

## Addendum No. 1

DATE: June 20, 2011

TO: All Planholders

FROM: Daniel A. Dombos PE DAD 06/20/11  
Project Engineer

RE: City of Benton Harbor  
West Klock Road Bike Path Project

OWNER: Harbor Shores  
602 Pleasant Street  
St. Joseph, MI 49085

The following items are changes to and/or clarifications of the drawings and specifications, and shall be included in the Bid Proposal. All these items will be part of the Contract Documents. The Bidder will acknowledge receipt of this addendum in the appropriate space provided in Section 001 40 – Bid Forms. Failure to acknowledge addenda may result in disqualification of the Bid.

### **General:**

#### **Item 1.1: Change of Owner**

The Owner of the Project has been changed from the City of Benton Harbor to Harbor Shores. This change will be reflected in the revised bid forms (attached) and bonds submitted with the Bid.

### **Specifications:**

#### **Item 1.2: Cover Page**

1. Owner: Delete "City of Benton Harbor" and Replace with "Harbor Shores."

**Item 1.2: Section 00050 Invitation to Bid**

1. Delete the first two paragraphs and replace with the following:  
Sealed bids will be received until 2:00 p.m., LOCAL TIME, on June 28, 2011, at the offices of Abonmarche, 95 West Main Street, Benton Harbor, MI 49022. At which time and place, said bids will be opened privately for the West Klock Road Bike Path Project.

All bids shall be addressed to Harbor Shores, 608 Pleasant Street, St. Joseph, MI 49085. Bids shall be sealed and shall have the name and address of the bidder and the contract for which the bid is being submitted on the outside of the envelope. All bidders shall bid in accordance with and upon the bid forms included in the contract documents. No bids will be received after the designated time stated above.

2. Delete the fifth paragraph and replace it with the following:  
All bids shall be subject to the Harbor Shores Handbook for Supporting Local Employment and the Local Business Consortium.

A copy of this document has been attached and shall become part of the Contract Documents.

**Item 1.3: Section 00210 Instructions to Bidders**

1. Article 15.02 – Delete “ the City of Benton Harbor” and replace with “Harbor Shores.”
2. Article 17.01 – Delete “unless obviously non-responsive, read aloud publicly” and replace with “read privately.”
3. Article 22 – Delete Article 22 in its entirety.

**Item 1.4: Section 00410 Bid Forms (Reissued with this Addendum)**

1. Article 1 – Delete Article 1.01 and replace with the following:

This Bid is submitted to:

Harbor Shores  
608 Pleasant Street  
St. Joseph, MI 49085



**Item 1.5: Section 00510 Notice of Award**

1. Owner: Delete "City of Benton Harbor" and Replace with "Harbor Shores."

**Item 1.6: Section 00520 Agreement Form**

1. Owner: Delete "City of Benton Harbor" and Replace with "Harbor Shores."

**Item 1.7: Section 00550 Notice to Proceed**

1. Owner: Delete "City of Benton Harbor" and Replace with "Harbor Shores."

**Item 1.8: Section 00610 Performance Bonds**

1. Owner: Delete "City of Benton Harbor, 200 East Wall Street, Benton Harbor, MI 49022" and replace with "Harbor Shores, 608 Pleasant Street, St. Joseph, MI 49085."

**Item 1.9: Section 00615 Payment Bonds**

1. Owner: Delete "City of Benton Harbor, 200 East Wall Street, Benton Harbor, MI 49022" and replace with "Harbor Shores, 608 Pleasant Street, St. Joseph, MI 49085."

**Item 1.10: Section 00800 Supplementary Conditions (Reissued with this Addendum)**

1. Delete Section 00800 Supplementary Conditions and replace with the attached Section 00800 Supplementary Conditions – Harbor Shores.

