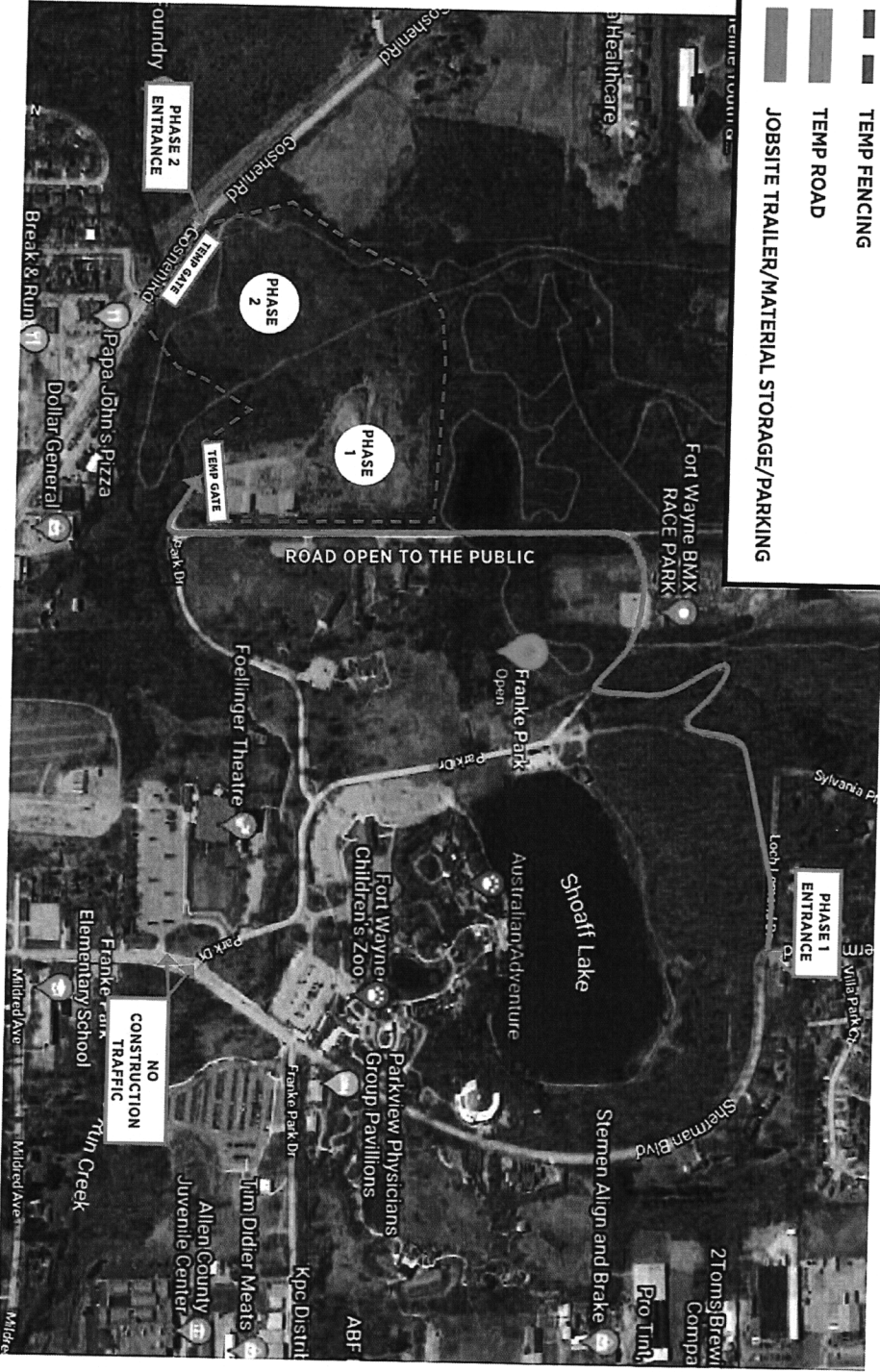


FRANKE PARK RENAISSANCE PROJECT PHASE 1

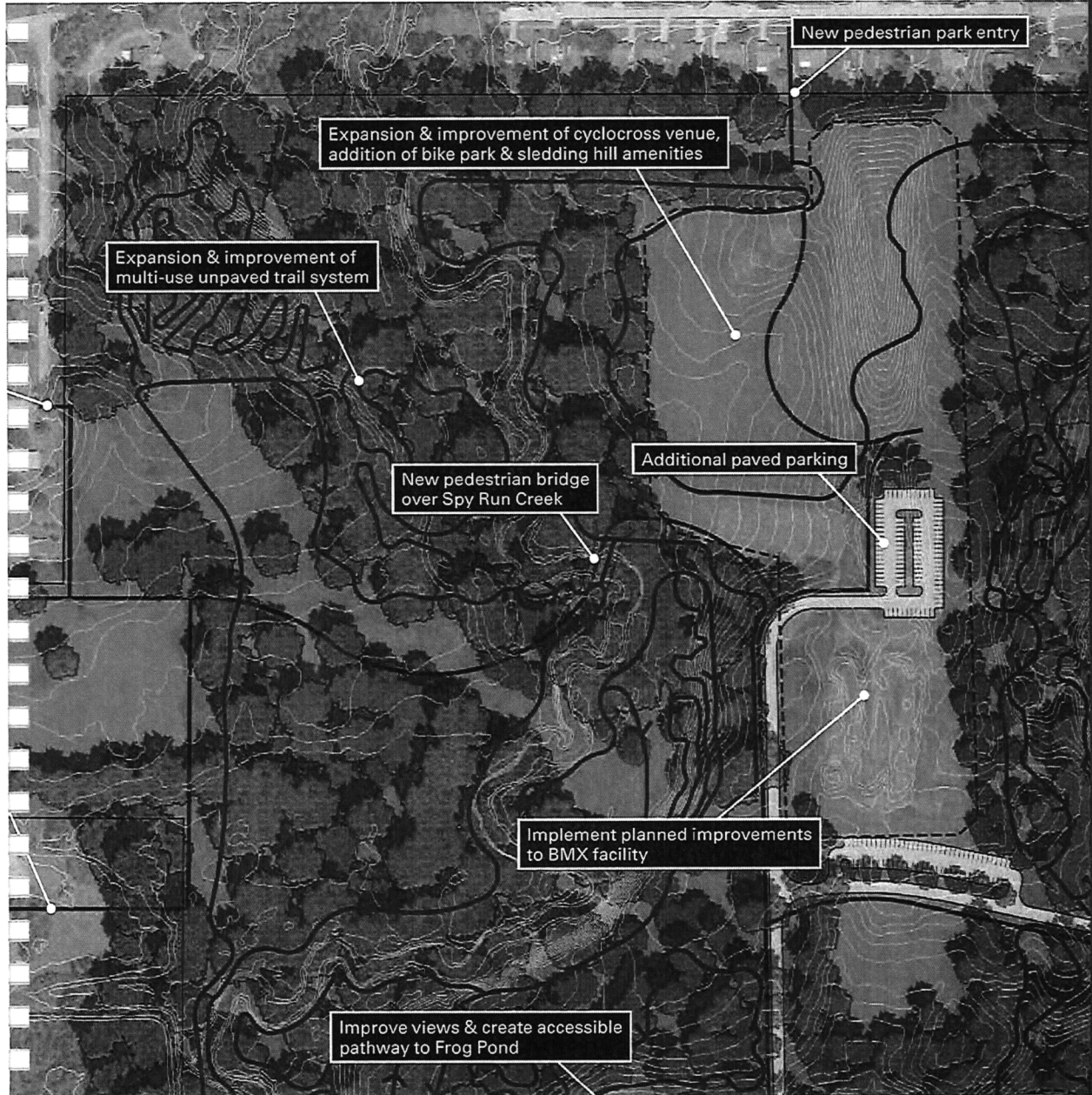
| ACTIVITY | START | FINISH | DURATION |
|---|-------|---------|-------------------------------------|
| Project Milestones | | | |
| Construction Manager Hired at Board of Park Commissioners Meeting | | 2/17/22 | |
| IDNR Construction Floodway Permit Submission | | 2/28/22 | 6 to 12 months |
| Project Kickoff | | 3/3/22 | |
| Schematic Design Complete | | 4/25/22 | |
| Design Development Complete | | 5/25/22 | |
| Owners Budget Approved | | 6/2/22 | |
| Construction Documents Complete | | 6/25/22 | |
| Bidding Procurement for Phase 1 (non-floodway work) | | | |
| Phase 1 Bidding Complete | | 7/31/22 | |
| Phase 2 Bidding (Floodway Work) | | | TBD based on permitting status |
| Floodway Work Bidding: TBD | | | TBD (following permit) |
| Construction Kickoff | | 8/15/22 | |
| Construction: | | | |
| Phase 1 | | | |
| Demolition/Clearing | 8/22 | 10/22 | |
| Mass Earthwork | 9/22 | 11/22 | |
| Pavillion Construction | 10/22 | 4/23 | |
| Parking Lot/Road Construction | 4/23 | 7/23 | |
| Landscaping | 6/23 | 8/23 | |
| Phase 2 (Floodway Work) | | | Dates subject to permitting process |
| Demolition/Clearing | 10/22 | 12/22 | |
| Mass Earthwork | 11/22 | 12/22 | |
| Temp. Road Construction | 11/22 | 12/22 | |
| Bridge Construction | 1/22 | 5/23 | |
| Final Road Construction | 4/23 | 7/23 | |
| Landscaping | 8/23 | 9/23 | |

FRANKE PARK RENAISSANCE PROJECT PHASE 1 SITE LOGISTICS PLAN

-  TEMP FENCING
-  TEMP ROAD
-  JOBSITE TRAILER/MATERIAL STORAGE/PARKING



TAB 5 PROJECT COSTS & BIDDING STRATEGIES



PROJECT COSTS & BIDDING STRATEGIES

a. Provide a detailed cost estimate using the documents issued with this RFP by the Architect for the project in **Attachment A**, based on your knowledge and experience in the market where you believe the final project cost will be when the Project is complete. Be certain to include the percentage of fee and dollar extensions.

As issued in Quest #8092884 - Addendum no. 2, Attachment A has been removed from the required documents to be submitted with this proposal.

b. Provide a detailed list of the assumptions and clarifications used in developing the detailed cost estimate.

As issued in Quest #8092884 - Addendum no. 2, Attachment A has been removed from the required documents to be submitted with this proposal.

c. Provide a detailed cost breakdown of General Conditions in the format provided in **Attachment B**. Clearly note what is included and be specific. These General Conditions will be capped as a not-to-exceed amount. To assure a fair comparison of proposals, do not transfer requested General Conditions' Costs to Direct Work. If you find there is no listing for a specific item in Attachment B that you wish to include, please insert any additional items at the bottom of the specific section it relates to and bold the added item.

As issued in Quest #8092884 - Addendum no. 2, Attachment B has been removed from the required documents to be submitted with this proposal.

d. Provide labor rates in the format provided in **Attachment C**. Your labor/wage and burden rates as a percentage or billable rate for the staff positions listed based on the allowable mark-ups as stated within this document. Note: no additional overhead burdens, fees or bonuses will be allowed within these staff rates. Any and all staff bonuses shall be included within your proposed Construction Management Fee, and NOT included in labor rates.

As issued in Quest #8092884 - Addendum no. 2, Attachment C has been removed from

the required documents to be submitted with this proposal.

e. Provide an initial list of key Subcontractors who you feel would be available to work on the project. Include a minimum of three (3) recommendations for subcontractors for each of the key trades.

Please see page 32 for our list of potential key subcontractors.

f. List the scopes of work you would prefer to Self-Perform specific to this project limited to 20% of the contract value. Explain why you would prefer to perform this work and discuss how you will assure the Owner that this work is secured in a competitive process with a minimum of two (2) additional subcontractors.

Our team plans to evaluate each scope of work to determine if our team can provide the best value to the customer. The following work scopes represent the preliminary list of those potential self-perform scope items. We will work with the subcontracting community to ensure we solicit at a minimum two additional bids for these items to comply with all regulations.

- **Selective Demolition:** Our team can use this work item to set the tone of the schedule for each phase of project.
- **Structural Concrete & Flatwork:** Once again, our team can use this item to continue leading this phase of the project by example.
- **Rough Carpentry:** Since limited subcontractors are available for this type of work, we would focus on having our team provide the best value with this work.
- **Finish Carpentry:** Since limited subcontractors are available for this type of work, we would focus on having our team provide the best value with this work.
- **Specialty Products/Div. 10:** Since limited subcontractors are available for this type of work, we would focus on having our team provide the best value with this work.

g. Provide your approach for developing bid packages and reviewing subcontractor pricing to ensure that the Owner receives competitive pricing for every element of the Work. Provide approach for pre-qualification of subcontractor for the work.

BID MANUAL & BID PROCESS

Our bid process includes the development of a project-specific bidding manual, which includes clear and complete information all bidders require to eliminate scope gaps. The manual includes:

- advertisement for bids
- instruction to bidders
- pre-qualification requirements
- available project information
- project bid schedule
- bid forms
- contract work category packages and descriptions
- standard contract agreements
- insurance requirements
- CMC special provisions
- safety requirements and expectations
- DBE outreach, instructions and assistance
- construction documents (drawings, specifications, select regulations)
- logistics and phasing plans

Once complete, the Bid Manual is provided to Fort Wayne Parks & Recreation.

PRE-QUALIFICATION PROCESS

Selecting the right trade partners is important to the success of the project. The MKS team is uniquely positioned to provide the best in both local talent and regional resources. A comprehensive list of qualified trade partners is developed in the early phases of preconstruction and will continue to be developed and refined as design is further developed and finalized. The best bid results include meaningful interaction with the bidders ahead of the bid date. Our teams are experienced in the coordination of the bidding process. By the time the bid package is ready for release, we are on a first name basis with prospective bidders.

Each bid team member has a grouping of work categories that they know well. Not only do they know the scope of the work and nuances, but they also know who is bidding, what they will be

bidding, and how to assure the bids are compiled correctly to assure budget and funding certainty.

Once bidders are confirmed and vetted, they are subject to further review. Reviews are conducted based on multiple criteria, including: financial feasibility, insurance abilities, licensing confirmation, safety audits, and historical reviews. Bidder websites and company information are reviewed and vetted. Licenses are checked against the work and for expiration. Any complaints are reviewed and if applicable, discussed. Financial health is analyzed using both internal financial analysis and external, including Dun & Bradstreet, to further verify the company has a good financial rating with no outstanding claims that could impact the company's ability to perform the contract. Bidders are asked to confirm all necessary insurance requirements and their backlog is reviewed. We request EMR documents and discuss safety culture. We discuss ability to perform the work, available manpower and their ability to procure and secure all necessary materials to complete their scope. We discuss how qualifications are determined, cost certainty, quality, scope awareness, the ability to complete the contract successfully, and how to assure best value after the bids are received.

COMPETITIVE & BEST VALUE BIDDING

We level the bids to assure quality and best value. **As design evolves, bid team members keep track of possible scope gaps, questions, inconsistencies, drawing conflicts, and value engineering opportunities.** Our bid team also keeps a list of possible value engineering opportunities per scope and category.

Most value engineering opportunities are often vetted, priced, and implemented in the design ahead of the issuance of CDs and prior to the bid roll-out; however, there are also possible opportunities confirmed through the bid process which maximize value and schedule. Opportunities may be large equipment items that one vendor may be able to provide at a better price or at an earlier time while others may be innovations in materials or methods. Potential value options are carried forward during preconstruction and included into the bid manual and work scope categories ahead of the bid release, which helps assure both scope and cost certainty.

In some cases, one contractor may have specific skills that another does not with most of their

work falling into another category. For this reason, bidders may be required to price several options, or provide add option costs or deducts to assure that each bid package and work category is as streamlined as possible to provide the absolute best value. Our approach is beneficial in separating work scopes quickly and efficiently for presentation to different funding groups.

PRICE & FUNDING ASSURANCE

We consider all options. The bid can be arranged in the desired fashion. The instructions to bidders, the work scope categories and the CMC special conditions are aligned to the benefit of Fort Wayne Parks & Recreation, the funding entities, and the overall project. With this approach, one bid effort can render multiple bids from the same bidding entity, arranged by funding type, scope of work, and even phase if desired. Bids are easily compiled in a variety of ways, including by funding type. The early separation and documentation also provides better billing breakouts for ease of fund recovery from outside (3rd party or outside sources) later during construction.

Sometimes bidders are asked if a volume discount can be afforded if they are awarded more than one scope category. The bidders are required to perform all breakouts, arrange all bids in the prescribed manner, and address all add options, deductive options, value engineered provisions, and any other alternates specified to be considered responsive. This method assures that competitive pricing is obtained on every aspect of the work and in every combination possible. The descope section below provides further information on bid reception, bid leveling and the contracting process.

DESCOPE, BUY-OUT AND CONTRACTING

Bid leveling starts early in the process, but it does not end with the finalization of the work scope categories and the issuance of the bid manual. Ahead of the bid due date, a master price book is developed which tracks the overall budget of the project and includes leveling sheets (typically one tab for each work category minimum). Leveling sheets are preloaded with all scope items. The sheets are preloaded with everything that needs to be addressed, discussed, and leveled. The leveling sheets also include provisions for add options, deducts, allowances and value engineering items. Results from the earlier trade

partner pre-qualification are also included to verify trade partner qualifications.

