

**MARQUETTE UNIVERSITY
CONSTRUCTION SERVICES PURCHASE ORDER
TERMS AND CONDITIONS (11/07)**

1. DEFINITIONS

Authorized Representative means the person(s) designated by a Party from time to time as its authorized representative in connection with this Construction Purchase Order. A Party may designate one or more Authorized Representative, provided that each Authorized Representative shall have full authority to act on behalf of a Party under this Construction Purchase Order.

Contract Documents means this Construction Purchase Order; the Contractor's proposal incorporated by reference; and all Contract Schedules, drawings, and specifications approved from time to time by the Authorized Representative of Marquette.

Contract Price means the total amount due from Marquette to Contractor for the Contract Work.

Contract Schedule means the dates by which specific Milestones must be completed as set forth in the Contract Documents or as approved by Marquette.

Contract Work means the construction, engineering services, or other activities or deliverables set forth in the Contract Documents.

Contractor shall include, where the meaning may require, the Contractor and all subcontractors.

Final Completion Date is the date on which the Notice of Final Acceptance is issued.

Losses means any actions, litigation, claims, suits liabilities, losses, damages, expenses, or costs, including but not limited to attorney's fees, incurred by a Party.

Milestone means that required interim performance by Contractor of the Contract Work as specified in the Contract Schedule.

Notice of Final Acceptance means that written notice provided by Marquette to Contractor acknowledging that the Contract Work has been finally accepted.

Progress Payment means a portion of the Contract

Price that is payable to Contractor upon the completion of a portion of the Contract Work.

Scheduled Substantial Completion Date means the date on which Contractor is obligated to complete its performance under this Construction Purchase Order such that Marquette shall have the beneficial use of the Contract Work for its intended purpose.

Site means the Marquette location at which the Contract Work is to be performed.

Substantial Completion Date means the date on which Marquette has the beneficial use of the Contract Work for its intended purpose.

2. CONTRACT WORK

2.1 Contractor shall provide all design, supervision, labor, materials, equipment, tools, incidentals, and other items, and perform all work, necessary to complete the Contract Work as described in the Contract Documents to the reasonable satisfaction of the Authorized Representative of Marquette.

2.2 The Contract Work shall conform to the Contract Documents. No deviations from the Contract Documents may be made by Contractor without the advance written consent of the Authorized Representative of Marquette.

2.3 Except as otherwise set forth in the Contract Documents, Contractor shall provide all temporary sheds, offices, or other structures required for the performance of the Contract Work and shall arrange for all required temporary connections and lines for water, electricity, telephone, gas, compressed air, steam, heat, and similar services. The Contractor shall bear all costs associated with such temporary structures and services. Upon the completion of the Contract Work, Contractor shall remove all such temporary structures, connections, and lines from the Site.

2.4 Contractor shall, at all times, protect the Contract Work and all materials, equipment, and other items of

Contractor from damage, deterioration, contamination, corrosion, and exposure. All reasonable requests of the Authorized Representative of Marquette to enclose or otherwise to protect the Contract Work shall be complied with by the Contractor at no additional cost to Marquette.

2.5 Contractor shall, at no additional cost to Marquette, obtain all licenses and permits that may be required for the prosecution of the Contract Work. Marquette shall provide such reasonable assistance as the Contractor may request from time to time.

2.6 Contractor and all of Contractor's subcontractors at all tiers shall at all times use reasonable precautions to prevent injury and illness to persons and to protect property and the environment in, about, or near the Contract Work. Contractor's activities shall at all times conform to Contractor's written safety policies and plans. Contractor's safety policies, plans, and practices shall at a minimum meet the requirements of applicable federal, state, and local environmental, health, and safety laws, regulations, and requirements, as well as the Marquette University Contractor Safety, Health, and Environmental Guidebook as it is then in effect. Contractor and Contractor's subcontractors at all tiers shall also comply with such directions as authorized Marquette representatives may give during the course of the Contract Work to eliminate, to correct, or to prevent unsafe conditions in, about, or near the Contract Work. Contractor shall designate in writing a competent person at the site of the Contract Work responsible for assuring that the requirements of this section are met and with the authority to take required corrective and preventive action. Contractor's written safety policies and plans shall be readily available for inspection at all times, and records of Contractor's safety training, OSHA logs, and first aid treatment records for Contractor's on-site personnel shall be made available to Marquette upon request within a reasonable time.