**Item 1.11: Add Section - Harbor Shores Handbook for Supporting Local Employment and the Local Business Consortium.**

1. A copy of this document has been attached and shall become part of the Contract Documents.

**Plans**

**Item 1.12: Cover Page and Title Blocks**

1. Owner: Delete "City of Benton Harbor" and Replace with "Harbor Shores."



**Attachments**

Specification Section 00410 Bid Forms

Specification Section 00520 Agreement Form

Specification Section 00800 Supplementary Conditions – Harbor Shores

Harbor Shores Handbook for Supporting Local Employment and the Local Business Consortium.

If you have any questions or comments related to this addendum, please feel free to contact our office.

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Date

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Bidding Firm

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Authorized Representative



**SECTION 00410****BID FORMS****TABLE OF CONTENTS**

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**ARTICLE 1 – BID RECIPIENT**

1.01 This Bid is submitted to:

Harbor Shores  
608 Pleasant Street  
St. Joseph, MI 49085

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

**ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS**

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

**ARTICLE 3 – BIDDER’S REPRESENTATIONS**

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

<u>Addendum No.</u>	<u>Addendum Date</u>
1	June 20, 2011
_____	_____
_____	_____

B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in SC-4.02 as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in SC-4.06 as containing reliable "technical data."

- E. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 3.01.E above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

#### **ARTICLE 4 – BIDDER'S CERTIFICATION**

##### 4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;

2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

## ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
1.	Mobilization	LS	1	\$	\$
2.	Culv, Rem, Less than 24 inch	Ft	3	\$	\$
3.	Sidewalk, Rem	Syd	218	\$	\$
4.	Pavt, Rem, Modified	Syd	194	\$	\$
5.	Subgrade Undercutting, Type II	Cyd	100	\$	\$
6.	Aggregate, 6A	Cyd	11	\$	\$
7.	Erosion Control, Inlet Protection, Fabric Drop	Ea	4	\$	\$
8.	Erosion Control, Silt Fence	Ft	2,221	\$	\$
9.	Aggregate Base, 6 inch, Modified	Syd	2,131	\$	\$
10.	Culv, Cl A, 12 inch	Ft	199	\$	\$
11.	Culv End Sect, 12 inch	Ea	6	\$	\$
12.	Dr Structure, 48 inch dia	Ea	1	\$	\$
13.	Dr Structure Cover, Adj, Case 2	Ea	3	\$	\$
14.	Dr Structure Cover, Modified	Lb	1,578	\$	\$
15.	San Structure, Adj, Case 2	Ea	1	\$	\$
16.	HMA, 13A	Ton	147	\$	\$
17.	HMA, 36A	Ton	147	\$	\$

18.	HMA Approach	Ton	7	\$	\$
19.	Conc Pavt, Nonreinf, 9 inch	Syd	44	\$	\$
20.	Driveway, Nonreinf Conc, 8 inch	Syd	130	\$	\$
21.	Curb and Gutter, Conc, Det C4	Ft	80	\$	\$
22.	Sidewalk, Conc, 4 inch	Sft	1,895	\$	\$
23.	Sidewalk Ramp, ADA, Modified	Sft	342	\$	\$
24.	Bicycle Path, Grading	Ft	1,585	\$	\$
25.	Pavt Mrkg, Ovly Cold Plastic, 12 inch, Crosswalk	Ft	277	\$	\$
26.	Pavt Mrkg, Ovly Cold Plastic, 24 inch, Stop Bar	Ft	44	\$	\$
27.	Pavt Mrkg, Waterborne, 4 inch, Yellow	Ft	25	\$	\$
28.	Flag Control	LS	1	\$	\$
29.	Lighted Arrow, Type B, Furn	Ea	1	\$	\$
30.	Lighted Arrow, Type B, Oper	Ea	1	\$	\$
31.	Minor Traf Devices	LS	1	\$	\$
32.	Plastic Drum, High Intensity, Furn	Ea	50	\$	\$
33.	Plastic Drum, High Intensity, Oper	Ea	50	\$	\$
34.	Sign, Type B, Temp, Furn	Sft	212	\$	\$
35.	Sign, Type B, Temp, Oper	Sft	212	\$	\$
36.	Riprap, Heavy	Syd	45	\$	\$
37.	Slope Restoration, Special	Syd	4,250	\$	\$
Total of All Bid Prices					\$