Once the results are entered, tabulated, analyzed, and vetted an overall best value budget emerges. Prior to development of the FGMP and any trade partner or vendor awards, a face-to-face meeting is held with a minimum of the top three best value proposers (sometimes more).

In these sessions all work aspects are discussed. The scope is thoroughly vetted to assure that the proposer truly has the best value bid. The session dives deep into the leveling sheet details to assure that the proposer has included all the required scope; has addressed all options, deducts, and value items and is ready to execute the contract with the appropriate workforce. An in-depth discussion is also held to ensure that they can hold to the bid schedule. The trade partner must verify the following: understanding of all the CMC special conditions; the constraints of an active public area; logistics, schedule, and phasing of the project; badging, project access, and parking requirements; and agreement to follow the rules and guidelines set forth in the special conditions. The Fort Wayne Parks & Recreation will be invited to attend the descope interviews and especially requested at the descope interviews for selected trade partners such as: BHS, Low Voltage, PBB and Electrical. All conversations and results are recorded and initialed by all attendees and are later incorporated into final contracts.

After the selected entities are interviewed and descoped, the Fort Wayne Parks & Recreation will have the opportunity to comment on contracts and purchase orders. If there are no exceptions, the bid team enters final negotiations with the selected best value entity, and contracts are issued.



DEVELOPMENT OF FINAL GMP (FGMP)

The development of the FGMP will occur before or after all bids are received, analyzed, vetted and descoped.

MKS performs our estimates at every design phase using Revit quantities and detail that blends with data from Timberline. Our Preconstruction teams acquire quantity takeoffs instantaneously using Assemble software to interact with the BIM model. Setting digital constraints in the BIM model early in design, for example, helps ensure access to critical mechanical systems and “future proofs” your building when it’s time to update systems.

We use a combination of Assemble and On-Screen Takeoff to perform quantity take-offs and couple the results with historic information. Assemble Systems allows us to continuously estimate a project as the BIM model is refined. As more details are made available, the estimate is updated with more pricing information. At every design phase, MKS shares the design with a select number of local and regional trade partners to provide accurate estimates that help MKS gauge the current market cost of the work. MKS takes great care to provide competitive and realistic prices throughout the preconstruction process and has remarkable success maintaining budgets during construction. Project financial records are open book.

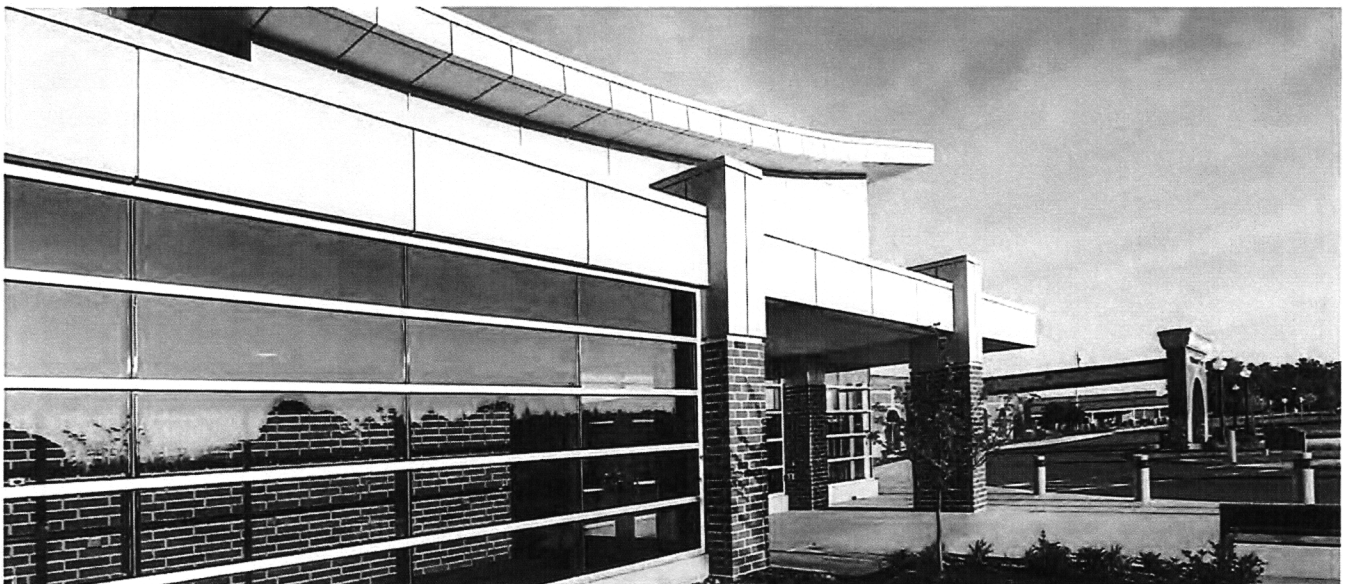
During preconstruction, we provide:

- Complete, comprehensive, and ongoing forecasts to actual project costs, which allows the team to spot trends, identify emerging problems, and implement corrective actions.
- Proprietary baselines and benchmarks to support key decision makers during the actual construction phase.
- Solid options for decision makers based upon thoughtful value analysis, spotlighting ways to maximize your budget and program consistent with design intent.

Our approach provides quantities to verify in-house takeoffs and allows for increased collaboration with the design team and trade partners to verify estimate accuracy and design intent. Side-by-side comparisons of quantity, cost, materials and systems are easily identified as the BIM model is updated. MKS provides and updates cost estimates continuously at any point during the design phase to account for options, alternates, and design schemes for the project design team. MKS begins cost estimating while design is in its early stages. We focus on definition, interpretation, and communication of assumptions and clarifications related to your project.

- h. Provide a list of CMc owned equipment and associated pricing for use.

Please see page 33 for a list of our owned equipment and pricing.



e. POTENTIAL KEY SUBCONTRACTORS

PAVING/SITWORK

Brooks Construction
Wayne Asphalt
E&B Paving
Fox Contractors
O'Neal

BRIDGE WORK

Primco
R.L. McCoy Inc.
Brooks Construction

LANDSCAPING

Clounie
Harlow
Bruce Ewing

GENERAL TRADES

MKS
FCI
Hagerman

CONCRETE

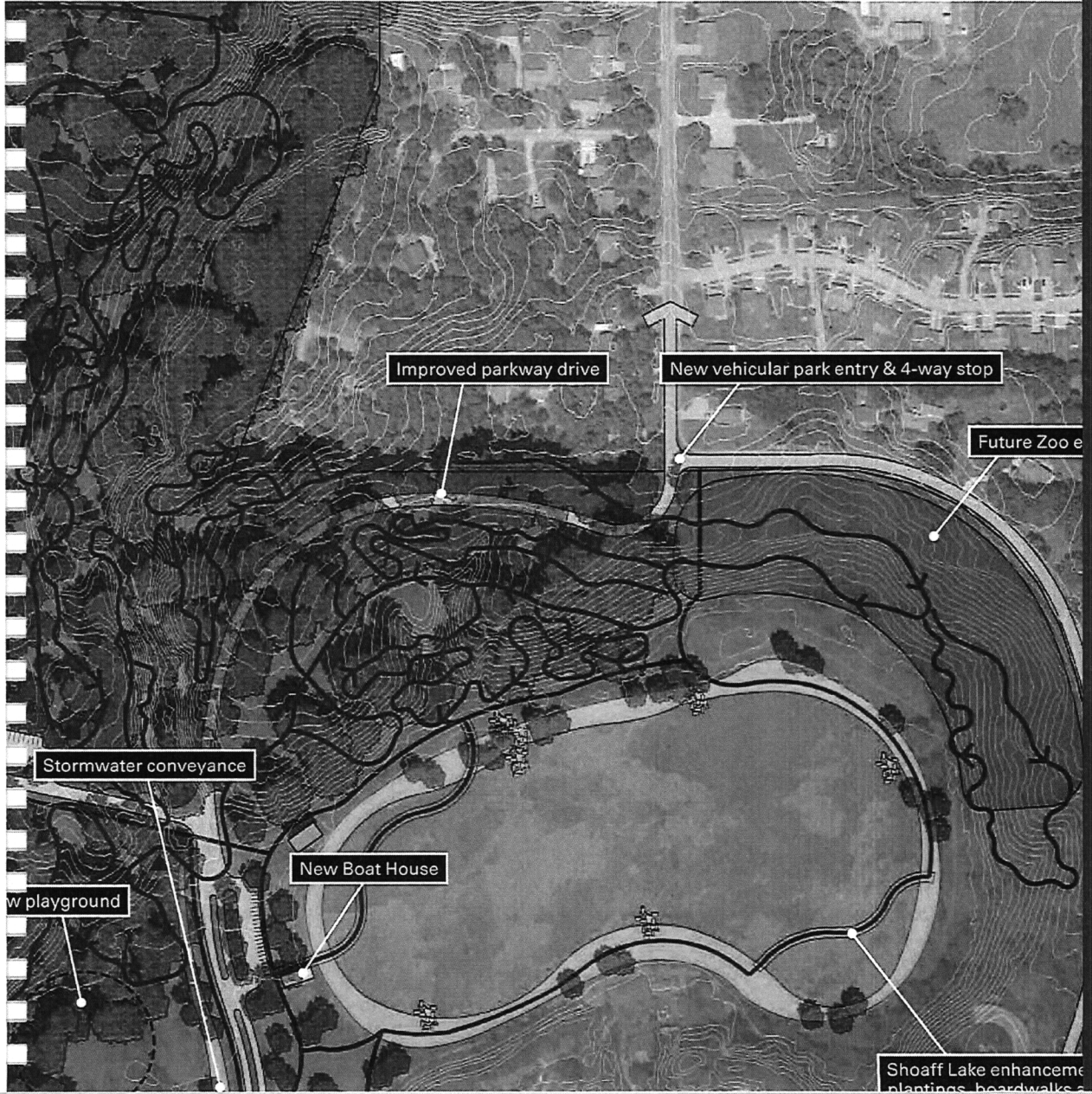
MKS
FCI
Brooks

h. CM OWNED EQUIPMENT RATE SHEET

| Item | Daily Cost | Monthly Cost |
|---|------------|--------------|
| 60' JLG Boom Lift | \$485.00 | \$2,790.00 |
| 40' JLG Boom Lift | \$335.00 | \$2,250.00 |
| 19' Scissor Lift | \$138.00 | \$595.00 |
| 26' Scissor Lift | \$210.00 | \$920.00 |
| RTS 33' All-terrain platform scissor lift | \$335.00 | \$1,315.00 |
| Case CX50B Mini Excavator | \$380.00 | \$2,500.00 |
| Case CX55B Mini Excavator | \$104.53 | \$2,299.66 |
| CAT 305 EXCAVATOR | \$104.53 | \$2,299.66 |
| 6,000 LB TELEHANDLER | \$102.27 | \$2,249.94 |
| 8,000 LB Lull (844C) | \$445.00 | \$2,965.00 |
| 10,000 LB TELEHANDER | \$149.99 | \$3,299.78 |
| Forklift | \$205.00 | \$1,195.00 |
| Grove 30 Ton Truck Crane | \$500.00 | \$5,000.00 |
| Portable Generator 6K | \$26.12 | \$574.64 |
| Portable Generator 9.7K | \$30.67 | \$674.74 |
| Portable Generator | \$50.00 | \$495.00 |
| Thawzall Trailer / Hose | \$800.00 | \$10,500.00 |
| Scoot-Crete | \$125.00 | \$1,125.00 |
| Soft Cut Saw | \$265.00 | \$1,935.00 |
| Large Concrete Floor Saw - 26" Blade | \$155.00 | \$1,100.00 |
| Concrete Floor Saw - 18" Blade | \$64.00 | \$899.80 |
| Concrete Vibrator | \$97.00 | \$710.00 |
| Wacker Plate Tamp | \$50.00 | \$624.80 |
| Jumping Jack | \$50.00 | \$1,100.00 |
| 2' Edge Trowel Machine | \$40.00 | \$880.00 |
| 3' Trowel Machine | \$50.00 | \$1,100.00 |
| 4' Trowel Machine | \$50.00 | \$1,100.00 |
| 8' Rider Trowel Machine | \$205.00 | \$4,510.00 |
| Curing Drum Sprayer | \$60.00 | \$1,320.00 |
| National Ride-on Floor Scrapper | \$225.00 | \$2,050.00 |
| Ride-on Floor Scrubber | \$225.00 | \$2,050.00 |
| GMC 5 Ton Truck with trailer | \$150.00 | \$1,350.00 |
| F350 Yard Truck | \$125.00 | \$2,142.80 |
| Shop Truck with Tools | \$125.00 | \$1,000.00 |
| 1/2 Ton Truck | \$100.00 | \$999.90 |
| Bobcat with Bucket | \$250.00 | \$1,685.00 |
| TRACK SKID STEER | \$95.44 | \$2,099.68 |
| FORKS ATTACHMENTS | \$3.41 | \$75.02 |
| Bobcat Sweeper | \$95.00 | \$749.76 |

TAB 6 INSURANCE/CLAIMS

INSURANCE/CLAIMS



INSURANCE/CLAIMS

a. Provide a copy of your standard General Liability insurance coverage. Provide any premiums associated with meeting the Owner's minimum insurance requirements. Identify the deductible associated with the Builder's Risk rate included in your proposal.

Please see **page 37** for a copy of our General Liability Insurance coverage.

b. Identify all outstanding claims, actions, or disputes against your company or principals of your company or those that you may have against another party. Also identify any claims that your firm has been involved within the past five (5) years.

There are no outstanding claims, actions, or disputes against MKS or its principals, nor does MKS have any claims against another party. Our firm has not been involved in any claims within the past five years.

c. Please provide a narrative describing your commitment to safety and state your safety modifier for the past five (5) years.

OUR COMMITMENT TO SAFETY

The foundation of our safety program is the moral commitment to ensure the safety of the employees and the general public who encounter our work.

After receiving the notice to proceed, MKS reviews Fort Wayne Parks & Recreation's Construction Safety Phasing Plan (CSPP) and works with the design team and park personnel to draft the Safety Plan Compliance document (SPCD). The SPCD augments the CSPP and further identifies coordination, phasing, areas and operations effected by construction, contractor access, FOD and Hazmat management, and procedures for Notification of Construction Activities. The CSPP and SPCD are reviewed at the project kick-off meeting with all team members and then reviewed with each worker individually on their first day on-site.

In addition to the SPCD, a mobilization plan is established prior to construction. The mobilization plan, details emergency vehicle access, site

fencing, parking, staging, crane locations, etc. The construction perimeter is established to ensure that there is no interaction between project employees and the public. Our team begins and ends each day with a site walk, ensuring that there are no breaches in the site perimeter. This type of planning and execution has led to several safety awards from industry associations.

WORKER SAFETY

MKS starts each shift, each day with a safety meeting and site walk to check all areas to ensure there are no unsafe working conditions. All key members of the MKS team have their OSHA 30 certification and are trained in recognizing hazards. In the case of an emergency, all personnel are certified in first aid and CPR.

FIRE PROTECTION

MKS coordinates with Fort Wayne Parks & Recreation and the Fort Wayne Fire Department and other officials prior to construction to plan emergency personnel and vehicle access to the project site and fire hydrants. All mobile equipment on-site is required to have fire extinguishers. Fire extinguishers are tested and tagged by a certified party and placed in highly visible locations every 75 feet throughout buildings and the jobsite.

EMERGENCY MEDICAL RESPONSE

Emergency numbers are displayed in easily accessible locations. Emergency response and fire drills are conducted to ensure all workers understand security protocols. **Site security is strictly enforced by our authorized agent (Adam Pequinot, Project Superintendent).** He works closely with Fort Wayne Parks & Recreation security to manage our site security plan and to make sure that the entire project team, including all trade partners, understand the safety and security processes.

SITE MANAGEMENT

Our local team is familiar with the Franke Park Renaissance Project Phase 1 area and has revisited study of the site from a planning and security perspective during preparation of our proposal.

We look forward to sharing our specific site security and management plans with you. As discussed in our technical approach, we plan to employ just-in-time delivery to control traffic flow on site, and off-site construction of certain scopes of work to reduce jobsite clutter.

SAFETY MODIFIER

Table 6.1 below includes Experience Modification Rate (EMR) data for both MKS for the previous five years. A contractor's EMR says a great deal about a company's safety culture and has strong impact upon the competitive position of a general contractor. It is a gauge of both past cost of injuries and future risk. Our low EMR means reduced worker compensation insurance premiums, and better value for FWPR. MKS has consistently maintained an EMR below industry average for more than five years.

MKS EMR 5-YEAR HISTORY

| YEAR | EMR | INDUSTRY AVERAGE |
|------|------|------------------|
| 2021 | 0.68 | 1.00 |
| 2020 | 0.70 | 1.00 |
| 2019 | 0.68 | 1.00 |
| 2018 | 0.81 | 1.00 |
| 2017 | 0.78 | 1.00 |

COVID-19 RESPONSE

At the onset of the COVID-19 pandemic in the U.S., MKS respectively, followed the guidelines published by the Centers for Disease Control and OSHA to ensure the health and safety of everyone associated with our work. Our offices and on-site project teams are following local and federal guidelines to help prevent the spread of the COVID-19 virus.

Our greatest priority is the health and safety of every worker on our job sites. We continue to monitor the situation closely and act on the guidance of federal, state and local authorities as the situation changes. The following is an overview of some of the practices we have put in place on jobsites during the pandemic.