2.7 Contractor shall, upon the written request of Marquette, provide Marquette with Material Safety Data Sheets (MSDS) for the materials incorporated into the Contract Work.

2.8 Contractor shall comply at all times with all security directives and policies of Marquette applicable to the Site, including but not limited to such reasonable instructions as the Authorized Representative of Marquette may from time to time issue.

2.9 Contractor shall keep the Site free of any debris from the Contract Work and shall leave the Site in a broom-clean and neat condition.

2.10 Contractor shall remove from the Site any persons as Marquette may direct and shall not allow such persons to return to the Site without the advance written permission of Marquette, which may be granted or withheld in Marquette's sole discretion.

2.11 Contractor acknowledges that additional contractors may be responsible for the performance of work associated with the Contract Work. Contractor shall cooperate with the Authorized Representative of Marquette and with other contractors to permit the efficient and timely performance of the Contract Work and of the work of other contractors. Contractor shall inform the Authorized Representative of Marquette in writing to the extent that other contractors at the Site are interfering in any way with the Contract Work or if the Contract Work is expected to interfere, or does interfere, in any way with the work of other contractors.

3. SUBCONTRACTORS AND MATERIAL SUPPLIERS

3.1 Prior to the commencement of the Contract Work, Contractor shall provide Marquette with a complete list of the subcontractors and material suppliers to be used. The list shall include the name, address, and materials and services being provided by each subcontractor and material suppliers.

3.2 Contractor shall include in each subcontract and material order for the Contract Work a provision that permits Contractor to assign such subcontract or material order to Marquette upon written notice by Marquette.

4. CLARIFICATIONS AND CHANGES

4.1 If Contractor believes that there is or may be a conflict within the Contract Documents, or if Contractor has any doubt as to the meaning of the Contract Documents, Contractor shall immediately submit a written request for clarification and direction to the Authorized Representative of Marquette, who shall provide any clarification then required. Any work performed by Contractor prior to receipt of, or contrary to, any required clarification shall be at Contractor's sole risk and expense.

4.2 Marquette reserves the right, by written notice to Contractor, to make changes to the Contract Work; to change the Contract Schedule; or to modify, change, omit, add to, or suspend the Contract Work.

4.3 To the extent that any proposed changes to the Contract Work shall result in a change to the cost of Contractor's performance, there shall be an equitable adjustment in the Price; except that, no increase in the Contract Price shall be made unless Contractor has fully performed all of its obligations under this Construction Purchase Order. Contractor shall advise Marquette in writing, within ten (10) days of the receipt of Marquette's notice, of any proposed change in the Contract Price as a result of Marquette's proposed change in the Contract Work, along with a detailed explanation of the basis for the change in the Contract Price. Within ten (10) days of the receipt of Contractor's information, Marquette shall advise Contractor of the approved revision to the Contract Price. If the revised Contract Price is accepted by Contractor, an Amendment shall be executed by the Parties to show the changed Contract Price. If the revised Contract Price is rejected by Contractor, the Parties shall negotiate in good faith concerning a revised Contract Price. If the Parties are unable to agree on the revised Price, Marquette may, by written notice to Contractor, either (a) direct the Contractor to complete the Contract Work in accordance with the proposed changes, with the dispute between the Parties concerning the Contract Price to be submitted for resolution in accordance with section 17.3, or (b) terminate this Construction Purchase Order for the convenience of Marquette under section 20.3.