Unit Prices have been computed in accordance with Paragraph 11.03.B of the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

**ARTICLE 6 – TIME OF COMPLETION**

- 6.01 Bidder agrees that the Work will be substantially complete on or before September 15, 2011, and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before September 30, 2011.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

**ARTICLE 7 – ATTACHMENTS TO THIS BID**

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid security in the form of a Bid Bond;
  - B. List of Proposed Subcontractors;
  - C. List of Proposed Suppliers;
  - D. List of Project References;
  - E. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
  - F. Contractor's License No.: \_\_\_\_\_ or Evidence of Bidder's ability to obtain a State Contractor's License and a covenant by Bidder to obtain said license within the time for acceptance of Bids;
  - G. Bidder Qualification Statement with Supporting Data (if required), and;
  - H. Non-Collusion Affidavit

**ARTICLE 8 – DEFINED TERMS**

- 8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

**ARTICLE 9 – BID SUBMITTAL**

9.01 This Bid is submitted by:

If Bidder is:

An Individual

Name (typed or printed): \_\_\_\_\_

By: \_\_\_\_\_  
(Individual’s signature)

Doing business as: \_\_\_\_\_

A Partnership

Partnership Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

A Corporation

Corporation Name: \_\_\_\_\_ (SEAL)

State of Incorporation: \_\_\_\_\_  
Type (General Business, Professional, Service, Limited Liability): \_\_\_\_\_

By: \_\_\_\_\_  
(Signature -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_  
(CORPORATE SEAL)

Attest \_\_\_\_\_

Date of Qualification to do business in Michigan is \_\_\_\_ / \_\_\_\_ / \_\_\_\_.

A Joint Venture

Name of Joint Venture: \_\_\_\_\_

First Joint Venturer Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

Second Joint Venturer Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
(Signature of second joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address \_\_\_\_\_

Phone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

E-mail \_\_\_\_\_

SUBMITTED on \_\_\_\_\_, 20\_\_\_\_.

State Contractor License No. \_\_\_\_\_ *[If applicable]*

## AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between \_\_\_\_\_ Harbor Shores \_\_\_\_\_ (“Owner”) and  
\_\_\_\_\_  
\_\_\_\_\_ (“Contractor”).

Owner and Contractor hereby agree as follows:

### ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

West Klock Road Bike Path Project

### ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

West Klock Road Bike Path Project

### ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Abonmarche (Engineer), which is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

### ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Dates for Substantial Completion and Final Payment*

A. The Work will be substantially completed on or before September 15, 2011, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before September 30, 2011.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$500.00 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500.00 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

**ARTICLE 5 – CONTRACT PRICE**

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

		<u>UNIT PRICE WORK</u>			
<u>Item</u>			<u>Estimated</u>	<u>Bid Unit</u>	
<u>No.</u>	<u>Description</u>	<u>Unit</u>	<u>Quantity</u>	<u>Price</u>	<u>Bid Price</u>

See Attached Bid Form

Total of all Bid Prices (Unit Price Work) \$ \_\_\_\_\_

B. The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions,

estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 30th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
    - a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
    - b. 0 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

## **ARTICLE 7 – INTEREST**

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 0 percent per annum.

## **ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.
  - E. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
  - F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  - G. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

- H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 8, inclusive).
2. Performance bond (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
3. Payment bond (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
4. Other bonds (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - a. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - b. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - c. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
5. General Conditions (pages 1 to 67, inclusive).
6. Supplementary Conditions (pages 1 to 4, inclusive).
7. Specifications as listed in the table of contents of the Project Manual.
8. Drawings consisting of 9 sheets with each sheet bearing the following general title: West Klock Road Bike Path Project the Drawings listed on attached sheet index.
9. Addenda (numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive).
10. Exhibits to this Agreement (enumerated as follows):
  - a. Contractor's Bid (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - b. Documentation submitted by Contractor prior to Notice of Award (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a. Notice to Proceed (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - b. Work Change Directives.