We are preparing contingency plans for the possibility of protracted impacts from COVID-19 to mitigate disruption while keeping our people safe.

- Increase number of temporary bathrooms, and cleaning frequency; additional personnel to monitor bathroom cleanliness
- One hand washing station per 15 workers
- Display posters for COVID-19
- COVID-19 employee screening
- Staggered breaks and lunch with trade partners
- Remove lunch trucks from jobsites
- Trade partners participate by sanitizing tools and gang boxes shared between employees
- Abide by social distancing mandate





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/6/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

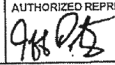
| PRODUCER Stewart Brimmer Peters and Company Inc. 3702 Rupp Drive Fort Wayne IN 46815 | | CONTACT NAME: Amy Pedersen PHONE (A/C, No, Ext): 260-482-6900 FAX (A/C, No): E-MAIL ADDRESS: amy@sbpinsurance.com | | | | | | | | | | | | | | | |
|--|--------|--|--|-------------------------------|--------|---|-------|---|-------|----------------------------------|-------|-------------|--|-------------|--|-------------|--|
| INSURED Michael Kinder & Sons, Inc. 5206 Decatur Rd. P.O. Box 10572 Fort Wayne IN 46853 | | MICHKIN-01 <table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A : Selective Ins Co of America</td> <td>12572</td> </tr> <tr> <td>INSURER B : Bridgefield Casualty Ins Co</td> <td>10335</td> </tr> <tr> <td>INSURER C : Selective Way Ins Co</td> <td>26301</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table> | | INSURER(S) AFFORDING COVERAGE | NAIC # | INSURER A : Selective Ins Co of America | 12572 | INSURER B : Bridgefield Casualty Ins Co | 10335 | INSURER C : Selective Way Ins Co | 26301 | INSURER D : | | INSURER E : | | INSURER F : | |
| INSURER(S) AFFORDING COVERAGE | NAIC # | | | | | | | | | | | | | | | | |
| INSURER A : Selective Ins Co of America | 12572 | | | | | | | | | | | | | | | | |
| INSURER B : Bridgefield Casualty Ins Co | 10335 | | | | | | | | | | | | | | | | |
| INSURER C : Selective Way Ins Co | 26301 | | | | | | | | | | | | | | | | |
| INSURER D : | | | | | | | | | | | | | | | | | |
| INSURER E : | | | | | | | | | | | | | | | | | |
| INSURER F : | | | | | | | | | | | | | | | | | |

COVERAGES **CERTIFICATE NUMBER:** 279397104 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL SUBR INSD WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---|--------------------|---------------|-------------------------|-------------------------|--|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU Not Excluded <input checked="" type="checkbox"/> Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER: | Y | S 2415982 | 12/10/2021 | 12/10/2022 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000 \$ |
| A | <input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY | | S 2415982 | 12/10/2021 | 12/10/2022 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ Zero | | S 2415982 | 12/10/2021 | 12/10/2022 | EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N N | 0196-49863 | 12/10/2021 | 12/10/2022 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |
| C | <input checked="" type="checkbox"/> Installation Floater Leased/Rented Equip | | S 2415982 | 12/10/2021 | 12/10/2022 | Limit \$50,000 Limit \$100,000 Ded \$500 Ded \$500 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Job Description: (Insert job description). Michael Kinder & Sons, Inc. officers, agents and employees and (Insert Job Owner's Name) are named as additional insureds incl. Products/Completed Operations as required by contract. All insurance shall be Primary and Non-Contributory. A Waiver of Subrogation clause in the favor of Michael Kinder & Sons, Inc. shall be added to the General Liability and Workers Compensation Policies.
 Please Note: A copy of the additional insured endorsement including Products/Completed Operations and a copy of the Waiver of Subrogation may need to be provided by your insurance carrier;

| | |
|---|---|
| CERTIFICATE HOLDER Michael Kinder & Sons, Inc. 5206 Decatur Road Fort Wayne IN 46806 USA | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE  |
|---|---|

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ACORD 25 (2016/03)

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TAB 7 OWNER & CMc AGREEMENT/COMMITMENT



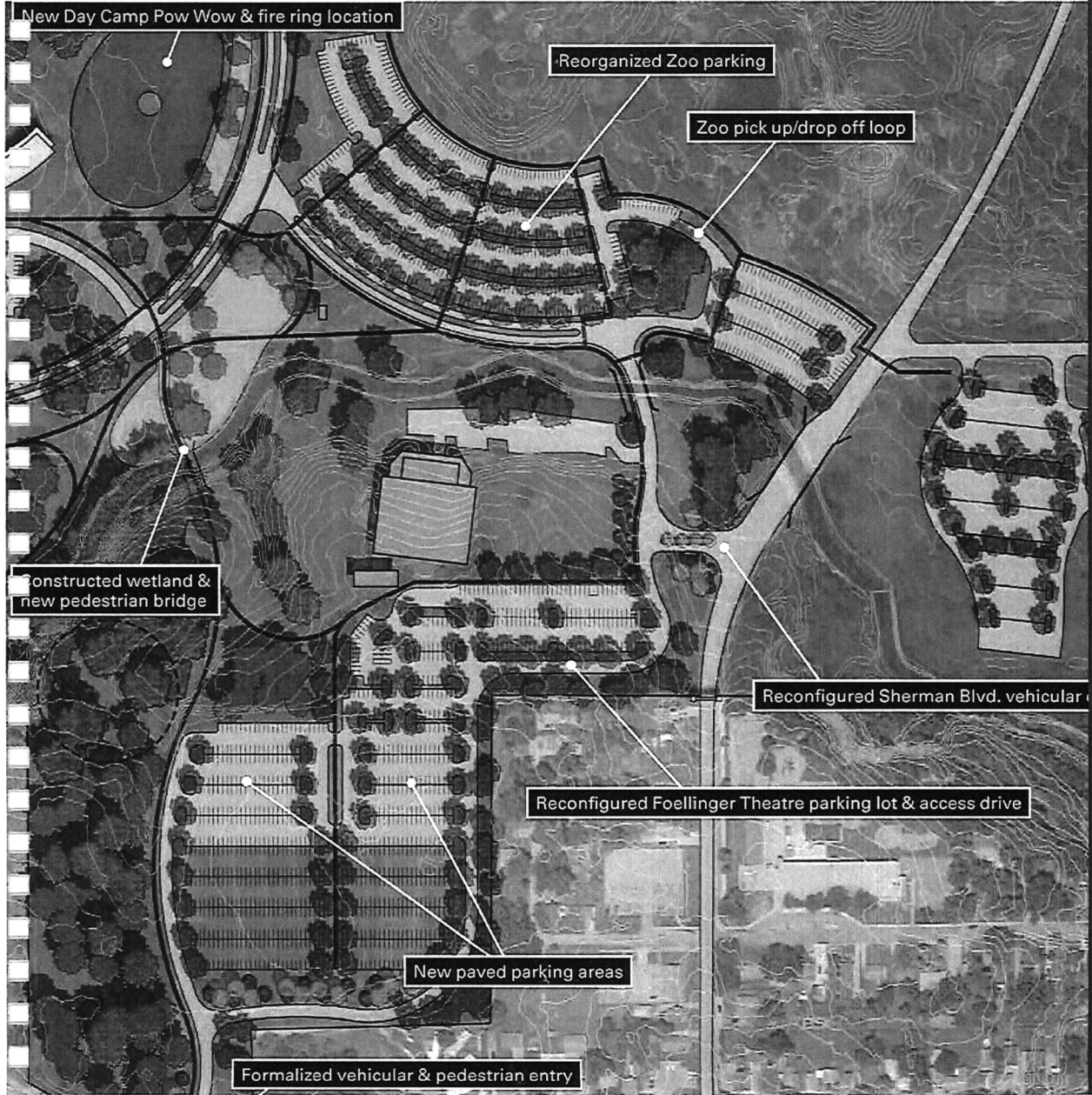
TAB 7

OWNER & CMc AGREEMENT/COMMITMENT

a. The selected CMc must fulfill all the requirements, obligations and responsibilities as outlined within the AIA A133-2019 Agreement and the A201-2017 General Conditions as modified by the Owner for this Project. The Owner is not prepared to make changes that substantially modify the roles and responsibilities of the parties to the contract. The Owner will however review CMc's specific questions that clarify the intent of the agreement. The Owner will not consider contract changes that have not been provided in the question and response period. A general statement suggesting that, if selected you reserve the right to discuss contract issues at a later date will not be accepted and will be grounds for disqualification. The Owner reserves the right to make further changes to the contract agreement delivered in connection with this RFP; note that the contract is currently under review by the Owner's insurance provider. Outline any specific suggested changes for Owner consideration within Tab 7.

We do not suggest any changes.

TAB 8 SURETY



TAB 8

SURETY

a. The CMC shall provide a letter from a bonding agent or surety directly addressing the CMC's ability to perform and the surety's willingness to provide performance and payment bonds on the proposed Project. As the party furnishing the construction, the CMC will be required to furnish these bonds.

Please see the following page for a letter from our bonding agent addressing our ability to provide performance and payment bonds for the Project.



The Cincinnati Insurance Company ■ The Cincinnati Indemnity Company
The Cincinnati Casualty Company ■ The Cincinnati Specialty Underwriters Insurance Company
The Cincinnati Life Insurance Company

January 26, 2022

Re: Michael Kinder & Sons, Inc.
5206 Decatur RD
Fort Wayne, IN 46806

To Whom It May Concern:

We are providing this information at the request of Michael Kinder & Sons, Inc. Michael Kinder & Sons, Inc. is a valued client of The Cincinnati Insurance Company. We have had the privilege of providing bonds on their behalf since 2006.

We have approved and considered bond programs up to and more than \$50,000,000 single project and aggregate work programs of \$100,000,000. We continue to be confident in Michael Kinder & Sons, Inc. ability to perform and recommend them for your favorable consideration.

This letter is offered as an indication of our past experience and confidence in this firm. Any arrangement for bonds required by the contract is a matter between Michael Kinder & Sons, Inc. and the surety and we assume no liability to you or your third parties, if for any reason we do not execute these bonds.

Sincerely,

John Redmond

John Redmond, AFSB, CPCU
CIC Sr. Contract Surety Regional Director

Mailing Address: P.O. Box 145496 • Cincinnati, Ohio 45250-5496 ■ **Headquarters:** 6200 S. Gilmore Road • Fairfield, Ohio 45014-5141
www.cinfin.com ■ 513-870-2000

TAB 9
RESPONSE FORMS



TAB 9

RESPONSE FORMS

Include completed RFP forms in this section of the submittal including:

(The first six attachments are found in a separate Excel document included with the RFP documents on the City website. Please download this document for use in compiling the requested reports in Attachments A-F)

- Attachment A - Cost Summary (Also include your detailed cost breakouts for each CSI division in your format)
- Attachment B - Detailed General Conditions
- Attachment C - Labor Burden Rates
- Attachment D - Staff Time Allocations
- Attachment E - Allowance List, Alternates, & Unit Prices
- Attachment F - Responsibility Matrix

As issued in Quest #8092884 - Addendum no. 2. Attachment A-F have been removed from the required documents to be submitted with this proposal.

- Attachment G - Vendor Submission Form
- Attachment H - Vendor Disclosure Form (Conflict of Interest)
- Attachment I - Non-Collusion Affidavit
- Attachment J - E-Verify Certification
- Attachment K - Fee Proposal and Submission Terms Agreement
- Attachment L - Indiana Legal Employment Declaration Form
- Attachment M - Data Security Agreement
- Attachment N - EBE Declaration Form
- Attachment O - AIA Document A312-2010 Performance Bond Edition
- Attachment P - AIA Document A312-2010 Payment Bond Edition
- Attachment Q - AIA Document A133-2019 General Contract Edition

Attachments G-N can be found on the following pages, 46-68.

RFP #8092884

Attachment G – Vendor Submission Form

City of Fort Wayne
Thomas C. Henry, Mayor
Purchasing Department
200 East Berry Street, Ste. 490
Fort Wayne, Indiana 46802-1804
Telephone (260) 427-1376 Fax (260) 427-1393



Vendor Submission

RFP #8092884
Description CONSTRUCTION MANAGER AS CONSTRUCTOR (CMc) SERVICES FOR THE
FRANKE PARK RENAISSANCE PROJECT @ Franke Park, 3411 Sherman
Blvd., Ft. Wayne, IN
Pre-Proposal Meeting..... Monday, January 20, 2022 @ 10:00 a.m.
Pre-Proposal Location..... Design Collaborative Architect’s Office located at 200 E Main Street, Suite
600, Fort Wayne, IN
RFP Due Date..... Thursday, February 3, 2022 at 11:00 a.m.

Sealed proposals should be delivered to Suite 490 of Citizens Square, up to **11:00 a.m.** on or before the opening date. Sealed proposals are **not** opened publicly. **No proposals will be accepted after 11:00 a.m. for any reason whatsoever.**

By mutual agreement between the City of Fort Wayne and the supplier, the contract period may be extended for an additional like or lesser time period. However, the agreement to extend must be completed in written form at the original price and under the original conditions governing the contract.

Prompt payment discounts will be allowed as follows: NA % if paid within NA days.

This Request for Proposal is issued to establish a contract to supply the City of Fort Wayne with a commodity or service in accordance with accompanying specifications. The execution hereof by the bidder is acceptance of all terms and conditions herein and in that regard the bidder agrees to be bound by same and be bound to the amount of the bid for a period of ninety (90) days.

Company: Michael Kinder & Sons

Signature:  Printed Name: Douglas E. Kinder
(Authorized Representative)

Title: President Date: 02/03/2022

Attachment H – Vendor Disclosure Form (Conflict of Interest)

CITY OF FORT WAYNE, INDIANA

Michael Kinder and Sons, Inc.

(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

- 1. FINANCIAL INTERESTS;**
- 2. POTENTIAL CONFLICTS OF INTEREST;**
- 3. CURRENT AND PENDING CONTRACTS OR PROCUREMENTS**

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$50,000 or more. Vendors shall disclose their financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the Vendor's contract, bid, proposal or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

Section 1: Disclosure of Financial Interest in Vendor

If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

- (i) Equity ownership exceeding 5%
- (ii) Distributable income share exceeding 5%
- (iii) Not Applicable (If N/A, go to Section 2)

Name: _____

Address: _____

For each individual listed in Section 1a. show his/her type of equity ownership:

- sole proprietorship stock
- partnership interest units (LLC)
- other (explain) _____

c. For each individual listed in Section 1a. show the percentage of ownership interest in Vendor (or its parent): ownership interest:

Name: _____ %

Name: _____ %

Section 2:

Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)

For each individual listed in Section 1a. check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

a. City employment currently or in the previous 3 years, including contractual employment for services: Yes _____ No X

b. City employment of "Member of Immediate Family" (defined herein as: spouse, parent, child or sibling) including contractual employment for services in the previous 3 years: Yes _____ No X

c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years: Yes _____ No X

Relationship to Member of Immediate Family holding appointive City office currently or in the previous 3 years: Yes _____ No X

Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

a. Does Vendor have current contracts (including leases) with the City? Yes _____ No X

If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact below (attach additional pages as necessary).

RFP #8092884

b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes _____ No X

If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

Does vendor have any existing employees that are also employed by the City of Fort Wayne? Yes _____ No X

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms

Name / Position / Payment Terms

Name / Position / Payment Terms

Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.).

Company / Name / Payment Terms

Company / Name / Payment Terms

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:

- a. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;

RFP #8092884

- c. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;
- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same elements as the offense of bid-rigging or bid-rotating
- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by
Michael Kinder and Sons, Inc. 5206 Decatur Road, Ft Wayne, IN 46806
(Name of Vendor) Address
(260) 744-4359
Telephone
dkinder@kinderandsons.com
E-Mail Address

The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed) Douglas E. Kinder

Title President

Signature  Date 02/03/2022

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.

Attachment I – Non-Collusion Affidavit Form

Non-Collusion Affidavit

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered 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 nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He/She further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee gift, commission or thing of value on account of such sale.

OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID ARE TRUE AND CORRECT.

Dated this 3rd day of February, 2022

Michael Kinder and Sons, Inc.
(Name of Organization)

President
(Title of Person Signing)

[Handwritten Signature]
(Signature)

ACKNOWLEDGEMENT

STATE OF Indiana)

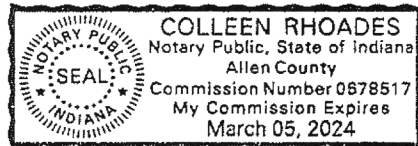
) ss

COUNTY OF Allen)

Before me, a Notary Public personally appeared the above named and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to me this 3rd day of February, 2022

[Handwritten Signature]
Notary Public Signature



My Commission Expires: 03/05/24

Attachment K – Fee Proposal and Submission Terms Acknowledgement Form

FEE PROPOSAL AND SUBMISSION TERMS ACKNOWLEDGEMENT
(Submit with Proposal)

FROM:

Michael Kinder and Sons, Inc.
Proposer

5206 Decatur Road
Address

Fort Wayne, IN 46806
Address

ID Corporate Charter No.

35-0440920
Federal I.D. No.