5. CONTRACT SCHEDULE

5.1 Time is of the essence in the performance by Contractor of this Construction Purchase Order, including but not limited to the date of commencement, the rate of progress, and the time of completion of the Contract Work. Contractor shall perform, continue, and complete its obligations under this Construction Purchase Order all strictly in accordance with the Construction Schedule.

5.2 Notwithstanding any other provision of this Construction Purchase Order, Contractor waives any equitable adjustments for any increase in the cost of performing the Contract Work resulting from the failure of Contractor to comply with the Contract Schedule, including but not limited to the cost of delays and costs of accelerating the Contract Work as a result of a change to the Contract Schedule necessitated by Contractor's failure to comply with the Contract Schedule.

5.3 Contractor shall, within ten (10) days after receiving the Notice of Commencement from the Authorized

Representative of Marquette, proceed with the work at such specific locations as the Authorized Representative of Marquette may designate, and shall continue to prosecute such work in a prompt and diligent manner, in addition to its obligations under section 5.1.

5.4 Except as otherwise set forth in the Contract Documents or directed in writing by the Authorized Representative of Marquette, all Contract Work shall be performed during regular business hours. If Contractor desires to perform Contract Work outside regular business hours, Contractor shall give written notice to the Authorized Representative of Marquette, which the Authorized Representative of Marquette may approve or disapprove in his or her sole discretion. If such request is approved, Contractor shall be responsible for any and all additional costs, including overtime, that may result from such request.

5.5 Contractor shall attend periodic meetings upon notice from the Authorized Representative of Marquette and shall provide such information as may be requested in order to determine the progress of the Contract Work.

5.6 Marquette may require Contractor to use critical path method scheduling and other project management techniques in the administration of the Contract Work, at no additional cost to Marquette.

5.7 At a minimum, Contractor shall provide progress reports to the Authorized Representative of Marquette not later than the tenth (10th) of each month that shall specify, as of the end of the previous month, the progress of the Contract Work by percentage by Milestone and both the projected costs and the actual costs incurred in performing the Contract Work that has been completed.

6. INSPECTION, ACCEPTANCE, AND WARRANTY

6.1 Any and all aspects of the Contract Work are subject to inspection and testing by Marquette at all reasonable times and places. Contractor shall promptly correct any and all defects or nonconformities identified as a result and shall provide notice to Marquette of such correction. The failure of Marquette to notify Contractor of any such failure shall not relieve Contractor of any of its duties under this Construction Purchase Order.

6.2 If the Contract Work is determined at any time to be defective or nonconforming in any respect, Contractor shall, at its sole expense, perform all necessary repairs and reconstruction and perform re-testing or reinspection.

6.3 Prior to the Final Acceptance Date, Contractor shall bear all risk of any loss or destruction or damage to the Contract Work and to any materials, equipment, or other property of the Contractor at the Site. Title and risk of loss shall pass to Marquette only on the Final Completion Date. Contractor shall protect the Equipment at all times prior to the Final Completion Date from all hazards and risks, and Marquette shall provide its reasonable cooperation as requested by Contractor.

6.4 Within ten (10) days after the Substantial Completion Date, Marquette shall provide written notice to Contractor of any remaining work or deficiencies in previous work of which Marquette is aware. Contractor shall complete such work and remedy all such deficiencies within thirty (30) days after the Substantial Completion Date.

6.5 Contractor warrants that the Contract Work shall comply with the Contract Documents and shall be free of defects in material and workmanship for a period of one (1) year from the Final Acceptance Date. In addition, Contractor hereby assigns to Marquette the benefit of all manufacturer's warranties for products and equipment incorporated into the Contract Work or delivered by Contractor to Marquette and billed under this Contract Purchase Order.

7. PRICE AND PAYMENT TERMS

7.1 Marquette shall pay Contractor the Contract Price for the Contract Work in accordance with this section, subject to such adjustments as may otherwise be provided in this Construction Purchase Order. All applications for payment shall be submitted in accordance with the directions of the Authorized Representative of Marquette that may be issued from time to time.