- c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## ARTICLE 10 – MISCELLANEOUS

### 10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### 10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### 10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No.: \_\_\_\_\_

(Where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

*NOTE TO USER: Use in those states or other jurisdictions where applicable or required.*

Agent for service of process:

\_\_\_\_\_

**SECTION 00800**  
**SUPPLEMENTARY CONDITIONS**  
**HARBOR SHORES**

The following provisions modify, change or add to, Section 00700 of the Standard General Conditions. Where any Article, Paragraph, Subparagraph or Clause thereof is modified or deleted by these Supplementary Conditions, the unaltered provisions of that Article, Paragraph, Subparagraph or Clause shall remain in effect.

I. Amend Article 2.05 as follows:

2.05.A.1 The estimated project schedule shall meet the following requirements:

- a. The Project Schedule shall be prepared in a reasonable level of detail so as to provide a workable tool in monitoring the progress of the work; working activities shall not exceed the completion date set forth in the phasing plan.
- b. The Project Schedule shall use the detailed Critical Path Method.
- c. The project Schedule shall portray the specific plan of operation proposed by the CONTRACTOR including construction means, methods, techniques, sequences and procedures.
- d. The Project Schedule shall include activities of the OWNER and the OWNER'S separate contractors and any other factors or conditions disclosed to the CONTRACTOR by the OWNER, including tenant finish work.
- e. If the OWNER does not object to the "estimated Project Schedule", it shall become the "final project schedule" and shall be binding on the CONTRACTOR. (See Art. 2.9 below.)
- f. The CONTRACTOR shall be responsible to obtain, on a daily basis all information which affects activities on the Project Schedule and shall update the Project Schedule at regular intervals or as required by the OWNER.
- g. If the CONTRACTOR shall fail to adhere to the Project Schedule, he must promptly supply additional labor, equipment and materials, as appropriate, and work such additional time over regular hours, and/or supply such additional workmen as may be required to bring the Work on schedule, without additional cost or expense to the OWNER, including claims for inefficiency due to the cost of overtime or additional labor.

II. Amend Article 5 as follows:

**INSURANCE**

The following are minimum insurance requirements which are required under this contract for both the general contractor and the sub contractors.

## MINIMUM INSURANCE COVERAGE REQUIRED

- A. Worker's Compensation Insurance - Worker's Compensation Insurance as required by the State of Michigan and Employer's General Liability Insurance with a limit of not less than \$500,000 covering all of the CONTRACTOR'S employees engaged in any operations hereunder.
- B. Comprehensive General Liability - CONTRACTOR shall procure and maintain during the life of this contract, Contractor's Public Liability Insurance in an amount not less than \$500,000 per occurrence and \$1,000,000 Aggregate for Bodily Injury and Property Damage. Coverage shall include Premises and Operations, Products and Completed Operations, Independent Contractors, Contractual, Personal Injury and the Hazard of Explosion, Collapse and Underground. The certificate of insurance shall attest to the fact that the above coverage applies specifically to this project.
- C. Comprehensive Automobile Liability - The CONTRACTOR shall procure and maintain during the life of this contract Statutory Michigan No-Fault Automobile Coverage and Residential Bodily Injury and Property Damage in an amount not less than \$1,000,000 for each occurrence. Coverage is to be on a Comprehensive form including Hired and Non-Owned exposures at the limit stated above.
- D. OWNER'S Protective Liability - The CONTRACTOR shall procure and maintain during the life of this contract, Owner's and Contractor's Protective Liability for Bodily Injury and Property Damage in the name of the OWNER and ENGINEER in an amount not less than \$1,000,000 each occurrence, \$2,000,000 Aggregate. Such insurance shall include motor vehicle exposure as well as specific coverage for the so-called Explosion, Collapse and underground Hazards.
- E. Excess (Umbrella) Liability - The CONTRACTOR shall procure and maintain, during the life of this contract, Excess Liability in an amount of not less than \$2,000,000 each Occurrence and Aggregate. Such coverage shall be on a follow form basis and be excess to Employer's Liability, Comprehensive General Liability and residual Automobile Liability coverage.
- F. Builders Risk Coverage - The OWNER shall procure and maintain coverage for the perils of Fire, Extended Coverage and All Risk during the life of the project.
- G. Installation Floater - The CONTRACTOR shall procure and maintain, at his discretion, an Installation Floater for the protection of his material, equipment and supplies not installed in the project.
- H. Proof of Coverage - The CONTRACTOR shall provide the OWNER at the time the contracts are returned by him for execution of certificates and policies attesting to the required coverages. Such certificates and policies shall guarantee that 30 days notice will be given prior to cancellation or change in any such insurance required.
- I. Additional Requirements - The CONTRACTOR and all Subcontractors shall include the following requirements:
- Occurrence Forms, at least equivalent to CG001 10 01
  - Include coverage for Premises Operations, Independent Contractors, Products/Completed Operations, Personal Injury & Advertising Liability per project Aggregate.
  - No endorsements or modifications arising from explosion, collapse, Underground