TO: Fort Wayne Parks & Recreation (FWPR)

The undersigned, hereinafter called the Proposer, having become familiar with the local conditions, nature, and extent of the Work, and having examined carefully the Request for Proposal (RFP) document dated **January 10, 2022**, all subsequent Addenda prepared by the Owner and their Consultants, and all other documents relating thereto, propose to provide Construction Manager as Constructor (CMc) Services for **Franke Park Phase I Renaissance Project** in full accordance with the RFP documents and per the fee structure indicated as follows:

FIXED FEE FOR PRECONSTRUCTION PHASE SERVICES: \$ 39,000.00

FIXED FEE FOR CONSTRUCTION PHASE SERVICES (STAFFING): \$ N/A - Per Addendum No. 2

CONSTRUCTION PHASE SERVICES, FEE AS A PERCENTAGE OF THE COST OF WORK*:
3.95% %

*Preliminary Construction Budget = **\$13,000,000.00**

RFP #8092884

No variances are included in this proposal. []

OR

Variances in stated scope of work, amenities, quality of construction, as requested in the RFP document, are proposed and are described within the Submittal package. []

Furthermore, the Proposer hereby agrees that: []

- a. The above Proposal shall remain in full force and effect for a period of ninety (90) calendar days after the time of receipt of this Proposal and the Proposer will not revoke or cancel this Proposal or withdraw from the project within the said ninety (90) calendar days.
- b. In the event a contract is offered and awarded, the Proposer will enter into a formal written Agreement with the Owner in accordance with the accepted Proposal within ten (10) calendar days after said Agreement is submitted to the Proposer. Unless clarifications and/or questions are submitted with the Proposal, it is assumed that Proposer accepts Standard Design Professional Services Agreement in its entirety upon award.
- c. The undersigned is empowered to bind the Proposer to the provisions of this RFP and any Agreement awarded pursuant to it, and shall attach evidence of this authority to this Proposal Form.
- d. The Proposer understands the Owner reserves the right to reject any and all proposals and to waive any minor irregularities or informality in any Proposal.

Acknowledgement is hereby made of receipt of the following Addenda issued during the bidding period.

| | |
|-----------------------|-----------------------|
| Addendum No. <u>1</u> | Dated: <u>1/10/22</u> |
| Addendum No. <u>2</u> | Dated: <u>1/10/22</u> |
| Addendum No. <u>3</u> | Dated: <u>2/1/22</u> |

SIGNED AND SEALED THIS 3rd DAY OF February, 2022.



(Signature)

By: Douglas E. Kinder

Title: President

Company: Michael Kinder & Sons

Attachment L: Indiana Legal Employment Declaration

(Submit with Proposal)

INDIANA LEGAL EMPLOYMENT DECLARATION

The State of Indiana has enacted a law (I.C. 22-5-1.7) requiring all state agencies and political subdivisions request verification from their contractors that their employees are legally eligible to work in the United States. This Declaration serves as notice that all Contractors doing business with the Fort Wayne Parks and Recreation must, as a term of their contract:

1. Enroll in and verify the work eligibility status of newly hired employees of the contractor through the E-Verify programs (but is not required to do this if the E-Verify program no longer exists); and
2. Verify, by signature below, that the Contractor does not knowingly employ unauthorized aliens.

I, Douglas E. Kinder, a duly authorized agent of Michael Kinder and Sons (name of Company), declare under penalties of perjury that Michael Kinder and Sons (name of Company) does not employ unauthorized aliens to the best of its knowledge and belief.

Michael Kinder and Sons
(Name of Company)

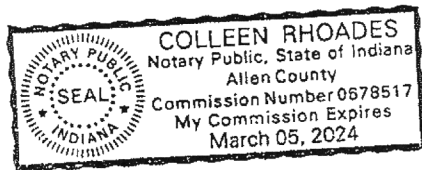
By: [Signature]
(Authorized Representative of Company)

Subscribed and sworn to before me on this 3rd day of February, 2022.

My Commission Expires: 03/05/24

County of Residence: Allen

[Signature]
Notary Public – Signature
Colleen Rhoades
Notary Public – Printed Name



PLEASE SEE <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES> FOR INSTRUCTIONS AND ELECTRONIC REGISTRATION FOR E-VERIFY.

Attachment M: Data Security Agreement

**ATTACHMENT C
(Submit with Proposal)**

Data Security Agreement – Guidelines for Access and Use

Necessary to your participation in the stated transaction, you will be provided with data of a proprietary and confidential nature. Fort Wayne Parks and Recreation (FWPR) requires that the awarded Consultant comply with a strict practice and procedure related to confidentiality and security of FWPR data.

To execute the designated transaction, the Consultant is required to endorse a *data Security Agreement*. This will sanction access to FWPR protected systems or to receipt of media containing restricted information. The information provided is solely for the Consultant to properly execute their services.

Access to, use, or retention of the data may only be used for the intended purpose. The data or media provided you is FWPR property and you may not share this information with any individual not specifically involved with the stated transaction, nor may you retain, disclose, give, or sell such data to a third party. Containment and security for the information provided is the Consultant's sole responsibility and Consultant bears the liability for all individuals with whom you share FWPR information.

As a required step to proceed in this transaction, the Consultant is permitted access to such data by providing this contractual guarantee that you will afford appropriate measures to secure the information at all times. Upon the completion of termination of your services, Consultant shall as instructed to, return, remove, permanently delete or destroy all information provided to them for purposes of the stated actively.

I have read and agree to abide by all FWPR data security practice related to access to FWPR confidential data. To the best of my ability, I will comply, keep secure, or return all information provided to me.

Signature  _____

Printed Name Douglas E. Kinder

Title President

Company Michael Kinder and Sons, Inc.

Fort Wayne City Council Project Summary

Franke Park
Phase 1 – Renaissance Project
Construction Manager Contract
Project No: 221007
Quest# 8092884

Project Approval Request

Scope of Work:

This is a request for approval of a contract to hire a construction manager for the Phase 1 Franke Park Renaissance Project. This will be a Construction Manager as Constructor (CMc) contract. The CMc will enter into a contract to provide preconstruction services during the design of the Project and serve as the construction manager/general contractor during the construction of the Project. The CMc will assume the risk of delivering the Project through a Guaranteed Maximum Price (GMP) contract. The CMc will be responsible for construction means and methods, and will collaborate with the owner to determine prequalified subcontractors to solicit bids from prequalified subcontractors to perform the work. The CMc may also compete to self-perform portions of the work that equals not more than 20% of the project value. After the GMP has been established with the CMc, I will return to you to ask for an amendment to this contract for that GMP amount. Currently the estimate and budget for the total project is \$13million.

Funding Source: Park Capital Fund

Council Approval:

Proposals for this project were requested on behalf of the Board of Parks Commissioners on February 4, 2022. Four companies picked up plans and one submitted a proposal. After review of the proposal from Michael Kinder and Sons, we felt that the fee for pre-construction services was appropriate and competitive.

Although this contract falls below the \$100,000.00 threshold requirement for council approval, we felt it important to inform you of it since we will be returning to you for approval of a much larger contract later in the year. This too will allow you to ask any questions that you may have about this relatively new method of contract.

I'm sure you have questions so if anyone would like to discuss this with us individually, I am available. My contact is below, or you can also contact the Parks Executive Director, Steve McDaniel at steve.mcdaniel@cityoffortwayne.org or 260-427-6407.

Thank you for your time and consideration,
Sincerely,

Steve Schuhmacher
DEPUTY DIRECTOR OF PARK MAINTENANCE
Fort Wayne Parks And Recreation
Steve.schuhmacher@cityoffortwayne.org
(260) 427-6401

ConsensusDocs 500

STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONSTRUCTION MANAGER (Where the CM is At-Risk)

TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
3. CONSTRUCTION MANAGER'S RESPONSIBILITIES
4. OWNER'S RESPONSIBILITIES
5. SUBCONTRACTS
6. TIME
7. COMPENSATION AND GUARANTEED MAXIMUM PRICE
8. COST OF THE WORK
9. CHANGES
10. PAYMENT
11. INDEMNITY, INSURANCE, AND BONDS
12. SUSPENSION, NOTICE TO CURE, AND TERMINATION
13. DISPUTE MITIGATION AND RESOLUTION
14. MISCELLANEOUS
15. CONTRACT DOCUMENTS

ARTICLE 1 AGREEMENT

This Agreement is made this 8th day of March in the year 2022, by and between the

OWNER, Fort Wayne Parks & Recreation; 705 E State Blvd, Fort Wayne, IN 46805

and the

CONSTRUCTION MANAGER, Michael Kinder & Sons, Inc. located at 5206 Decatur Rd., Fort Wayne, IN 46806

for construction and services in connection with the following

PROJECT Franke Park Renaissance Project | Phase I; 3900 Sherman Blvd; Fort Wayne, IN 46808

Design Professional is Design Collaborative; 200 E. Main St. – Suite 600, Fort Wayne, IN 46802

ARTICLE 2 GENERAL PROVISIONS

2.1 PARTIES' RELATIONSHIP Each Party agrees to act on the basis of mutual trust, good faith, and fair dealing, and perform in an economical and timely manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.



2.1.1 Construction Manager represents that it is an independent contractor and that it is familiar with the type of Work it is undertaking.

2.1.2 Neither Construction Manager nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in this Agreement unless authorized in writing by Owner's Representative.

2.2 ETHICS Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest, and (b) promptly disclose to the other Party any conflicts that may arise. Each Party warrants that it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers, employees, Subcontractors, Sub-subcontractors, Suppliers, or Others to secure preferential treatment.

2.3 DESIGN PROFESSIONAL Owner, through its Design Professional, shall provide all architectural and engineering design services necessary for the completion of the Work excluding, however, (a) design services delegated to Construction Manager in accordance with §3.17, and (b) services within the construction means, methods, techniques, sequences, and procedures employed by Construction Manager, its Subcontractors, and Sub-subcontractors in connection with their construction operations.

2.4 Owner shall obtain from Design Professional either a license for Construction Manager and Subcontractors to use the design documents prepared by Design Professional or ownership of the copyrights for such design documents and shall indemnify and hold harmless Construction Manager against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents for the Project.

2.5 DEFINITIONS

2.5.1 "Agreement" means this ConsensusDocs 500 Standard Agreement and General Conditions Between Owner and Construction Manager, as modified, and exhibits and attachments made part of this agreement upon its execution.

2.5.1.1 The following and attached exhibits are a part of this Agreement:

Exhibit A: Preconstruction and Construction Management Fee Proposal (1 Page)

Exhibit B: General Conditions (2 Page)

Exhibit C: Project Milestones (1 Page)

2.5.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.5.3 A "Change Order" is a written order signed by the Parties after execution of this Agreement, indicating changes in the scope of the Work, the GMP and Date of Substantial Completion or Date of Final Completion, including substitutions proposed by Construction Manager and accepted by Owner.

2.5.4 The "Contract Documents" consist of (a) this Agreement; (b) documents listed in §15.1 as existing contract documents; (c) drawings, specifications, addenda issued and acknowledged before execution of this Agreement; (d) information furnished by Owner pursuant to §3.15.4, and (e) Change Orders, Interim Directives, and amendments issued in accordance with this Agreement.

2.5.5 "Contract Time" is the period between the Date of Commencement and the total time authorized to achieve Final Completion.



2.5.6 "Cost of the Work" means the costs and discounts specified in ARTICLE 8.

2.5.7 The "Construction Manager" is the person or entity identified in ARTICLE 1 and includes Construction Manager's Representative.

2.5.8 "Date of Commencement" is as set forth in §6.1.

2.5.9 "Day" means a calendar day.

2.5.10 "Defective Work" is any portion of the Work that that does not conform with the requirements of the Contract Documents.

2.5.11 "Design Professional" means the licensed architect or engineer, and its consultants, retained by Owner to perform design services for the Project.

2.5.12 "Final Completion" occurs on the date when Construction Manager's obligations under this Agreement are complete and accepted by Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Parties.

2.5.13 "Hazardous Material" is any substance or material identified now or in the future as hazardous under the Law, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or cleanup.

2.5.14 "Law" means federal, state, or local laws, ordinances, codes, rules, and regulations applicable to the Work with which Construction Manager must comply that are enacted as of the Agreement date.

2.5.15 "Others" means Owner's other: (a) contractors/constructors, (b) suppliers, (c) subcontractors, sub-subcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or any by any of them or for whose acts any of them may be liable.

2.5.16 "Overhead" means (a) payroll costs, burden, and other compensation of Construction Manager's employees in Construction Manager's principal and branch offices excluding employees in the principle and branch offices assigned to this project; including charges against Construction Manager for delinquent payments, and costs related to the correction of defective work; and (b) Construction Manager's capital expenses, including interest on capital used for the Work.

2.5.17 "Owner" is the person or entity identified in ARTICLE 1.

2.5.18 The "Owner's Program" is an initial description of Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, and any requirements for phased occupancy.

2.5.19 The "Parties" are collectively Owner and Construction Manager.

2.5.20 The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which Construction Manager is to perform Work under this Agreement. It may also include construction by Owner or Others.



2.5.21 The "Schedule of the Work" is the document prepared by Construction Manager that specifies the dates on which Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Owner.

2.5.22 "Subcontractor" is a person or entity retained by Construction Manager as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design Professional or Others.

2.5.23 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that Owner may occupy or utilize the Work, or a designated portion, for the use for which it is intended, without unapproved disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond Construction Manager's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Parties.

2.5.24 A "Sub-subcontractor" is a person or entity who has an agreement with a Subcontractor or another sub-subcontractor or Supplier to perform a portion of the Subcontractor's Work or supply material or equipment.

2.5.25 A "Supplier" is a person or entity retained by Construction Manager to provide material or equipment for the Work.

2.5.26 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.5.27 "Work" means the construction and administrative and management services necessary or incidental to fulfill Construction Manager's obligations for the Project in accordance with and reasonably inferable from the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

2.5.28 "Worksite" means the area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

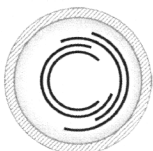
ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 Construction Manager shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with the Contract Documents and reasonably inferable from the Contract Documents.

3.1.2 Construction Manager represents that it is an independent contractor and that it is familiar with the type of work required by this Agreement.

3.1.3 Unless the Contract Documents instruct otherwise, Construction Manager shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized. When following construction means, methods, techniques, sequences, or procedures instructed by the Contract Documents, Construction Manager is not liable to Owner for damages resulting from compliance with such instructions, unless (a) Construction Manager



recognized and (b) failed to timely report to Owner any error, inconsistency, omission, or unsafe practice that it discovered in such requirements.

3.1.4 Construction Manager shall perform Work only within locations allowed by the Contract Documents, Law, and applicable permits.

3.2 CONSTRUCTION PERSONNEL AND SUPERVISION

3.2.1 Construction Manager shall provide competent supervision, project management and other required professional or administrative support for the performance of the Work.

3.2.2 Construction Manager shall be responsible to Owner for acts or omissions of Parties or entities performing portions of the Work for or on behalf of Construction Manager or any of its Subcontractors.

3.2.3 Construction Manager shall permit only fit and skilled persons to perform the Work. Construction Manager shall enforce safety procedures, strict discipline and good order among persons performing the Work. If Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, Construction Manager shall immediately reassign the person on receipt of Owner's written notice to do so.

3.2.4 CONSTRUCTION MANAGER'S REPRESENTATIVE Construction Manager's authorized representative is William A Kinder Construction Manager's Representative shall possess full authority to receive instructions from Owner and to act on those instructions. If Construction Manager changes its representative or their authority, Construction Manager shall immediately notify Owner in writing.

3.3 PRECONSTRUCTION SERVICES The Preconstruction Services under this section are included in Construction Manager's work.

3.3.1 PRELIMINARY EVALUATION Construction Manager shall provide a preliminary evaluation of Owner's Program and report such findings to Owner and Design Professional.

3.3.2 CONSULTATION Construction Manager shall schedule and attend regular meetings with Owner and Design Professional. Construction Manager shall consult with Owner and Design Professional regarding site use and improvements and the selection of materials, building systems, and equipment. Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost, including estimates of alternative designs or materials.

3.3.3 SCHEDULE OF THE WORK When Project requirements have been sufficiently identified, Construction Manager shall prepare a preliminary Schedule of the Work for Design Professional's review and Owner's approval. Construction Manager shall coordinate and integrate the Schedule of the Work with the services and activities of Owner, Construction Manager, Design Professional, and the requirements of governmental entities. As design proceeds, Construction Manager shall update the Schedule of the Work to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. If Schedule of the Work updates indicate that milestone dates contained in prior Schedules of the Work will not be met, Construction Manager shall notify and make recommendations to Owner. If the Project is to be completed in phases, Construction Manager shall make recommendations to Owner and Design Professional regarding the phased issuance of the drawings and specifications.



3.3.4 ESTIMATES

3.3.4.1 When Owner has sufficiently identified Owner's Program and other Project requirements and Design Professional has prepared other basic design criteria, Construction Manager shall prepare, for the review of Design Professional and approval of Owner, an initial estimate for the Project, utilizing area, volume, or similar conceptual estimating techniques.

3.3.4.2 When schematic or preliminary design documents have been completed by Design Professional and approved by Owner, Construction Manager shall prepare for the review of Design Professional and approval of Owner, a more detailed budget with supporting data. During the preparation of the design development documents or documents of comparable detail, Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by The Parties.

3.3.4.3 When design development documents or documents of comparable detail have been completed by Design Professional and approved by Owner, Construction Manager shall prepare a further detailed estimate with supporting data for review by Design Professional and approval by Owner. During the preparation of the drawings and specifications, Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Parties.