7.2 The Contract Price shall constitute Contractor's full compensation for Contractor's obligations under this Construction Purchase Order. Contractor acknowledges and agrees that the intent of the Contract Documents is to include all labor, materials, equipment, tools, plans, water, light, power, and other items necessary for Contractor to provide a complete and finished project. As a result, Contractor waives any right to additional compensation on account of any misdescription in, or omission from, the Contract Document of details of the Contract Work that are plainly necessary to carry out the general intent of the Contract Documents or that are

customarily performed or furnished by contractors for a complete and finished project.

7.3 Prior to the submission of Contractor's first request for payment, Contractor shall submit to Marquette a breakdown of the Contract Price, specifying an apportionment of the Contract Price among the Milestones. No portion of the Contract Price shall be allocated to mobilization in such breakdown, and demobilization shall be listed as a Milestone and a portion of the Contract Price apportioned to demobilization. Marquette shall review such submission and advise Contractor of the approved apportionment of the Contractor Price among the Milestones, which shall be used for the calculation of Progress Payments to Contractor under this Construction Purchase Order.

7.4 Contractor shall be entitled to request monthly Progress Payments by submitting an invoice not later than the tenth (10th) day of the calendar month following the month for which the Progress Payment is sought. Lien waivers from Contractor and from all subcontractors who have performed work at the Site and all material suppliers who have provided materials that have been delivered to the Site, substantially in the form set forth in this Construction Purchase Order, effective through thirty (30) days prior to the last day of the calendar month for which the Progress Payment is sought, shall accompany the Progress Payment request. The Authorized Representative of Marquette shall determine the progress of the Contract Work at the end of each calendar month and shall revise the Progress Payment request as necessary to conform to such determination, which shall be binding on Contractor.

7.5 Unless waived in whole or in part by the Authorized Representative of Marquette in writing, ten percent (10%) of each Progress Payment up to fifty percent (50%) completion of the Contract Work shall be retained by Marquette until final payment.

7.6 Payment terms are net 30 days. No interest shall be payable with respect to any amounts due or that may be due Contractor under this Construction Purchase Order. All invoices shall reference the Marquette Construction Purchase Order Number and shall be sent to the Marquette Accounts Payable Department unless otherwise set forth in the Contract Documents.

7.7 Final payment shall be made to Contractor within forty-five (45) days after the latter of (a) the Final Completion Date or (b) the date on which Contractor submits final conditional lien waivers and releases from all subcontractors and material suppliers.

7.8 Final unconditional lien waivers from Contractor and proof of payment of the amounts stated in the final conditional lien waivers of all subcontractors and material suppliers shall be submitted by Contractor to the Authorized Representative of Marquette within ten (10) days of receipt by Contractor of final payment.

7.9 The making of any payment to Contractor under this Construction Purchase Order shall not constitute evidence of satisfactory performance of any obligation of Contractor under this Construction Purchase Order or of acceptance of any defective or incomplete Contract Work.

7.10 The acceptance of any payment by Contractor shall constitute a release of Marquette by Contractor of any and all liability, except for amounts expressly retained, for any reason arising or incurred during the period to which the payment relates, other than claims or disputes expressly reserved in writing in the request for payment. Acceptance of final payment by Contractor constitutes a general release under this Construction Purchase Order.

8. AUDIT AND RECORDS

8.1 Marquette shall have the right, upon reasonable notice of not less than seven (7) days and during regular business hours, to audit any and all of Contractor's records concerning this Construction Purchase Order. Contractor shall provide all reasonable assistance as may be required.

8.2 Contractor shall provide Marquette with any and all information necessary to permit Marquette to allocate costs between structural and non-structural components and for purposes of determining related income, sales, use, or ad valorem taxes. Contractor shall also furnish Marquette, upon request, affidavits of status of accounts and releases of liens as may be deemed necessary by Marquette.

9. SETOFFS AND COUNTERCLAIMS

9.1 Marquette shall be entitled to exercise a right of setoff or counterclaim with respect to any amounts due Contractor under this Construction Purchase Order without otherwise being considered in breach of its obligations under this Construction Purchase Order. Such right may be exercised as Marquette may deem reasonably necessary to protect Marquette from any actual or potential liability or damage arising out of or related to this Construction Purchase Order for which Contractor may be liable.