- Property damage or Work performed by subcontractors
- Include Waiver of Subrogation on General Liability and Worker's Comp.
- Harbor Shores shall be named as an entity as Additional Insured using CG 2010 10 01 or CG2037 10 01. Actual copies of the endorsements issued are required.
- Excess Liability policies should be Following Form.

III. Amend Article 11 as follows:

#### CONTRACT PRICE

11.04 Unit Prices All Inclusive: Unit Prices (and Lump Sum Amounts) include all charges applicable to the item including, but not limited to fee, layout, supervision (field and home office), labor, materials, equipment, general expenses, overhead and profit, taxes, permits, licenses, government authorizations, approvals and notices, bonds, patents, royalties and insurance premiums.

IV. Amend Article 14 as follows:

#### PAYMENTS

14.02.A. 3 Retention: All retained amounts shall be held by the OWNER until Final Completion of the Work. The retainage for this contract shall be ten percent.  
(10%)

Assignment: The CONTRACTOR shall not assign, transfer, or further sublet the Contract, nor assign any moneys due or to become due hereunder, except with the prior consent of the OWNER. Any assignment of the contract consented to by the OWNER shall not operate to relieve the CONTRACTOR of primary responsibility to the OWNER for all acts and omissions of CONTRACTOR'S SUBCONTRACTORS and assignees. The OWNER reserves the right to assign both the benefits and/or obligations of the OWNER under the Contract Documents, in whole or in part, absolutely or as security, to any party reasonably capable of performing OWNER'S executory obligations under this Contract at any time and, upon such assignment (except in the case of an assignment as security), OWNER shall have no further responsibility for the obligations so assigned hereunder which at that time remain executory, provided such party assumes such obligations. Further no approved SUBCONTRACTOR shall further subcontract any portion of his subcontract without prior approval of the OWNER.

Disposal of Materials: Whenever the CONTRACTOR is permitted or required under the Specifications to dispose of materials off-site, the CONTRACTOR shall properly dispose of such materials in accordance with all applicable laws, codes, regulations, and requirements of governmental agencies.

V. Delete paragraph 4.03.A.2

VI. Amend paragraph 4.03.A.4 as follows:

For purposes of this agreement, "unusual nature", "differs materially" and "generally recognized as inherent in the work" shall mean that such condition is dramatically, extremely and completely unforeseeably different than that which is generally recognized as inherent in the character of the work or the nature of the geological subsoil of the Northwest Quadrant of the Lower Peninsula of the State of Michigan and that the Contractor can establish such differing condition by clear and convincing evidence.

VII. Add Article 4.03.D

In any action for a claim for contract adjustment, the CONTRACTOR must demonstrate and establish the claimed differing conditions by clear and convincing evidence that such differing condition exists before disturbing the physical condition.