3.3.4.4 If any estimate submitted to Owner exceeds previously approved estimates, Construction Manager shall notify and make recommendations to Owner.

3.3.5 CONSTRUCTION DOCUMENT REVIEW Construction Manager shall review the drawings and specifications in an effort to identify potential constructability problems that could impact Construction Manager's ability to perform the Work in an expeditious and economical manner. Construction Manager shall issue a report to Design Professional and Owner for their review and action as appropriate. In addition, Construction Manager shall promptly report to Owner and Design Professional any errors or omissions which it discovers in the drawings and specifications.

3.3.6 TEMPORARY FACILITIES Construction Manager shall make recommendations regarding temporary construction facilities, equipment, materials, and services for common use by Construction Manager, its Subcontractors, Sub-subcontractors, and Suppliers.

3.3.7 LONG-LEAD-TIME ITEMS Construction Manager shall recommend to Owner and Design Professional a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Schedule of the Work. Construction Manager shall help expedite the delivery of long-lead-time items.

3.3.8 SOLICITATION OF SUBCONTRACTORS AND SUPPLIERS Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to Owner and Design Professional a list of possible subcontractors from whom proposals may be requested for each principal portion of the Work. Owner shall promptly reply in writing to Construction Manager if Owner or Design Professional know of any objection to a subcontractor. Owner may designate specific persons or entities from whom Construction Manager shall solicit bids.

3.3.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION Construction Manager shall consult with Owner regarding equal employment opportunity and affirmative action programs.

3.3.10 CONSULTANTS Construction Manager shall assist Owner in selecting, retaining, and coordinating the professional services of a surveyor, testing laboratories, and special consultants as needed.



3.3.11 PERMITS Construction Manager shall assist Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by Construction Manager.

3.3.12 OTHER PRECONSTRUCTION SERVICES Construction Manager shall provide such other preconstruction services as are agreed upon by the Parties and identified in an attached exhibit to this Agreement.

3.4 GUARANTEED MAXIMUM PRICE (GMP)

3.4.1 At such time as the Parties agree the drawings and specifications are sufficiently complete, Construction Manager shall prepare and submit to Owner in writing a GMP. The GMP proposal shall include the sum of the estimated cost of the Work, Construction Manager's Fee, the clarifications, and assumptions upon which it is based, allowances, and reasonable contingencies. Construction Manager does not guarantee any specific line item provided as part of the GMP but agrees that it will be responsible for paying all costs of completing the Work which exceeds the GMP, as adjusted in accordance with this Agreement.

3.4.2 BASIS OF GUARANTEED MAXIMUM PRICE Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

3.4.2.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal.

3.4.2.2 a list of allowances and a statement of their basis;

3.4.2.3 a list of the assumptions and clarifications made by Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications.

3.4.2.4 the Date of Substantial Completion or the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion or the Date of Final Completion is based.

3.4.2.5 a schedule of applicable alternate prices.

3.4.2.6 a schedule of applicable unit prices.

3.4.3 Construction Manager shall meet with Owner and Design Professional to review the GMP. If Owner or Design Professional discovers any inconsistencies, inaccuracies, or omissions in the information presented, they shall promptly notify Construction Manager, who shall make appropriate adjustments to the GMP. Owner shall then give prompt written approval of the GMP.

3.4.4 Owner shall cause Design Professional to revise the drawings and specifications to the extent necessary to reflect the clarifications, assumptions, and allowances on which the GMP is based. Revised drawings and specifications shall be furnished to Construction Manager in accordance with the current Schedule of the Work, unless otherwise agreed by Owner, Construction Manager, and Design Professional. Construction Manager shall promptly notify Owner and Design Professional if the revised drawings and specifications are inconsistent with the GMP's clarifications, assumptions, and allowances.



3.4.5 If the Contract Documents are not complete at the time the GMP proposal is submitted to Owner, Construction Manager shall provide in the GMP for further development of the Contract Documents. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Document.

3.4.6 If this Agreement is executed before establishment of the Guaranteed Maximum Price and its acceptance by Owner, then the GMP and its basis shall be set forth in Amendment 1.

3.4.7 Allowances shall include the costs of materials, supplies, and equipment delivered to the Worksite less applicable trade discounts and including requisite taxes, unloading, and handling at the Worksite, and labor and installation, unless specifically stated otherwise. Construction Manager's overhead and profit for the allowances will not be included in the GMP, each allowance allocation will be handled as a Change per Section 9 of the contract as it relates to overhead and profit markup as allocations are finalized. The GMP shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

3.4.8 FAILURE TO ACCEPT THE GMP PROPOSAL Unless Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies Construction Manager, the GMP Proposal shall not be effective. If Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, Owner shall have the right to:

3.4.8.1 suggest modifications to the GMP Proposal. If such modifications are accepted in writing by Construction Manager, the GMP Proposal shall be deemed accepted in accordance with §3.4.6;

3.4.8.2 direct Construction Manager to proceed on the basis of reimbursement as provided in ARTICLE 7 and ARTICLE 8 without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

3.4.8.3 terminate the Agreement for convenience in accordance with §12.4. In the absence of a GMP the Parties may establish a Date of Substantial Completion or a Date of Final Completion.

3.4.9 PRE-GMP WORK Before Owner's acceptance of the GMP Proposal, Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as Owner may specifically authorize in writing.

3.5 WORKMANSHIP

3.5.1 The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except as otherwise provided in the Contract Documents.

3.6 COOPERATION WITH WORK OF OWNER AND OTHERS

3.6.1 Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, cleanup, and safety that are substantively the same as the corresponding provisions of this Agreement.

3.6.2 If Owner elects to perform work at the Worksite directly or by Others, the Parties shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. Owner shall require each separate contractor to



cooperate with Construction Manager and assist with the coordination of activities and the review of construction schedules and operations. The GMP or the Date of Substantial Completion or the Date of Final Completion may be equitably adjusted in accordance with this Agreement, for changes resulting from the coordination of construction activities, and the Schedule of the Work shall be revised accordingly.

3.6.3 Regarding the work of Owner and Others, Construction Manager shall (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of Owner or Others or cause the work of Owner or Others to become defective; (b) afford Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities; and (c) coordinate Construction Manager's Work with theirs.

3.6.4 Before proceeding with any portion of the Work affected by the construction or operations of Owner or Others, Construction Manager shall give Owner prompt, written notification of any defects Construction Manager discovers in their work which will prevent the proper execution of the Work. Construction Manager's obligations in this subsection do not create a responsibility for the work of Owner or Others but are for the purpose of facilitating the Work. If Construction Manager does not notify Owner of defects interfering with the performance of the Work, Construction Manager acknowledges that the work of Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from Construction Manager of defects, Owner shall promptly issue an Interim Directive informing Construction Manager what action, if any, Construction Manager shall take with regard to the defects.

3.7 CONTRACT DOCUMENT REVIEW AND ADMINISTRATION

3.7.1 Before commencing the Work, Construction Manager shall examine and compare the drawings and specifications with information furnished by Owner that are considered Contract Documents, relevant field measurements made by Construction Manager, and any visible conditions at the Worksite affecting the Work.

3.7.2 Should Construction Manager discover any errors, omissions, or inconsistencies in the Contract Documents, Construction Manager shall promptly report them to Owner. It is recognized, however, that Construction Manager is not acting in the capacity of a licensed design professional, and that Construction Manager's examination is to facilitate construction and does not create an affirmative responsibility to detect defects or to ascertain compliance with a Law. Following receipt of written notice from Construction Manager of defects, Owner shall promptly inform Construction Manager what action, if any, Construction Manager shall take with regard to the defect.

3.7.3 Construction Manager shall have no liability for errors, omissions, or inconsistencies discovered under this section, unless Construction Manager knowingly fails to report a recognized problem to Owner.

3.7.4 Construction Manager may be entitled to additional costs or time because of clarifications or instructions growing out of Construction Manager's reports described in this §3.7.

3.7.5 Nothing in §3.7 shall relieve Construction Manager of responsibility for its own errors, inconsistencies, or omissions.

3.7.6 COST REPORTING Construction Manager shall maintain complete, accurate, and current records that comply with generally accepted accounting principles and calculate the proper financial management under this Agreement. Construction Manager shall maintain a complete set of all books and records prepared or used by Construction Manager with respect to the Project. Owner shall be afforded access to all of Construction Manager's records, books, correspondence, instructions,



drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. Construction Manager shall preserve all such records for a period of three years after the final payment or longer where required by Law.

3.7.6.1 Construction Manager agrees to use reasonable skill and judgment in the preparation of cost estimates and Schedule of the Work but does not warrant or guarantee their accuracy.

3.8 MATERIALS FURNISHED BY OWNER OR OTHERS

3.8.1 If the Work includes installation of materials or equipment furnished by Owner or Others, it shall be the responsibility of Construction Manager to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of Construction Manager shall be the responsibility of Construction Manager and may be deducted from any amounts due or to become due Construction Manager. Any defects discovered in such materials or equipment shall be reported at once to Owner. Following receipt of written notice from Construction Manager of defects, Owner shall promptly inform Construction Manager what action, if any, Construction Manager shall take with regard to the defects.

3.9 TESTS AND INSPECTIONS

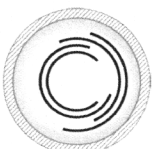
3.9.1 Construction Manager shall schedule all required tests, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. Construction Manager shall give proper notice to all required Parties of such tests, approvals, and inspections. If feasible, Owner and Others may timely observe the tests at the normal place of testing. Except as provided in §3.9.3, Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by Construction Manager and promptly delivered to Owner.

3.9.2 If Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, Construction Manager shall arrange for the procedures and give timely notice to Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at Owner's expense except as provided in the subsection below.

3.9.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of Construction Manager, Construction Manager shall be responsible for costs of correction and retesting.

3.10 WARRANTY

3.10.1 Construction Manager warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At Owner's request, Construction Manager shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Construction Manager further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. Construction Manager's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or others, or abuse.



Construction Manager's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion.

3.10.2 With respect to any portion of Work first performed after Substantial Completion, Construction Manager's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

3.10.3 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. For such incorporated items, ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED

3.10.4 Construction Manager shall obtain from its Subcontractors and Suppliers any special or extended warranties required by the Contract Documents. Construction Manager's liability for such warranties shall be limited to the one-year correction period referred to in the section immediately below. After that period Construction Manager shall provide reasonable assistance to Owner in enforcing the obligations of Subcontractors or Suppliers for such extended warranties.

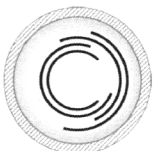
3.11 CORRECTION OF WORK WITHIN ONE YEAR

3.11.1 If before Substantial Completion or within one year after the date of Substantial Completion of the Work any Defective Work is found, Owner shall promptly notify Construction Manager in writing. Unless Owner provides written acceptance of the condition, Construction Manager shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Owner discovers and does not promptly notify Construction Manager or give Construction Manager an opportunity to test or correct Defective Work as reasonably requested by Construction Manager, Owner waives Construction Manager's obligation to correct that Defective Work as well as Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.11.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall commence when that portion of the Work is substantially complete. Correction periods shall not be extended by corrective work performed by Construction Manager.

3.11.3 If Construction Manager fails to correct Defective Work within a reasonable time after receipt of written notice from Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due Construction Manager. If payments then or thereafter due Construction Manager are not sufficient to cover such amounts, Construction Manager shall pay the difference to Owner.

3.11.4 Construction Manager's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Work which Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Construction Manager and allow Construction Manager an opportunity to correct the Work if Construction Manager elects to do so. If Construction Manager elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Construction Manager does not elect to correct the Work, Owner may have the Work corrected by itself or Others,



and, if Owner intends to seek recovery of those costs from Construction Manager, Owner shall promptly provide Construction Manager with an accounting of the actual correction costs.

3.11.5 If Construction Manager's correction or removal of Defective Work causes damage to or destroys other completed or partially completed work or existing building, Construction Manager shall be responsible for the cost of correcting the destroyed or damaged property.

3.11.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Construction Manager's other obligations under the Contract Documents.

3.11.7 Before final payment, at Owner's option and with Construction Manager's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such cases the GMP shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.12 CORRECTION OF COVERED WORK

3.12.1 Upon issuance of an Interim Directive, Work that has been covered without a requirement that it be inspected before being covered may be uncovered for Owner's inspection. Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by Owner or Others. If the uncovered Work proves to be defective, Construction Manager shall pay the costs of uncovering and replacement.

3.12.2 If any Work is covered contrary to requirements in the Contract Documents, Owner may issue an Interim Directive to uncover the Work for Owner's observation and recover the Work all at Construction Manager's expense. In this circumstance the Work shall be replaced at Construction Manager's expense and with no adjustment to the Dates of Substantial or Final Completion.

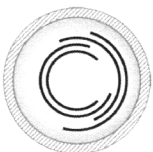
3.13 SAFETY OF PERSONS AND PROPERTY

3.13.1 SAFETY PROGRAMS Construction Manager holds overall responsibility for safety programs. However, such obligation does not relieve Subcontractors of their safety responsibilities and to comply with the Law. Construction Manager shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the Worksite; (b) materials and equipment stored at onsite or offsite locations for use in performing the Work; and (c) property located at the Worksite and adjacent to work areas, whether or not the property is part of the Worksite.

3.13.2 CONSTRUCTION MANAGER'S SAFETY REPRESENTATIVE Construction Manager shall designate an individual at the Worksite in its employ as its safety representative. Unless otherwise identified by Construction Manager in writing to Owner, Construction Manager's project superintendent shall serve as its safety representative. Construction Manager shall report promptly in writing all recordable accidents and injuries occurring at the Worksite. When Construction Manager is required to file an accident report with a public authority, Construction Manager shall furnish a copy of the report to Owner.

3.13.3 Construction Manager shall provide Owner with copies of all notices required of Construction Manager by the Law. Construction Manager's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

Damage or loss not insured under property insurance that may arise from the Work, to the extent caused by negligent or intentionally wrongful acts or omissions of Construction Manager, or anyone for



whose acts Construction Manager may be liable, shall be promptly remedied by Construction Manager.

3.13.4 If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Construction Manager's safety program, may require by Interim Directive Construction Manager to stop performance of the Work, take corrective measures satisfactory to Owner, or both. If Construction Manager does not adopt corrective measures, Owner may perform them and deduct their cost from the GMP. Construction Manager agrees to make no claim for damages, or an increase in the GMP, or for a change in the Dates of Substantial or Final Completion based on Construction Manager's compliance with Owner's reasonable request.

3.14 EMERGENCIES In an emergency affecting the safety of persons or property, Construction Manager shall act in a reasonable manner to prevent threatened damage, injury, or loss. If appropriate, an equitable adjustment in GMP or Date of Substantial Completion or Date of Final Completion shall be determined as provided for in ARTICLE 9.

3.15 HAZARDOUS MATERIALS

3.15.1 Construction Manager shall not be obligated to commence or continue Work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by Owner as certified by an independent testing laboratory, and approved by the appropriate governmental agency.

3.15.2 If after commencing the Work, Hazardous Material is discovered at the Worksite, Construction Manager shall be entitled to immediately stop Work in the affected area. Construction Manager shall promptly report the condition to Owner, Design Professional, and, if required, the governmental agency with jurisdiction.

3.15.3 Construction Manager shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.15.4 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of Owner, and shall be performed in a manner minimizing any adverse effect upon the Work.

3.15.5 If Construction Manager incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Construction Manager may be entitled to an equitable adjustment in the GMP or the Dates of Substantial or Final Completion in accordance with this Agreement.

3.15.6 To the extent permitted by §6.6 and to the extent not caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, its Subcontractors and Sub subcontractors, and the agents, officers, directors, and employees of each of them, Owner shall defend, indemnify, and hold harmless Construction Manager, its Subcontractors and Sub subcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.15.7 MATERIALS BROUGHT TO THE WORKSITE



3.15.7.1 Safety Data Sheets (SDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Construction Manager, Subcontractors, Owner or Others, shall be maintained at the Worksite by Construction Manager and made available to Owner, Subcontractors, and Others.

3.15.7.2 Construction Manager shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Construction Manager in accordance with the Contract Documents and used or consumed in the performance of the Work. Upon the issuance of the Certificate of Substantial Completion, Owner shall be responsible for materials and substances brought to the Worksite by Construction Manager if such materials or substances are required by the Contract Documents.

3.15.7.3 To the extent permitted under §6.6 and to the extent caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, its agents, officers, directors, and employees, Construction Manager shall defend, indemnify, and hold harmless Owner, its agents, officers, directors, and employees, from and against claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Construction Manager

3.15.7.4 §3.15 shall survive the completion of the Work or Agreement termination.

3.16 SUBMITTALS

3.16.1 Construction Manager shall submit to Owners designated Design Professional all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in electronic form if required in accordance with §4.6.1. Construction Manager shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, Construction Manager shall prepare and deliver its submittals in such time and sequence so as not to delay the performance of the Work or the work of Owner and Others. Construction Manager's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any Construction Manager submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless a Change Order or Interim Directive specifically authorizes such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval by Owners designated Design Professional. Neither Design Professional nor Owner shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to Construction Manager. If the Contract Documents do not contain submittal requirements pertaining to the Work, Construction Manager agrees upon request to submit in a timely fashion to Owners Design Professional for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by Owner.

3.16.2 Owners designated Design Professional shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

3.16.3 Construction Manager shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not an authorization to perform changed work, unless the procedures of ARTICLE 9 are followed. Approval does not relieve Construction Manager from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.