9.2 More specifically, and without limiting the foregoing, and in addition to Contractor's obligations under section 12, upon the filing of any laborer, material supplier, or mechanic liens on the Equipment or on the Site as a result of the work performed by Contractor under this Construction Purchase Order, if Contractor fails to secure the release of such liens, Marquette may, upon ten (10) days advance notice to Contractor, take all necessary steps, including but not limited to payment, to secure the release of the lien, and any amount paid by Marquette, including but not limited to reasonable attorney's fees and costs, shall be paid by Contractor to Marquette or, in the absence of such payment and at Marquette's election, Marquette may deduct such amounts from amounts owed Contractor under this Construction Purchase Order. Contractor agrees that, in such event, Contractor shall look only to the person responsible for such lien for recovery.

10. PERFORMANCE AND PAYMENT BONDS

At any time prior to the Final Completion Date, within ten (10) days of the written request of Marquette, Contractor shall provide Marquette with payment and performance bonds, from a good and sufficient surety approved in advance by the Authorized Representative of Marquette, to secure its obligations under this Construction Purchase Order. Upon proof of payment of the premiums associated with such bonds, Marquette shall reimburse Contractor for the cost of such bonds.

11. REPRESENTATIONS AND WARRANTIES

11.1 Contractor represents that it is a corporation in good standing in the state in which it is incorporated; that the person designated to act on behalf of the Contractor is authorized to do so; and that it is unaware of any governmental action or pre-existing obligation that would prevent it from performing its obligations as set forth in this Construction Purchase Order.

11.2 Contractor represents and warrants that the Contract Work and Contractor's performance of it shall comply with all applicable federal, state, and local laws, ordinances, orders, rules, and regulations.

11.3 Contractor represents and warrants that neither the Contract Documents prepared by Contractor nor the Contract Work performed by Contractor shall infringe any United States patent or any other intellectual property right of a third person.

11.4 Contractor represents and warrants that it shall not permit or allow any laborer, mechanic, or material supplier liens upon the Site arising out of the Contract Work or out of any labor, materials, or equipment furnished by any person under this Contract.

11.5 Contractor represents that Contractor has had a full and complete opportunity to examine both the Site of the Contract Work and all of the Contract Documents and that Contractor is satisfied as to the character, quality, and quantity of the Contract Work required to be performed under this Construction Purchase Order, as well as the materials, equipment, and other items that may be required of Contractor as a result and the conditions for the performance of the Contract Work that will be encountered at the Site that may affect the cost or difficulty of performing the Contract Work.

12. INDEMNIFICATION

12.1 To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold Marquette, its Trustees, officers, employees, subsidiaries, affiliates, successors, assigns, and agents harmless from all Losses, to the extent that such Losses shall arise out of or are related to (a) the performance of the Contract Work, including but not limited to claims of personal injury by employees of Contractor, employees of Marquette, or any other person; and (b) Contractor's breach of its representations and warranties under section 11. Nothing in this section shall be limited in any way by any limitation on the amount or type of damages, compensation, or benefits paid to any person under worker's compensation, disability benefits, or other employee benefit acts.

12.2 Marquette shall provide Contractor with prompt notice of any Loss. Contractor shall have the exclusive right to control the defense of any Loss, including but not limited to the exclusive right to settle or to compromise any Loss, except as otherwise set forth in this Construction Purchase Order. Marquette shall provide reasonable assistance to Contractor with respect to the defense of any Loss, including making documents and witnesses available to Contractor without cost.

13. PUBLIC STATEMENTS AND PRESS RELEASES

Any press release or public announcement related to this Construction Purchase Order or to the terms and conditions of this Construction Purchase Order must be mutually agreed by the Parties prior to its issuance, except to the extent required by law.