VIII. Add Article 4.02.3

In preparation of the Drawings and Specifications, the DESIGNER and ENGINEER have relied upon such reports and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work as are specially referred to in the Agreement. These reports are available at the OWNER's office and may be obtained during working hours for a nominal printing charge. These reports have been used solely for informational purposes during the preparation of the Contract Documents. Such reports are not guaranteed as to accuracy or completeness and do not constitute in any way a part of said Contract Documents.

IX. Add Article 9 Duties of Designer and Engineer

9.1. During the construction process, DESIGNER (Nicklaus Design) will be responsible for assuring the integrity of the original design concepts of the golf course as set forth in the Contract Documents, and ENGINEER will be responsible for assuring the integrity of the engineering concepts and practices as approved by ENGINEER in the Contract Documents. DESIGNER and ENGINEER will serve as consultants to OWNER in connection with the construction process and shall advise and assist the parties as provided in this Article 9. The duties and responsibilities of DESIGNER and ENGINEER as set forth in the Contract Documents shall not be extended without written consent of OWNER, DESIGNER and ENGINEER.

9.2. VISITS TO SITE. DESIGNER and ENGINEER will be on site during the various stages of construction to observe the progress of the executed Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. Neither DESIGNER nor ENGINEER shall be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. DESIGNER's and ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed work will conform to the Contract Documents. DESIGNER and ENGINEER will keep OWNER informed of the progress of the Work and will use their best efforts to inform OWNER regarding any defects or deficiencies in the Work noted by them in connection with visits to the site.

9.3. CLARIFICATIONS AND INTERPRETATIONS. DESIGNER and ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as the parties may reasonably request. The rights of the parties with respect to any such clarification or interpretation shall be governed by Paragraph 10.2, below.

9.4. REJECTING DEFECTIVE WORK. DESIGNER or ENGINEER may recommend that OWNER disapprove or reject Work which is defective, and may recommend that OWNER require special inspection or testing of the Work as provided in paragraph 13.8, whether or not the Work is fabricated, installed or completed. OWNER shall have the right to reject or accept defective Work regardless of any recommendations made by DESIGNER or ENGINEER hereunder, and CONTRACTOR shall be liable for correction of defective Work as further provided in Article 13 of this Agreement regardless of whether or not such Work or any part thereof is rejected by OWNER or reviewed by DESIGNER or ENGINEER.

9.5. FIELD NOTES, SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS. ENGINEER shall be responsible for on site verification of Field Notes prepared by CONTRACTOR. Any discrepancies noted by ENGINEER's staff in connection with their review of Field Notes shall be called to the attention of CONTRACTOR and DESIGNER so that appropriate corrections can be made by CONTRACTOR. In connection with DESIGNER's and ENGINEER's responsibility for Shop Drawings and samples, see paragraphs 6.22 through 6.25 inclusive. In connection with DESIGNER's and ENGINEER's responsibilities as to Change Orders, see Article 10, 11 and 12. In connection with DESIGNER's and ENGINEER's responsibilities in respect of Applications for Payment, etc., see Article 14.

9.6. PROJECT REPRESENTATION. DESIGNER shall be represented generally under the Agreement by the Design Associate assigned to the project by DESIGNER and identified in writing to OWNER, ENGINEER and CONTRACTOR. OWNER, ENGINEER and CONTRACTOR shall be entitled to rely upon the authority of the designated Design Associate unless notified in writing to the contrary by DESIGNER. If OWNER's agreement with DESIGNER is for a signature design, the Design Associate shall be responsible for communicating the directions of the principal designer engaged for the project, except for directions communicated directly by the principal designer during site visits to the project. If expressly provided in the Design Agreement between DESIGNER and OWNER, DESIGNER shall furnish a Design Coordinator who will be on site generally during the progress of the Work, to assist DESIGNER in observing the performance of the Work and coordinating the participation of the Design Associate and principal designer, if any. The duties, responsibilities and limitations of authority of the DESIGNER shall be exercised by and apply to the Design Associate, unless otherwise expressly provided in the Contract Documents or by written notice to OWNER, CONTRACTOR and ENGINEER. The Design Associate may further delegate duties, responsibilities or authority of DESIGNER to a Design Coordinator, which delegation shall not be effective unless in writing, in which case the Design Coordinator shall be deemed to represent DESIGNER within the scope of the matters so delegated and subject to the terms of such writing.