3.16.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to Owner upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples, and shop drawings.

3.16.5 Construction Manager shall prepare and submit to Owner

- X Final marked-up as-built drawings.
- Updated electronic data, in accordance with §4.6.1;
- Other documentation required by the Contract Documents that specifies how various elements of the Work were constructed or installed.

3.17 DESIGN DELEGATION If the Contract Documents require Construction Manager to specify that Construction Manager is responsible for the design of a particular system or component to be incorporated into the Project, then Owners designated Design Professional shall specify all required performance and design criteria. Construction Manager shall not be responsible for the adequacy of such performance and design criteria. As required by the Law, Construction Manager shall procure design services and certifications necessary to satisfactorily complete the Work from a licensed design professional. The signature and seal of Construction Manager's design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Work designed or certified by Construction Manager's design professional.

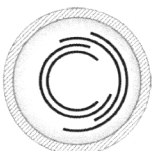
3.18 WORKSITE CONDITIONS

3.18.1 WORKSITE VISIT Construction Manager acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.18.2 CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite is (a) a subsurface or other physical condition materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Construction Manager shall stop affected Work after the condition is first observed and give prompt written notice of the condition to Owner and Design Professional. Owner and its designated Design Professional shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Construction Manager is to proceed. Construction Manager shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties. Any change in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services as a result of the condition, including any dispute about its existence or nature shall be determined as provided in ARTICLE 9.

3.19 PERMITS AND TAXES

3.19.1 Construction Manager shall give public authorities all notices required by law and, except for permits and fees that are the responsibility of Owner or designated Design Professional pursuant to §4.4, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. Construction Manager shall provide to Owner copies of all notices, permits, licenses, and renewals required under this Agreement.



3.19.2 Construction Manager shall pay applicable taxes for the Work provided by Construction Manager.

3.19.3 If, in accordance with Owner's direction, Construction Manager claims an exemption for taxes, Owner shall indemnify and hold Construction Manager harmless from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by Construction Manager as a result of any such claim.

3.20 CUTTING, FITTING, AND PATCHING

3.20.1 Construction Manager shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or Others.

3.20.2 Cutting, patching, or altering the work of Owner or Others shall be done with the prior written approval of Owner. Such approval shall not be unreasonably withheld.

3.21 CLEAN UP

3.21.1 Construction Manager shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Construction Manager shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Construction Manager shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Construction Manager shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.21.2 If Construction Manager fails to commence compliance with cleanup duties within two (2) Business Days after written notification from Owner of non-compliance, Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due to Construction Manager in the next payment period.

3.22 ACCESS TO WORK Construction Manager shall facilitate the access of Owner, its Design Professional, and Others to Work in progress.

3.23 COMPLIANCE WITH LAWS Construction Manager shall comply with all the Law at its own cost. Construction Manager shall be liable to Owner for all loss, cost, or expense attributable to any acts or omissions by Construction Manager, its employees, subcontractors, suppliers, and agents for failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if prior approval by appropriate authorities and Owner is received.

3.23.1 CHANGES IN THE LAW The GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services shall be equitably adjusted in accordance with ARTICLE 9 for additional costs or time needed resulting from Laws enacted after the date of this Agreement, including taxes.

3.24 CONFIDENTIALITY Construction Manager shall treat as confidential and not disclose to third persons, nor use for its own benefit ("Treat as Confidential"), any of Owner's confidential information, know-how, discoveries, production methods, and the like disclosed to Construction Manager or which Construction Manager may acquire in performing the Work. To the extent necessary to perform the Work, Construction Manager's confidentiality obligations do not apply to disclosures to Subcontractors, Sub subcontractors, and Suppliers. Owner shall Treat as Confidential information all of Construction Manager's estimating systems and historical and parameter cost data disclosed to Owner in performing the Work. Each Party shall specify and mark confidential items as "Confidential." Confidentiality obligations do not supersede compulsion by



Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party's legal objection.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Owner's responsibilities under this Article shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION Before commencement of the Work and thereafter at the written request of Construction Manager, Owner shall provide Construction Manager with evidence of Project financing. Evidence of such financing shall be a condition precedent to Construction Manager's commencing or continuing the Work. Construction Manager shall be notified before any material change in Project financing.

4.3 WORKSITE INFORMATION To the extent Owner has obtained, or is required to obtain the following Worksite information, then Owner shall provide Construction Manager the following:

4.3.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations.

4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or Law.

4.3.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and

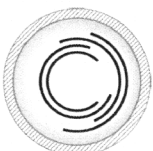
4.3.4 any other information or services requested in writing by Construction Manager which are required for Construction Manager's performance of the Work and under Owner's control.

4.4 BUILDING PERMIT, FEES, AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of Construction Manager pursuant to §3.19.1, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving Construction Manager's written request, Owner shall provide Construction Manager with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner's real property interests in the Worksite and the record legal title.

4.6 CONTRACT DOCUMENTS Unless otherwise specified, Owner shall provide a reasonable number of hard copies of the Contract Documents to Construction Manager without cost.

4.6.1 ELECTRONIC DOCUMENTS If Owner requires that Owner, Design Professional, and Construction Manager exchange documents and data in electronic or digital form, before any such exchange, Owner, Design Professional, and Construction Manager shall agree on and follow a written protocol governing all exchanges in Consensus Docs 200.2 or a separate addendum, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed upon by the



Parties in writing, each Party shall each bear its own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.7 OWNER'S REPRESENTATIVE Owner's Representative is Steve McDaniel. Owner's Representative shall be fully acquainted with the Project and shall have authority to bind Owner in all matters requiring Owner's approval, authorization, or written notice. If Owner changes its Representative or the Representative's authority, Owner shall immediately notify Construction Manager in writing.

4.8 OWNER'S CUTTING AND PATCHING Cutting, patching, or altering the Work by Owner or Others shall be done with the prior written approval of Construction Manager, which approval shall not be unreasonably withheld.

4.9 OWNER'S RIGHT TO CLEAN UP In case of a dispute between Construction Manager and Others with regard to respective responsibilities for cleanup at the Worksite, Owner may implement appropriate cleanup measures after five (5) Business Days' notice and allocate the cost among those responsible during the following pay period.

4.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of Owner or Others and not to Construction Manager, Owner may either (a) promptly remedy the damage or loss and assume affected warranty responsibilities, (b) accept the damage or loss, or (c) issue an Interim Directive or Change Order to remedy the damage or loss. If Construction Manager incurs costs or is delayed due to such loss or damage, Construction Manager may seek an equitable adjustment in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services under this Agreement.

ARTICLE 5 SUBCONTRACTS

5.1 SUBCONTRACTORS Subcontracts shall be issued on a lump sum basis unless Owner has given prior written approval of a different method of payment to the Subcontractor.

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

5.2.1 If Owner has a reasonable objection to any proposed subcontractor or material supplier, Owner shall notify Construction Manager in writing. Failure to promptly object shall constitute acceptance.

5.2.2 If Owner has reasonably and promptly objected, Construction Manager shall not contract with the proposed Subcontractor or Supplier, and Construction Manager shall propose another acceptable Subcontractor or Supplier to Owner. An appropriate Change Order shall reflect any increase or decrease in the GMP or Dates of Substantial or Final Completion because of the substitution.

5.3 BINDING OF SUBCONTRACTORS AND SUPPLIERS Construction Manager agrees to bind every Subcontractor and Supplier (and require every Subcontractor to so bind its subcontractors and significant suppliers) to the Contract Documents as they apply to the Subcontractor's or Supplier's applicable provisions to that portion of the Work.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 If this Agreement is terminated, each subcontract and supply agreement shall be assigned by Construction Manager to Owner, subject to the prior rights of any surety, provided that:

5.4.1.1 this Agreement is terminated by Owner pursuant to §12.3 or §12.4; and



5.4.1.2 Owner accepts such assignment after termination by notifying the Construction Manager and Subcontractor or Construction Manager and Supplier in writing and assumes all rights and obligations of Construction Manager pursuant to each subcontract or supply agreement.

5.4.2 If Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, the Subcontractor's or Supplier's compensation shall be equitably adjusted as a result of the suspension.

ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in ARTICLE 1 unless otherwise set forth below: March 8, 2022.

6.1.1 SUBSTANTIAL/FINAL COMPLETION Unless the Parties agree otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established in Amendment 1 to this Agreement subject to adjustments as provided for in the Contract Documents. Owner and Construction Manager may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in Amendment 1. If a GMP is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in Amendment 1. The dates for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.1.2 Time is of the essence with regard to the obligations of the Contract Documents.

6.1.3 Unless instructed by Owner in writing, Construction Manager shall not knowingly commence the Work before the effective date of Construction Manager's required insurance.

6.2 SCHEDULE OF THE WORK

6.2.1 Before submitting its first application for payment unless the first application for payment is related to preconstruction work, Construction Manager shall submit to Owner and, if directed, Design Professional, a Schedule of the Work showing the dates on which Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the Owner and the Owners Designated Design Professional. Except as otherwise directed by Owner, Construction Manager shall comply with the approved Schedule of the Work.. Unless otherwise agreed, the Schedule of the Work shall be formatted in a detailed precedence-style critical path method that (a) provides a graphic representation of all activities and events, including float values that will affect the critical path of the Work, and (b) identifies dates that are critical to ensure timely and orderly completion of the Work. Construction Manager shall update the Schedule of the Work on a monthly basis or as mutually agreed by the Parties.

6.2.2 Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved project schedule. Owner may require Construction Manager to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Owner or Others. If Construction Manager consequently incurs costs or is delayed, the GMP or the Dates of Substantial or Final Completion, or both, Construction Manager may seek equitable adjustment under ARTICLE 9.

6.3 DELAYS AND EXTENSIONS OF TIME



6.3.1 If Construction Manager is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Construction Manager, Construction Manager shall be entitled to an equitable extension of the Date of Substantial Completion or Date of Final Completion. Examples of causes beyond the control of Construction Manager include, but are not limited to, the following: (a) acts or omissions of Owner, Design Professional, or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under §12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Construction Manager; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Construction Manager shall submit any requests for equitable extensions of Contract Time in accordance with the provisions of ARTICLE 9.

6.3.2 In addition, if Construction Manager incurs additional costs as a result of a delay that is caused by items (a) through (m) immediately above, Construction Manager shall be entitled to an equitable adjustment in the GMP subject to §6.6.

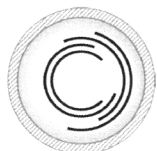
6.3.3 NOTICE OF DELAYS If delays to the Work are encountered for any reason, Construction Manager shall provide prompt written notice to Owner of the cause of such delays after Construction Manager first recognizes the delay. The Parties each agree to take reasonable steps to mitigate the effect of such delays.

6.4 NOTICE OF DELAY CLAIMS If Construction Manager requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in §6.3, Construction Manager shall give Owner written notice of the claim in accordance with §9.3. If Construction Manager causes delay in the completion of the Work, Owner shall be entitled to recover its additional costs subject to §6.6. Owner shall process any such claim against Construction Manager in accordance with ARTICLE 9.

6.5 MONITORING PROGRESS AND COSTS Following acceptance by Owner of the GMP, Construction Manager shall establish a process for monitoring actual costs against the GMP and actual progress against the Schedule of Work. Construction Manager will provide written reports to Owner at intervals as agreed to by the Parties on the status of the Work, showing variances between actual costs and the GMP and actual progress as compared to the Schedule of Work, including estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met.

6.6 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties and excluding losses covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. Owner agrees to waive damages including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. Construction Manager agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The following are excluded from this mutual waiver: [_____].

6.6.1 The Parties shall each require similar waivers in contracts with Subcontractors and Others retained for the Project.



ARTICLE 7 COMPENSATION AND GUARANTEED MAXIMUM PRICE

7.1 Owner shall compensate Construction Manager for Work performed on the following basis:

7.1.1 the Cost of the Work as allowed in ARTICLE 8; and

7.1.2 Construction Manager's Fee paid in proportion to the Work performed subject to adjustment as provided in §7.4.

7.2 The compensation to be paid shall be limited to the GMP, to be established at later date in Amendment 1, as the GMP may be adjusted under ARTICLE 9.

7.2.1 Payment for Work performed shall be as set forth in ARTICLE 10.

7.3 CONSTRUCTION MANAGER'S FEE Construction Manager's Fee shall be as follows, subject to adjustment as provided in §7.4: is 3.95%.

7.4 FEE ADJUSTMENTS:

7.4.1 Changes in the Work after GMP established as provided in ARTICLE 9, shall adjust Construction Manager's Fee as follows: Cost of Work plus 3.95% fee. This would include items outside the agreed-upon Guaranteed Maximum Price (GMP). Contingencies, which are carried within the GMP would also be subject to a 15% Change Order Fee per section 7.3.

7.4.2 except as provided for in §6.3, delays in the Work not caused by Construction Manager shall adjust Construction Manager's Fee to compensate for increased expenses as provided for in ARTICLE 9; and

7.4.3 managing the replacement of an insured or uninsured loss shall increase Construction Manager's fee in the same proportion that Construction Manager's Fee bears to the estimated Cost of the Work for the replacement.

7.5 PRECONSTRUCTION SERVICES COMPENSATION Construction Manager shall be compensated for Preconstruction Services as follows: \$39,000.

ARTICLE 8 COST OF THE WORK

8.1 Owner agrees to pay Construction Manager for the Cost of the Work as defined in this article. This payment shall be in addition to Construction Manager's Fee stipulated in §7.3.

8.2 COST ITEMS

8.2.1 Labor wages directly employed by Construction Manager in performing of the Work.

8.2.2 Salaries of Construction Manager's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office pursuant to 2.5.16.

8.2.3 Cost of all employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as



required by law, labor agreements, or paid under Construction Manager's standard personnel policy,

8.2.4 insofar as such costs are paid to employees of Construction Manager who are included in the Cost of the Work pursuant to §8.2.1 and §8.2.2.

8.2.5 Reasonable transportation, travel, hotel, and moving expenses of Construction Manager's personnel incurred in connection with the Work.

8.2.6 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, transportation, storage, and handling.

8.2.7 Payments made by Construction Manager to Subcontractors for work performed under this Agreement.

8.2.8 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed that remain the property of Construction Manager.

8.2.9 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Construction Manager or others, including installation, repair, and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from Construction Manager or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.

8.2.10 Cost of the premiums for all insurance and surety bonds which Construction Manager is required to procure or deems necessary and approved by Owner including any additional premium incurred as a result of any increase in the GMP.

8.2.11 Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Construction Manager is liable.

8.2.12 Permits, fees, licenses, tests, royalties.

8.2.13 Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the Construction Phase and for a one-year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from Construction Manager's negligence.

8.2.14 Costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office.

8.2.15 Water, power, and fuel costs necessary for the Work.

8.2.16 Cost of removal of all nonhazardous substances, debris, and waste materials.

8.2.17 Costs incurred due to an emergency affecting the safety of persons or property.

8.2.18 Legal, mediation, and arbitration fees and costs, other than those arising from disputes between Owner and Construction Manager, reasonably and properly resulting from Construction Manager's performance of the Work.



8.2.19 Costs directly incurred in the performance of the Work or in connection with the Project, and not included in Construction Manager's Fee as set forth in ARTICLE 7, which are reasonably inferable from the Contract Documents.

8.2.20 Cost of Subcontracted work Self Performed by Construction Manager (ie. Demolition; Concrete; Carpentry; Structural-Misc Steel; Specialties; etc) will comply to the terms pursuant to Article 5 Subcontract Terms.

8.3 DISCOUNTS All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner. To the extent payments are made with funds of Construction Manager, all cash discounts shall accrue to Construction Manager. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

ARTICLE 9 CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Interim Directive.

9.1 CHANGE ORDER

9.1.1 Construction Manager may request, or Owner may order changes in the Work or the timing or sequencing of the Work that impacts the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services. All such changes in the Work shall be formalized in a Change Order. Any such requests for changes in the Work shall be processed in accordance with this article.

9.1.2 For changes in the Work, the Parties shall negotiate an equitable adjustment to the GMP or the Date of Substantial Completion or Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any equitable adjustment in the GMP or Date of Substantial Completion or Date of Final Completion shall not be unreasonably withheld.

9.1.3 NO OBLIGATION TO PERFORM Construction Manager shall not be obligated to perform changes in the Work that impact the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion without a Change Order or Interim Directive.

9.2 DETERMINATION OF COST

9.2.1 An increase or decrease in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from a change in the Work shall be determined by one or more of the following methods:

9.2.1.1 unit prices set forth in this Agreement or as subsequently agreed.

9.2.1.2 a mutually accepted, itemized lump sum.

9.2.1.3 Cost of the Work as defined by ARTICLE 8 and determined as a net savings from the change in the work; plus 10% for Overhead and 5% for profit. Construction Manager's Overhead and profit shall be added to any net increase in GMP pursuant to 7.4.1. No Overhead and profit shall be applied to any net decrease in the GMP.



9.2.1.4 If there is a net increase in the GMP, Construction Manager's Fee shall be adjusted accordingly. In case of a net decrease in the GMP, Construction Manager's Fee shall not be adjusted unless ten percent (10%) or more of the Project is deleted. Construction Manager shall maintain a documented, itemized accounting evidencing the expenses and savings.

9.2.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to either Party, such unit prices shall be equitably adjusted.