14. FORCE MAJEURE

Neither Party shall be liable for any failure to perform under this Construction Purchase Order to the extent such failure is the result of causes beyond the control and without the fault or negligence of the non-performing Party, including but not limited to wars, strikes, fires, acts of God, acts of a public enemy, terrorism or threats of terrorism, labor difficulties, shortages of raw materials or components, or freight embargoes. A Party seeking the benefit of this provision shall provide prompt written notice to the other Party when a force majeure event has occurred and when the force majeure event has terminated.

15. INSURANCE

Contractor shall provide to Marquette, at the time that Contractor returns an executed copy of this Construction Purchase Order, a Certificate of Insurance evidencing its insurance coverage(s) then in effect. Such insurance coverage(s) shall be with a reputable insurer and shall not be less than those that may be specified by Marquette from time to time in writing to Contractor. Such coverages shall include, at a minimum, worker's compensation insurance, including employer's liability insurance, as statutorily required, as well as (a) comprehensive general bodily injury liability insurance comprehensive general property liability insurance of not less than Two Million Dollars (\$2,000,000) Combined Single Limit per occurrence and (b) comprehensive automobile liability insurance of not less than Two Million Dollars (\$2,000,000) Combined Single Limit per occurrence. Comprehensive general liability provisions shall include Premises/Operations, Contractual Liability, Fire Legal Liability, Independent Contractors, Products Liability, and Completed Operations coverage for not less than three (3) years after the completion of the Contract Work. The Certificate of Insurance shall also name Marquette and its subsidiaries and affiliates as additional insureds or certificate holders with thirty (30) days advance written notice of cancellation or non-renewal. Contractor shall provide information concerning policy form, retroactive date, discovery provisions, and retention upon request. Use of purchasing or retention groups and requests for waiver of other requirements in this section 15 shall be submitted in writing in advance of commencement of the Contract Work. Contractor shall, to the extent that its insurance coverage(s) may be modified from time to time prior to the completion of the Contract Work, promptly provide revised Certificates of Insurance to Marquette. If Contractor fails to maintain the required

insurance coverage(s) in force at all times prior to the Termination Date, Marquette may treat such failure as a default under section 20.4 and to provide notice as permitted under that section. Marquette reserves the right not to pay any invoice from Contractor unless Marquette has received a valid Certificate of Insurance in accordance with this section and, in addition, to obtain the required insurance on behalf of the Contractor and to charge the Contractor with the cost of such insurance.

16. EQUAL EMPLOYMENT

16.1 Contractor shall comply with all laws, rules, and regulations related to employment, including but not limited to Executive Order No. 11246, Equal Employment Opportunity, effective October 24, 1965; the Vietnam Era Readjustment Assistance Act of 1974 and Executive Order 11701, relating to the employment of veterans; the Rehabilitation Act of 1973 and Executive Order No. 11758, related to the employment of handicapped persons; any and all amendments to the above; and any and all applicable state and local statutes, regulations, and ordinances on the same subjects.

16.2 Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, gender, age, national origin, or sexual preference. Contractor shall require each of its subcontractors to comply with this section.

17. GOVERNING LAW, JURISDICTION, AND DISPUTES

17.1 This Construction Purchase Order shall be construed and interpreted in accordance with the laws of the State of Wisconsin, without regard to its choice of law provisions.

17.2 Each Party consents to the non-exclusive jurisdiction of the courts of Wisconsin for resolution of disputes arising out of or related in any way to this Construction Purchase Order.

17.3 Contractor shall continue to perform its obligations under this Construction Purchase Order during the pendency of any dispute. Contractor shall comply with any and all reasonable orders issued by the Authorized Representative of Marquette during the pendency of any dispute. No such order shall prejudice the rights of either Party regarding the dispute or be interpreted as an admission by Marquette. The failure of Contractor to continue to perform its obligations or to comply with any such order may be treated by Marquette as a default under this Construction Purchase Order.