9.7. DESIGNER will be the initial interpreter of the requirements of the Contract Documents and shall, upon request, advise the parties concerning its judgment regarding the acceptability of the Work thereunder.

9.8. LIMITATIONS ON RESPONSIBILITIES. Neither the grant of authority to act under this Article 9 or elsewhere in the Contract Documents to DESIGNER or ENGINEER nor any action or inaction by DESIGNER or ENGINEER in good faith in performance of their duties to OWNER shall give rise to any duty or responsibility of DESIGNER or ENGINEER to CONTRACTOR, any Subcontractor, any manufacturer, fabricator, supplier or distributor, or any of their agents or employees or any other person performing any of the Work.

9.9. Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed" or terms of the like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used, to describe requirement, direction, review or judgment of DESIGNER or ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that DESIGNER or ENGINEER shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of paragraphs 9.10 or 9.11.

9.10. Neither DESIGNER nor ENGINEER will be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and neither DESIGNER nor ENGINEER will be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

9.11. Neither DESIGNER nor ENGINEER will be responsible for the acts or omissions of CONTRACTOR or of any Subcontractors, or of the agents or employees of any CONTRACTOR or Subcontractor, or of any other persons at the site or otherwise performing any of the Work.

X. Modify Paragraph 4.03 by the addition of the following language:

The Owner may deduct liquidated damages from any unpaid amounts then and thereafter due the Contractor under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable to the Owner by the date specified by the Owner, but in no event less than fourteen (14) days from the date of the Owner's demand. Interest at the lower of (i) one-quarter percentage point above the "prime" rate published in the "Money Rates" section of *The Wall Street Journal* or (ii) the maximum legal rate shall begin to accrue on the date such liquidated damages are due until paid.

XI. Modify Paragraph 1.02, Part E, Subparagraph 1 by the addition of the following language:

The word "including" shall not be a word of limitation, but instead shall be construed as introducing one or more nonexclusive examples. The words "consent," "approved," "satisfactory," "proper," "as directed," any derivatives of them, or similar terms, mean written approval by the Owner, and may include approval of the Design Professional if the Owner so directs. Except where a different standard is specifically established, the Owner has the right to grant or withhold approval in its sole discretion.

XII. Amend article 3.03 as follows:

3.03B2 Other conflicts between or among the Contract Documents shall be resolved under the following rules of construction:

(1) The specific shall govern over the general and the more stringent standard shall always apply.

(2) Specified dimensions shown on the Drawings shall govern, even though they may differ from dimensions scaled on the Drawings, if any;