9.2.3 If the Parties disagree as to whether work required by Owner is within the scope of the Work, Construction Manager shall furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

9.3 CHANGES NOTICE Except as provided in §6.3.2 and §6.4 for any claim for an increase in the GMP or the Date of Substantial Completion or Date of Final Completion, Construction Manager shall give Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after Construction Manager first recognizes the condition giving rise to the claim, whichever is later. Owner's failure to so respond shall be deemed a denial of Construction Manager's claim. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, Construction Manager shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. No later than fourteen (14) Days after receipt, Owner shall respond in writing denying or approving the claim. Owner's failure to so respond shall be deemed a denial of the claim. Any change in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from such claim shall be authorized by Change Order.

9.4 INCIDENTAL CHANGES Owner may direct Construction Manager to perform incidental changes in the Work, upon concurrence with Construction Manager that such changes do not involve adjustments in the Contract Price or the Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Owner shall initiate an incidental change in the Work by issuing a written order to Construction Manager. Such written notice shall be carried out promptly and is binding on the Parties.

ARTICLE 10 PAYMENT

10.1 SCHEDULE OF VALUES Within thirty (30) Days from the date of execution of this Agreement unless GMP has not yet been established pursuant to 3.4.6, Construction Manager shall prepare and submit to Owner and Design Professional a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the GMP.

10.2 PROGRESS PAYMENTS

10.2.1 APPLICATIONS Construction Manager shall submit to Owner and, if directed, Design Professional a monthly application for payment no later than the 30th (thirtieth) Day of the calendar month for the preceding calendar month. Construction Manager's applications for payment shall be itemized and supported by Construction Manager's schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Applications for payment shall include payment requests on account of properly authorized Change Orders. . Owner shall pay the amount otherwise due on any payment application, , no later than fifteen (15) Days after accepting such application. Owner may deduct from any progress payment amounts that may be retained pursuant to §10.2.4.



10.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by Construction Manager of bills of sale and proof of required insurance, or such other documentation satisfactory to Owner to establish the proper valuation of the stored materials and equipment, Owner's title to such materials and equipment, and to otherwise protect Owner's interests therein, including transportation to the Worksite.

10.2.3 LIEN WAIVERS AND LIENS

10.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If required by Owner, as a prerequisite for payment, Construction Manager shall provide a partial lien waiver as a coverall to the entire project and a claim waiver in the amount of the application for payment and affidavits. Such waivers shall be conditional upon payment. In no event shall Construction Manager be required to sign an unconditional waiver of lien or claim, before receiving payment or in an amount in excess of what it has been paid.

10.2.3.2 RESPONSIBILITY FOR LIENS If Owner has made payments in the time required by this article, Construction Manager shall, within thirty (30) Days after filing, remove any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If Construction Manager fails to take such action on a lien, Owner may cause the lien to be removed at Construction Manager's expense, including bond costs and reasonable attorneys' fees. This subsection shall not apply if there is a dispute pursuant to ARTICLE 13 relating to the subject matter of the lien.

10.2.4 RETAINAGE From each progress payment made before Substantial Completion, Owner may retain five percent (5%), of the amount otherwise due after deduction of any amounts as provided in §10.3, provided such percentage doesn't exceed the Law. If Owner chooses to use this retainage provision:

10.2.4.1 after the Work is fifty percent (50%) complete, Owner shall withhold no additional retainage and shall pay Construction Manager the full amount due on account of subsequent progress payments.

10.2.4.2 Owner may, in its sole discretion, reduce the amount to be retained at any time.

10.2.4.3 Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which Owner has accepted. In lieu of retainage, Construction Manager may furnish a retention bond or other security interest acceptable to Owner, to be held by Owner.

10.3 ADJUSTMENT OF CONSTRUCTION MANAGER'S PAYMENT APPLICATION Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Construction Manager is responsible under this Agreement:

10.3.1 Construction Manager's repeated failure to perform the Work as required by the Contract Documents.



10.3.2 except as accepted by the insurer providing builder's risk or other property insurance covering the Project, loss or damage arising out of or relating to this Agreement and caused by Construction Manager to Owner or others to whom Owner may be liable.

10.3.3 Construction Manager's failure to properly pay Subcontractors and Suppliers following receipt of such payment from Owner for that portion of the Work or for supplies, provided that Owner is making payments to Construction Manager in accordance with this Agreement.

10.3.4 rejected or Defective Work not corrected in a timely fashion.

10.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion.

10.3.6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work; and

10.3.7 uninsured third-party claims involving Construction Manager or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Construction Manager furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, Owner shall give written notice to Construction Manager, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by Construction Manager in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

10.4 ACCEPTANCE OF WORK Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

10.5 PAYMENT DELAY If for any reason not the fault of Construction Manager Construction Manager does not receive a progress payment from Owner within seven (7) Days after the time such payment is due, then Construction Manager, upon giving seven (7) Days' written notice to Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Construction Manager has been received, including interest for late payment. If Construction Manager incurs costs or is delayed resulting from shutdown, delay, and start-up, Construction Manager may seek an equitable adjustment in the GMP and Dates of Substantial or Final Completion may be equitably adjusted by a Change Order in accordance with ARTICLE 9.

10.6 SUBSTANTIAL COMPLETION

10.6.1 Construction Manager shall notify Owner and, if directed, Design Professional when it considers Substantial Completion of the Work or a designated portion to have been achieved. Owner, with the assistance of its Design Professional, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by Owner without excessive interference in completing any remaining unfinished Work. If Owner determines that the Work or designated portion has not reached Substantial Completion, Owner, with the assistance of its Design Professional, shall promptly compile a list of items to be completed or corrected so Owner may occupy or use the Work or designated portion for its intended use. Construction Manager shall promptly complete all items on the list.



10.6.2 When Substantial Completion of the Work or a designated portion is achieved, Construction Manager shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of each Party for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Construction Manager to Owner and, if directed, to Design Professional for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.

10.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

10.6.4 Upon Owner's written acceptance of the Certificate of Substantial Completion, Owner shall pay to Construction Manager the remaining retainage and balance held by Owner for the Work described in the Certificate of Substantial Completion less a sum equal to one hundred and fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Parties as necessary to achieve Final Completion. Uncompleted items shall be completed by Construction Manager in a mutually agreed upon timeframe. Owner shall pay Construction Manager monthly the amount retained for unfinished items as each item is completed.

10.7 PARTIAL OCCUPANCY OR USE

10.7.1 Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. Construction Manager shall not unreasonably withhold consent to partial occupancy or use. Owner shall not unreasonably refuse to accept partial occupancy.

10.8 FINAL COMPLETION AND FINAL PAYMENT

10.8.1 Upon notification from Construction Manager that the Work is complete and ready for final inspection and acceptance, Owner, with the assistance of its Design Professional shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

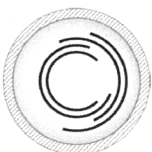
10.8.2 When the Work is complete, Construction Manager shall prepare for Owner's written acceptance a final application for payment stating that to the best of Construction Manager's knowledge, and based on Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

10.8.3 Final payment of the balance of the GMP shall be made to Construction Manager within twenty (20) Days after Construction Manager has applied for final payment, including submissions required under §10.8.4, and a Certificate of Final Completion has been executed by the Parties.

10.8.4 Final payment shall be due on Construction Manager's submission of the following to Owner:

10.8.4.1 an affidavit declaring any indebtedness connected with the Work, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Owner's property.

10.8.4.2 as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents.



10.8.4.3 release of any liens, conditioned on final payment being received.

10.8.4.4 consent of any surety; and

10.8.4.5 any outstanding known and unreported accidents or injuries experienced by Construction Manager or its Subcontractors at the Worksite.

10.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of Construction Manager, Owner shall pay the balance due for any portion of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount before payment, Construction Manager shall submit to Owner and, if directed, Design Professional the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by this §10.8.

10.8.6 OWNER RESERVATION OF CLAIMS Owner's claims not reserved in writing with final payment are waived, except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects.

10.8.7 ACCEPTANCE OF FINAL PAYMENT Unless Construction Manager provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

10.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS

11.1 INDEMNITY

11.1.1 To the fullest extent permitted by law, Construction Manager shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees, Design Professional, and Others (the "Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and other property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, Subcontractors, Suppliers, Subsubcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Construction Manager shall be entitled to reimbursement of any defense costs paid above Construction Manager's percentage of liability for the underlying claim to the extent provided for by §11.1.2.

11.1.2 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Construction Manager, its officers, directors, members, consultants, agents, and employees, Subcontractors, Suppliers, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner, Design Professional, or Others, but only to the extent caused by the negligent or intentionally wrongful acts or omissions by Owner, Design Professional, or Others. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for by §11.1.1.

11.1.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Construction Manager, anyone directly or indirectly employed by Construction Manager, or anyone



for whose acts Construction Manager may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Construction Manager under workers' compensation acts, disability benefit acts, or other employment benefit acts.

11.2 INSURANCE

11.2.1 Before starting the Work and as a condition precedent to payment, Construction Manager shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance ("CGL"). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Construction Manager shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. Construction Manager's Employers' Liability, Business Automobile Liability and CGL policies shall be written with at least the following limits of liability:

11.2.1.1 Employers' Liability Insurance

- (a) \$1,000,000 bodily injury by accident per accident.
- (b) \$1,000,000 bodily injury by disease policy limit.
- (c) \$1,000,000 bodily injury by disease per employee

11.2.1.2 Business Automobile Liability Insurance \$1,000,000 per accident.

11.2.1.3 Commercial General Liability Insurance

- (a) \$1,000,000 per occurrence.
- (b) \$2,000,000 general aggregate.
- (c) \$2,000,000 products/completed operations aggregate.
- (d) \$1,000,000 personal and advertising injury limit.

11.2.1.4 Umbrella Liability Insurance

- (a) \$2,000,000 per occurrence.
- (b) \$2,000,000 per aggregate

11.2.2 Employers' Liability, Business Automobile Liability, and CGL coverages required under §11.2.1 may be provided by a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies.

11.2.3 Construction Manager shall maintain in effect all insurance coverage required under §11.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Construction Manager fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Construction Manager, or terminate this Agreement.

11.2.4 To the extent commercially available to Construction Manager from its current insurance company, insurance policies required under §11.2.1 shall contain a provision that the insurance company or its designee must give Owner written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after cancellation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Construction Manager shall furnish Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §11.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be



cancelled, Construction Manager shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise directed in writing by Owner, before starting the Work, Owner shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also (a) name Construction Manager, Subcontractors, Sub subcontractors, and Design Professional as named insureds; (b) be written in such form to cover all risks of physical loss except those specifically excluded by the policy; and (c) insure at least against and not exclude:

11.3.1.1 the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Construction Manager) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse, however caused;

11.3.1.2 damage resulting from defective design, workmanship, or material;

11.3.1.3 coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant or structures. Coverage shall be to the extent loss or damage arises out of Construction Manager's activities or operations at the Project;

11.3.1.4 equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment;

11.3.1.5 testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and

11.3.1.6 physical loss resulting from Terrorism.

11.3.2 The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party obtaining and maintaining the Builder's Risk Policy pursuant to §11.3.1 shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Owner has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Owner shall provide a copy of the property policy or policies obtained in compliance with this §11.3.

11.3.3 If Owner elects to purchase the property insurance required by this Agreement, including all of the coverages and deductibles for the same durations specified in this §11.3, Owner shall give written notice to Construction Manager before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with this §11.3. Owner may then provide insurance to protect its interests and the interests of the Construction Manager, Subcontractors, Suppliers, and Sub subcontractors. The cost of this insurance shall be paid by Owner in a Change Order. If Owner gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Owner shall be responsible for costs reasonably attributed to such failure.



11.3.4 The Parties each waive all rights against each other and their respective employees, agents, contractors, subcontractors, suppliers, sub subcontractors, and design professionals for damages caused by risks covered by the property insurance provided under §11.3.1, except such rights as they may have to the proceeds of the insurance. To the extent of the limits of Construction Manager's Commercial General Liability Insurance specified in §11.2.1 or zero dollars (\$0), whichever is more, Construction Manager shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, Subcontractor, Supplier, Subsubcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

11.3.5 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss from damage to the Work shall be upon the Party obtaining and maintaining the Builder's Risk Policy pursuant to §11.3.1 until the Date of Final Completion.

11.3.6 POLLUTION LIABILITY INSURANCE Construction Manager is/ is not required to maintain pollution liability insurance. Unless indicated affirmatively, the obligation to procure such insurance is not triggered.

11.3.6.1 If applicable: in the following amounts: [_____] per occurrence and shall apply for [_____] year(s) after Final Completion. The policy shall cover Construction Manager's liability during construction, removal, storage, encapsulation, transport and disposal of hazardous waste and contaminated soil, and asbestos abatement. The policy shall include coverage for on-site and off-site bodily injury and loss of damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials, or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water body, whether it be gradual or sudden and accidental. The policy shall not have exclusions for mold or asbestos.

11.4 ADDITIONAL GENERAL LIABILITY COVERAGE Owner shall/ shall not require Construction Manager to purchase and maintain additional liability coverage. If required, Construction Manager shall provide:

11.4.1 Additional Insured. Owner shall be named as an additional insured on Construction Manager's CGL specified, for on-going operations and completed operations, excess/umbrella liability, commercial automobile liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of Construction Manager, or those acting on Construction Manager's behalf, in the performance of Construction Manager's work for Owner at the Worksite. The insurance of the Construction Manager and its Subcontractors (both primary and excess) shall be primary to any insurance available to the Additional Insureds.

Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by Owner directly or the costs may be reimbursed by Owner to Construction Manager by increasing the Contract Price to correspond to the actual cost required to purchase and maintain the coverage. Before commencing the Work, Construction Manager shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Owner has been named as an additional insured, as applicable.



11.4.2 ROYALTIES, PATENTS, AND COPYRIGHTS Construction Manager shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Construction Manager and incorporated in the Work. Construction Manager shall defend, indemnify, and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Owner agrees to defend, indemnify, and hold Construction Manager harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Owner or Design Professional.

11.5 BONDS Performance and Payment Bonds are/ are not required of Construction Manager. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to Owner. Owner's acceptance shall not be withheld without a reasonable cause. The penal sum of the bonds shall each be one hundred percent (100%) of the GMP. Construction Manager shall endeavor to keep its surety advised of changes potentially impacting the GMP and Contract Time, though Construction Manager shall require that its surety waives any requirement to be notified of any alteration or extension of time.

11.6 PROFESSIONAL LIABILITY INSURANCE To the extent Construction Manager is required to procure design services in accordance with §3.17, Construction Manager shall require its design professionals to obtain professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, with a company reasonably satisfactory to Owner, including coverage for all professional liability caused by any consultants to Construction Manager's design professional, written for not less than five hundred thousand dollars (\$500,000) per claim and in the aggregate with the deductible not to exceed fifty thousand dollars (\$50,000). Construction Manager's design professional shall pay the deductible. The Professional Liability Insurance shall contain a retroactive date providing prior acts coverage sufficient to cover all Services performed by the Construction Manager's design professional for this Project. Coverage shall be continued in effect for two (2) year(s) following Substantial Completion. Construction Manager's design professional shall pay the self-insured retention and deductible. The combined total deductible and self-insured retention maximum shall be twenty-five thousand dollars (\$25,000).

ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION

12.1 SUSPENSION BY OWNER FOR CONVENIENCE

12.1.1 OWNER SUSPENSION Should Owner order Construction Manager in writing to suspend, delay, or interrupt the performance of the Work for the convenience of Owner and not due to any act or omission of Construction Manager or any person or entity for whose acts or omissions Construction Manager may be liable, then Construction Manager shall immediately suspend, delay, or interrupt that portion of the Work for the time period ordered by Owner.

12.1.2 Any action taken by Owner that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all of the Work does not constitute a suspension of Work under this section.

12.2 NOTICE TO CURE A DEFAULT If Construction Manager persistently fails to supply enough properly qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards a Law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Construction Manager may be deemed in default.

12.2.1 After receiving Owner's written notice, if Construction Manager fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default with



diligence and promptness, then Owner shall give Construction Manager a second notice to correct the default within three (3) Business Days after receipt. The second notice to Construction Manager, and if applicable, the surety, may include, that Owner intends to terminate this Agreement for default absent appropriate corrective action.

12.2.2 If Construction Manager fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing reasonable means; (c) withhold payment due to Construction Manager; and (d) as Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge Construction Manager, the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

12.2.3 In the event of an emergency affecting the safety of persons or property, Owner may immediately commence and continue satisfactory correction of such default without first giving written notice to Construction Manager, but shall give Construction Manager prompt written notice.

12.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

12.3.1 Upon expiration of the second notice to cure pursuant to §12.2, and absent appropriate corrective action, Owner may terminate this Agreement by written notice. Termination for default is in addition to any other remedies available to Owner under §12.2. Termination for default is in addition to any other remedies available to Owner under §12.2. If Owner's costs arising out of Construction Manager's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid GMP, Construction Manager shall be liable to Owner for such excess costs. If Owner's costs are less than the unpaid GMP, Owner shall pay the difference to Construction Manager. If Owner exercises its rights under this section, upon the request of Construction Manager, Owner shall furnish to Construction Manager a detailed accounting of the costs incurred by Owner.