18. ATTORNEY'S FEES

Should either Party employ an attorney to enforce any of the provisions of this Construction Purchase Order, or to protect its interests in any manner arising out of this Construction Purchase Order, or to recover damages as a result of the breach of this Construction Purchase Order by Contractor, or to prosecute or to defend any litigation or legal action as a result of this Construction Purchase Order, the prevailing party shall be entitled to recover all reasonable costs, charges, expenses, and attorney's fees expended or incurred as a result.

19. ASSIGNMENT

Neither Party may assign this Construction Purchase Order or any rights or obligations under this Construction Purchase Order, and any assignment without the express written consent of the other Parties will be invalid; except that, either Party shall be permitted to assign this Construction Purchase Order to any wholly-owned subsidiary without obtaining prior approval.

20. TERM, TERMINATION, AND SURVIVAL

20.1 Acceptance of this Construction Purchase Order occurs when (a) Contractor acknowledges acceptance in writing or (b) Contractor commences any part of the Contract Work, including but not limited to placing orders for materials to be incorporated into the Contract Work. This Construction Purchase Order will continue in effect until Final Acceptance, unless terminated earlier in accordance with this section.

20.2 If a force majeure event continues for a period of more than thirty (30) days, the Party not claiming the benefit of force majeure shall have the right to terminate this Construction Purchase Order for its convenience immediately, without any further liability to the Party claiming the benefit of force majeure.

20.3 Marquette may, at any time and for its convenience, terminate this Construction Purchase Order in whole or in part by written notice to the Contractor. Upon the receipt of the notice, Contractor shall discontinue the terminated Contract Work at the time and in the manner set forth in the notice, or if none, immediately; place no further material orders and enter into no further subcontracts, except as may be necessary to complete the portion of the Contract Work not terminated; direct all subcontractors to suspend the portion of the Contract Work that has been terminated;

and perform such additional work as may be necessary to preserve and to protect the Contract Work in progress and to protect materials and equipment at the Site. Upon the request of Marquette, Contractor shall also make all commercially reasonable efforts to secure the cancellation of any subcontract and material orders not fully performed on such terms as may be satisfactory to Marquette. Contractor shall be entitled to receive Progress Payments for all completed Work; unrecovered costs associated with the cancellation of outstanding subcontracts and material orders; and costs of demobilization.

20.4 Either Party may terminate this Construction Purchase Order for default by written notice to the other Party, provided that the terminating Party shall have given at least thirty (30) days advance written notice of its intent to terminate this Construction Purchase Order for default and the defaulting Party shall have failed to cure the defaults within the required time, or, if such cure cannot reasonably be accomplished within thirty (30) days, the defaulting Party has not taken all commercially reasonable action to cure the default at the earliest commercially reasonable time and does not continue to prosecute such actions diligently until such defaults are cured.

20.5 If it is determined that Marquette has wrongfully terminated the Construction Purchase Order in accordance with this section 20, Contractor shall be entitled to compensation as set forth in section 20.3 as its sole and complete remedy.

20.6 Upon the expiration or termination of this Construction Purchase Order, each Party shall promptly pay to the other Party any unpaid and undisputed amounts due as of the Termination Date. Each Party shall provide written notice to the other, within thirty (30) days of the Termination Date, of any amounts claimed by the other Party that remain unpaid and disputed, including with specificity the reasons why such amounts have not been paid; but the failure to give such notice shall not, in and of itself, waive any right under this Construction Purchase Order to recover such amount.

20.7 In addition, upon the termination of this Construction Purchase Order for any reason, and upon the written request of the Authorized Representative of Marquette at the time that the notice of termination is given, Contractor shall assign such subcontracts and material orders to Marquette.

20.8 Upon the expiration or termination of this

Construction Purchase Order, Marquette's obligation to pay for Contractor Work in accordance with the terms of this Construction Purchase Order shall survive, as well as the obligations of the Parties set forth under the Warranty, Consequential Damages, Setoffs and Counterclaims, Insurance, Indemnification, Public Statements and Press Releases, Confidentiality, Governing Law, Jurisdiction, and Disputes, and Miscellaneous provisions of this Construction Purchase Order.