12.3.2 If Owner or Others perform work under this section, Owner shall have the right to take and use any materials and supplies for which Owner has paid and located at the Worksite for the purpose of completing any remaining Work. Owner or Others performing work under §12.3 shall also have the right to use construction tools and equipment belonging to the Construction Manager or its subcontractors and located on the Worksite for the purpose of completing the remaining Work but only after Construction Manager's written consent which shall not be unreasonably withheld. If Owner uses Construction Manager's construction tools and equipment in accordance with this subsection, then Owner shall indemnify and hold harmless Construction Manager and applicable Subcontractors and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with Owner's use of Construction Manager's or applicable subcontractor's construction tools and equipment. Immediately upon completion of the Work, any remaining materials, supplies, or equipment not consumed or incorporated in the Work shall be returned to Construction Manager in substantially the same condition as when they were taken, reasonable wear and tear excepted.

12.3.3 If Construction Manager files a petition under the Bankruptcy Code, this Agreement shall terminate if: (a) Construction Manager or Construction Manager's trustee rejects the Agreement; (b) a default occurred, and Construction Manager is unable to give adequate assurance of required performance; (c) Construction Manager is otherwise unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.



12.3.4 Owner shall make reasonable efforts to mitigate damages arising from Construction Manager's default, and shall promptly invoice Construction Manager for all amounts due pursuant to §12.2 and §12.3.

12.4 TERMINATION BY OWNER FOR CONVENIENCE

12.4.1 Upon Construction Manager's receipt of written notice from Owner, Owner may, without cause, terminate this Agreement. Construction Manager shall immediately stop the Work, follow Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

12.4.2 If Owner terminates this Agreement for convenience, Construction Manager shall be paid (a) for the Work performed to date including Overhead and profit; (b) for all demobilization costs and costs incurred resulting from termination, but not including Overhead and profit on Work not performed; and (c) reasonable attorneys' fees and costs related to termination; and (d) a premium as follows:

If Owner terminates this Agreement before commencing construction phase, Construction Manager shall be paid for Construction Manager's Preconstruction Phase services provided to date as set forth in 7.4, and a premium as set forth below.

12.4.2.1 If the termination occurs before the completion of the schematic or preliminary design documents, then the Construction Manager shall be paid for the cost of the Work and Services performed by Construction Manager up to the date of Owner's termination; or

12.4.2.2 If the termination occurs after the completion of the schematic or preliminary design documents, but before the completion of the design development documents, then the Construction Manager shall be paid: (a) for the cost of the Work and Services performed by the Construction Manager up to the date of Owner's termination; plus (b) a Fee equal to twenty-five percent (25%) of the total Fee owed to Construction Manager based on the schematic design budget; or

12.4.2.3 If the termination occurs after the completion of the design development documents, then the Construction Manager shall be paid: (a) for the cost of the Work and Services performed by the Construction Manager up to the date of Owner's termination; plus (b) a Fee equal to fifty percent (50%) of the total Fee based on the most recently approved Construction Budget.

12.4.3 If Owner terminates this Agreement after commencement of the Construction Phase, Construction Manager shall be paid for (a) the Construction Phase services provided to date pursuant to §7.4; (b) reasonable attorney's fees and costs related to termination; and (c) a premium as set forth below: If the termination occurs after the start of construction the Construction Manager shall be paid (a) for the cost of the Work and Services performed by Construction Manager up to the date of Owner's termination; plus (b) a Fee equal to one hundred percent (100%) of the total Fee based on the most recently approved Construction Budget.

12.4.3.1 execute and deliver to Owner all papers and take all action required to assign, transfer, and vest in Owner the rights of Construction Manager to all materials, supplies, and equipment for which payment has been or will be made in accordance with the Contract Documents and all subcontracts, orders, and commitments which have been made in accordance with the Contract Documents.

12.4.3.2 exert reasonable effort to reduce to a minimum Owner's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination.

12.4.3.3 cancel any subcontracts, orders, and commitments as Owner directs; and



12.4.3.4 sell at prices approved by Owner any materials, supplies, and equipment as Owner directs, with all proceeds paid or credited to Owner.

12.5 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE

12.5.1 Seven (7) Days after Owner's receipt of written notice from Owner, Construction Manager may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of Construction Manager for any of the following reasons:

12.5.1.1 under court order or order of other governmental authorities having jurisdiction.

12.5.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Construction Manager, materials are not available; or

12.5.1.3 suspension by Owner for convenience pursuant to §12.1.

12.5.2 In addition, upon seven (7) Days' written notice to Owner and an opportunity to cure within three (3) Days, Construction Manager may terminate this Agreement if Owner:

12.5.2.1 fails to furnish reasonable evidence pursuant to §4.2 that sufficient funds are available and committed for Project financing, or

12.5.2.2 assigns this Agreement over Construction Manager's reasonable objection, or

12.5.2.3 fails to pay Construction Manager in accordance with this Agreement and Construction Manager has stopped Work in compliance with §10.5, or

12.5.2.4 otherwise materially breaches this Agreement.

12.5.3 Upon termination by Construction Manager in accordance with this section, Construction Manager shall be entitled to recover from Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable Overhead and profit on Work not performed.

12.6 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

ARTICLE 13 DISPUTE MITIGATION AND RESOLUTION

13.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, Construction Manager shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution proceedings. If Construction Manager continues to perform, Owner shall continue to make payments in accordance with this Agreement.

13.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that a resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to



endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected below.

13.3 MITIGATION If the Parties select one of the dispute mitigation procedures provided in this section, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in §13.5. The Parties agree that the dispute mitigation procedure shall be:

- Project Neutral
- Dispute Review Board.

13.3.1 MITIGATION PROCEDURES As soon as practicable after the execution of this Agreement, the Project Neutral/Dispute Review Board ("Neutral/Board") shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of the Neutral's/Board's responsibilities. The costs and expenses of the Neutral/Board shall be shared equally by the Parties. The Neutral/Board shall be available to either Party, upon request, throughout the course of the Project, and shall make regular visits to the Project to maintain an up-to-date understanding of the Project progress and issues and to enable the Neutral/Board to address matters in dispute between the Parties promptly and knowledgeably. The Neutral/Board shall issue nonbinding findings within five (5) Business Days of referral of the matter to the Neutral/Board, unless good cause is shown.

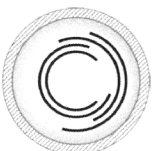
13.3.2 If the matter remains unresolved following the issuance of the nonbinding finding by the mitigation procedure or if the Neutral/Board fails to issue nonbinding findings within five (5) Business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in §13.5 ("DRB").

13.3.3 MITIGATION PROCEDURES As soon as practicable after the execution of this Agreement, the Neutral or DRB shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of responsibilities, including requirements for nonbinding findings. Costs and expenses of the Neutral or DRB shall be shared equally by the Parties. A Neutral or DRB shall be available to either Party, upon request, throughout the course of the Project, and shall make regular visits to the Project so as to maintain an up-to-date understanding of the Project progress and issues and to enable the Neutral or DRB to address matters in dispute between the Parties promptly and knowledgeably.

13.3.4 If the matter remains unresolved following the issuance of the nonbinding findings or such findings are not made within five (5) Business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in §13.5.

13.3.5 If the Parties execute a DRB Addendum, then the dispute mitigation procedures and time requirements in §13.3.1 and §13.3.2. shall be governed by that DRB Addendum.

13.4 MEDIATION If direct discussions pursuant to §13.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under §13.3, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by



written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

13.5 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

Arbitration using:

- the current Construction Industry Arbitration Rules of the AAA and administered by the AAA;
- the current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by JAMS; or
- the current arbitration rules of [_____] and administered by [_____].

Unless the Parties mutually agree otherwise in writing, if arbitration is selected as the binding dispute resolution procedure and this Agreement does not specify the arbitration rules to be utilized, then the arbitration shall be conducted using the current Construction Industry Arbitration Rules of the AAA and the arbitration shall be administered by the AAA.

Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

13.6 COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

13.7 VENUE To the extent permitted by Law, the venue of any binding dispute resolution procedure shall be the location of the Project.

13.8 MULTIPARTY PROCEEDING All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding, if possible. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

13.9 LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by Construction Manager which Construction Manager may have under lien laws.

ARTICLE 14 MISCELLANEOUS

14.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each provision is for the exclusive benefit of the Parties and not for the benefit of any third party.

14.2 ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign their interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement without written consent of the other except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Construction Manager or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Construction Manager than this Agreement. If such assignment occurs, Construction Manager shall execute any consent reasonably required. In such event, the wholly owned subsidiary or



lender shall assume Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

14.3 GOVERNING LAW The law in effect at the location of the Project shall govern this Agreement.

14.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.5 NOTICE Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

14.6 NO WAIVER OF PERFORMANCE Either Party's failure to insist upon any of its rights, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

14.7 TITLES The titles given to the articles are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.8 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms before execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

ARTICLE 15 CONTRACT DOCUMENTS

15.1 EXISTING CONTRACT DOCUMENTS The Contract Documents in existence at the time of execution of this Agreement are as follows:

- a. Drawings: – None at this time
- b. Specifications: – None at this time
- c. Addenda: – None at this time
- d. Owner Provided information: – None at this time
- e. Other: – See Attachments as denoted in §2.5.11

15.2 INTERPRETATION OF CONTRACT DOCUMENTS

15.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, Construction Manager shall perform the Work as though fully described on both.

15.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, Construction Manager shall immediately submit the matter to Owner for clarification. Subject to an equitable adjustment in the GMP, Dates of Substantial or Final Completion pursuant to ARTICLE 9 or a dispute mitigation and resolution, Owner's clarifications are final and binding.

15.2.3 Where figures are given, they shall be preferred to scaled dimensions.

15.2.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.



15.2.5 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement; (c) subject to §15.2.2 the drawings, specifications, and addenda issued before the execution of this Agreement; (d) approved submittals; (e) information furnished by Owner pursuant to §3.15.4 or designated as a Contract Document in §15.1; (f) other Contract Documents listed in this Agreement.

CONTRACT ATTACHMENTS

- 1) Exhibit A: Preconstruction and Construction Management Fee Proposal (1 Page)
- 2) Exhibit B: General Conditions (2 Page)
- 3) Exhibit C: Project Milestones (1 Page)

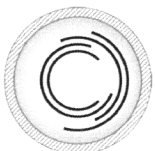
OWNER: Fort Wayne Parks & Recreation

BY: _____ NAME: Steve McDaniel TITLE: Director of Parks

CONSTRUCT MANAGER: Michael Kinder & Sons, Inc.

BY: _____ NAME: William A. Kinder TITLE: CEO

END OF DOCUMENT



FRANKE PARK RENAISSANCE PROJECT PHASE 1

| ACTIVITY | START | FINISH | DURATION |
|---|-------|---------|-------------------------------------|
| Project Milestones | | | |
| Construction Manager Hired at Board of Park Commissioners Meeting | | 2/17/22 | |
| IDNR Construction Floodway Permit Submission | | 2/28/22 | 6 to 12 months |
| Project Kickoff | | 3/3/22 | |
| Schematic Design Complete | | 4/25/22 | |
| Design Development Complete | | 5/25/22 | |
| Owners Budget Approved | | 6/2/22 | |
| Construction Documents Complete | | 6/25/22 | |
| Bidding Procurement for Phase 1 (non-floodway work) | | | |
| Phase 1 Bidding Complete | | 7/31/22 | |
| Phase 2 Bidding (Floodway Work) | | | TBD based on permitting status |
| Floodway Work Bidding: TBD | | | TBD (following permit) |
| Construction Kickoff | | 8/15/22 | |
| Construction: | | | |
| Phase 1 | | | |
| Demolition/Clearing | 8/22 | 10/22 | |
| Mass Earthwork | 9/22 | 11/22 | |
| Pavillion Construction | 10/22 | 4/23 | |
| Parking Lot/Road Construction | 4/23 | 7/23 | |
| Landscaping | 6/23 | 8/23 | |
| Phase 2 (Floodway Work) | | | Dates subject to permitting process |
| Demolition/Clearing | 10/22 | 12/22 | |
| Mass Earthwork | 11/22 | 12/22 | |
| Temp. Road Construction | 11/22 | 12/22 | |
| Bridge Construction | 1/22 | 5/23 | |
| Final Road Construction | 4/23 | 7/23 | |
| Landscaping | 8/23 | 9/23 | |

ATTACHMENT B
 Franke Park: Renaissance Project - Phase I

DETAILED GENERAL CONDITIONS

Submitted Date: 3/8/2022

FIRM NAME: Michael Kinder and Sons

| ITEM NO. | DESCRIPTION | QUANTITY | UNIT | UNIT COST | TOTAL COST | COMMENTS / CLARIFICATIONS |
|----------|---|----------|------|-----------|------------|---------------------------|
| 1 | PRECONSTRUCTION: | | | | | |
| 2 | PROJECT PRECONSTRUCTION TOTAL | | | | \$ - | |
| 3 | Officers of the Company (included in fee) | --- | --- | --- | | Included in Fee |
| 4 | Project Executive (included in fee) | --- | --- | --- | | Included in Fee |
| 5 | Sr. Preconstruction Manager | 0 | HR | \$ 125.00 | \$ - | |
| 7 | Sr. Estimator | 0 | HR | \$ 100.00 | \$ - | |
| 9 | Sr. Project Manager | 0 | HR | \$ 125.00 | \$ - | |
| 10 | Project Manager | 0 | HR | \$ 100.00 | \$ - | |
| 12 | Project Engineer - | 0 | HR | \$ 70.00 | \$ - | |
| 15 | Project Superintendent | 0 | HR | \$ 85.00 | \$ - | |
| 19 | Administrative Support | 0 | HR | \$ 56.00 | \$ - | |
| 25 | | | | | | |
| 26 | TOTAL PRECONSTRUCTION (NOT TO EXCEED) | | | | \$ - | |
| 27 | | | | | | |
| 28 | | | | | | |
| 29 | GENERAL CONDITIONS: | | | | | |
| 30 | PROJECT SUPERVISION TOTAL (On-Site Personnel Only) | | | | \$ - | |
| 31 | Officers of the Company (included in fee) | --- | --- | --- | | Included in Fee |
| 32 | Project Executive (included in fee) | --- | --- | --- | | Included in Fee |
| 33 | Sr. Project Manager | 0 | HR | \$ 125.00 | \$ - | |
| 34 | Project Manager | 0 | HR | \$ 100.00 | \$ - | |
| 37 | Project Engineer | 0 | HR | \$ 70.00 | \$ - | |
| 40 | Project Superintendent | 0 | HR | \$ 85.00 | \$ - | |
| 44 | Administrative Support | 0 | HR | \$ 50.00 | \$ - | |
| 47 | Safety Director (not full time on site) | 0 | HR | \$ 85.00 | \$ - | |
| 52 | Carpenter | --- | --- | --- | --- | Distribute in tasks below |
| 57 | PROJECT ON-SITE OFFICE TOTAL | | | | \$ - | |
| 152 | TOTAL GENERAL CONDITIONS (NOT TO EXCEED) | | | | \$ - | |

BILL NO. S-22-03-01

REPORT OF COMMITTEE ON FINANCE

March 22, 2022

Sharon Tucker Chair


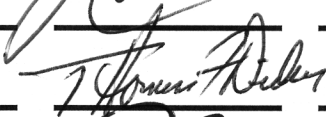

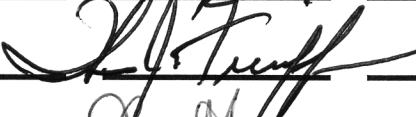




Russ Jehl Co-Chair

All Council Members

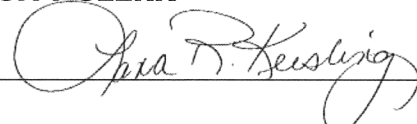
An Ordinance approving Construction Manager Contract/Phase 1 Franke Park Renaissance Project between Michael Kinder and Sons, Inc. and the City of Fort Wayne, Indiana, in connection with the Board of Parks Commissioners

Involving a total cost not to exceed \$39,000.00

COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

| <u>COUNCIL MEMBER</u> | <u>DO PASS</u> | <u>DO NOT PASS</u> | <u>ABSTAIN</u> |
|-----------------------|---|--------------------|----------------|
| <u>ARP</u> |  | | |
| <u>CHAMBERS</u> | | | |
| <u>DIDIER</u> |  | | |
| <u>ENSLEY</u> |  | | |
| <u>FREISTROFFER</u> |  | | |
| <u>HINES</u> |  | | |
| <u>JEHL</u> |  | | |
| <u>PADDOCK</u> |  | | |
| <u>TUCKER</u> |  | | |

**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilperson Tucker.

Read the second time by title and referred to the Finance Committee.

Read the third time in full and on motion by Councilperson Tucker, placed on passage by the following vote:

| <u>TOTAL VOTES</u> | <u>AYES</u> | <u>NAYS</u> | <u>ABSTAINED</u> | <u>ABSENT</u> |
|--------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| ARP | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| CHAMBERS | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| DIDIER | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ENSLEY | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| FREISTROFFER | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| HINES | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| JEHL | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| PADDOCK | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| TUCKER | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

DATED: March 22, 2022




 LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Special Ordinance No. S-22-03-01 on the 22nd day of March, 2022

ATTEST:



 LANA R. KEESLING
 CITY CLERK



 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 23rd of March 2022, at the hour of 10:15 o'clock A.M. E.S.T.



 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 23RD day of MARCH 2022, at the hour of 10:30 o'clock AM E.S.T.



 THOMAS C. HENRY, MAYOR