21. MISCELLANEOUS

21.1 All notices under this Construction Purchase Order must be in writing. Notices will be sent to the addresses indicated on the signature page of the Construction Purchase Order. All Amendments to this Construction Purchase Order must be in writing and signed by the Parties.

21.2 This Construction Purchase Order does not create any agency, employment, partnership, joint venture, or other joint relationship. The Parties are independent contractors. No Party has any authority to bind any other Party. Marquette does not reserve, and does not have, any right to exercise any control over, or to direct in any respect, the performance of the Contract Work. The entire direction of the activities of Contractor under this Construction Purchase Order remains with the Contractor.

21.3 If and to the extent any provision of this Construction Purchase Order is held illegal, invalid, or unenforceable in whole or in part under applicable law, such provision or such portion thereof will be ineffective as to the jurisdiction in which it is illegal, invalid, or unenforceable to the extent of its illegality, invalidity, or unenforceability, and such provision will be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the Parties. The illegality, invalidity, or unenforceability of such provision in that jurisdiction will not in any way affect the legality, validity or enforceability of such provision or of any other provisions of this Construction Purchase Order in any other jurisdiction.

21.4 The Contract Documents are intended to be construed as a whole. The Contract Documents are complementary, so that what is called for by any one of the Contract Documents shall be as binding as if it were called for by all of the Contract Documents. If there is a conflict within the Contract Documents, the provisions of this Construction Purchase Order shall govern.

21.5 The failure of any Party to assert any of its rights under this Construction Purchase Order, including but not limited to the right to terminate the Construction Purchase Order in the event of breach or default by another Party, will not be deemed to constitute a waiver by that Party of its right thereafter to enforce each and every provision of this Construction Purchase Order in accordance with their respective terms.

21.6 Nothing in this Construction Purchase Order will prevent or restrict any Party from entering into agreements for the provision of products and services of the same or similar nature as those provided under the Construction Purchase Order with any other person.

21.7 A facsimile version, including a facsimile signature, shall be considered the same as an original for

all purposes. The headings in this Construction Purchase Order are for reference purposes only and shall not affect in any way the interpretation of this Construction Purchase Order.

21.8 This Construction Purchase Order, including any Addenda or Exhibits, constitutes the entire understanding of the Parties with respect to the subject matter thereof and will supersede all previous and contemporaneous communications, representations, or understandings, either oral or written, between or among the Parties relating to that subject matter and will not be contradicted or supplemented by any prior course of dealing between or among the Parties.

END OF TERMS AND CONDITIONS

**CONSTRUCTION SERVICES AGREEMENT
FORM OF AFFIDAVIT AND WAIVER OF LIEN**

STATE OF _____
COUNTY OF _____, 200__

_____, being first duly sworn, states as follows:

1. I am _____ (job title) of _____ (“Contractor”) and am familiar with the facts stated in this Affidavit.
2. Contractor has performed for Marquette Corporation certain labor or furnished certain supplies, materials, equipment, or facilities, or both, or by others for it, in connection with _____ (“the Project”), and payment less retainages has been made by all such others for all labor, supplies, materials, equipment, and other facilities furnished by them.
3. Contractor has no lien or other rights on account of any labor, supplies, materials, equipment, or facilities furnished by it, or by others for it, in connection with the Project.
4. In consideration for payment of _____ Dollars (\$_____), Contractor hereby waives all liens and claims against Marquette, its premises, its assets, and its property, through _____, 200__.
5. Contractor shall indemnify, defend, and hold Marquette harmless against any and all liens, claims, and suits that may now or hereafter be asserted on account of any labor, supplies, materials, equipment, or facilities furnished by it, or by others for it, in connection with the Project, including but not limited to all expenses, costs, and attorney’s fees associated with any such liens, claims, or suits.

Contractor

Subscribed and sworn to before me
this ___ day of _____, 200__.

Notary Public, State of _____
My commission _____.