- (3) Drawings of larger scale shall govern over those of smaller scale; any special Drawing details shall govern over standard detail;
  - (4) Specifications shall govern over Drawings in matters of material or equipment specified; Drawings shall govern over Specifications in matters of construction or installation detail;
  - (5) Documents of later date shall always govern; except that
  - (6) The Agreement shall govern over all other documents, regardless of their dates.
- XIII. Modify Paragraphs 4.06G and H by the insertion of the words "or exacerbated" after the word "created" wherever it occurs.
- XIV. Modify Paragraph 5.07 by adding the words "or required to be covered" after the word "covered" on the nineteenth line. Also, delete the words "as trustee" from the second-to-the-last line of that paragraph.
- XV. Amend Article 5.06 as follows:
- 5.06F The Contractor and all subcontractors should be required to insure all of their personal property, such as tools, equipment and supplies, under an "all-risk" policy of insurance for the full amount of their replacement cost. The Contractor and all Subcontractors shall be responsible for this property, including theft or mysterious disappearance thereof, wherever it is located, even if it is located on the Site. Contractor, and not Owner, shall be responsible for Site security.
- XVI. Modify Paragraph 6.02 by the addition of Part C, as follows:
- Unless a benchmark on the CPM schedule is missed by contractor, should Owner call for any portion of the Work to be accomplished utilizing a work week in excess of that designated herein, Owner shall reimburse Contractor for resulting additional costs with the amount thereof to be determined in accordance with Contractor's regular accounting procedure. If a benchmark on the CPM schedule is missed by Contractor without the fault of Owner, Contractor will submit to Owner, and implement at its sole cost, a plan to return to the CPM schedule. This plan shall, unless overtime work is unnecessary, include overtime work to be performed at the sole expense of Contractor.
- XVII. Modify Paragraph 6.09B by the insertion of the words "or negligently failing to ascertain" after the word "know" on the second line.
- XVIII. Modify Paragraph 6.20 by the insertion of the word "defend," after the word "shall" on the second line; delete the parenthetical beginning on the thirteenth line; and insert the words "of any tier" after the word "them" on the second-to-the-last line.
- XIX. The Contract shall require that the Contractor require all Subcontractors to undertake to it the duties and responsibilities that it has undertaken to Harbor Shores in the Contract Documents. In addition, it is critical that the dispute resolution provision incorporated into the Contractor/Harbor Shores documents be also incorporated into all design contracts and subcontracts.
- XX. Modify Paragraph 7.03 by the removal of the word "direct" in Parts B and C of that

paragraph.

XXI. Modify Paragraph 10.03A by the addition of a new Subparagraph 4, providing as follows:

**Full Compensation.** The changes to the Contract Price and Contract Times (if any) granted under a Change Order will constitute the parties' agreed final adjustments to the Agreement as a result of the change to the Work described therein. Each Change Order will be cumulative of all prior Change Orders with respect to the Project and, together with all previous Change Orders, will have specified the full and complete compensation (in money and time) owing Contractor for or as a result of changes to the Work, including all direct costs, indirect costs, overhead costs, taxes, interest, general and administrative expenses, profit and all effects (direct, indirect and consequential, such as impacts, delay, acceleration [actual or constructive], hindrance, disruption, interference, loss of productivity, impairment, manpower inefficiencies, lost opportunity, and "ripple effects"), of the Work covered by Change Orders on the remainder of the Work. Contractor releases Owner from all other claims and charges whatsoever related to changes in the Work.

XXII. Modify Paragraph 10.05 to reduce the window for delivery of claims to 10 days, and the window for explanation of claims to 30 days.

XXIII. Modify the seventh line of Paragraph 12.03A by the deletion of the words "but not be" and replacement with the words "and are."

XXIV. Modify Paragraph 12.03C by the deletion of the phrase beginning with the word "or" on the fourth line and continuing through the word "Contractor" at the beginning of the sixth line. Then add the following sentence should be added at the end of Paragraph 12.03C:

Contractor shall not be entitled to any monetary compensation for delays described in this Paragraph 12.03C.

XXV. Add the following language to Paragraph 12.03B:

For purposes of this Paragraph 12.03B, "delays, disrupts or interferes" means actual delay to Contractor's completion of the Work beyond the Scheduled Completion date caused by: (i) Change Orders initiated by Owner, (ii) Owner's failure to provide any data or information requested in writing by Contractor that is necessary for Contractor to carry out its duties and is Owner's obligation to provide under this Agreement after receipt of such (so long as Owner is given adequate time to respond); or (iii) unjustified interference by Owner or anyone for whom Owner is responsible, with Contractor's performance of the Work which continues after written notice to Owner of such interference. Owner's exercise of any of its rights under the Contract Documents regarding changes in the Work, regardless of the extent or number of such changes, or Owner's exercise of any of its remedies of suspension of the Work or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as unjustified interference with Contractor's performance of the Work or an event of default under this Agreement.

XXVI. Amend Article 12.03 as follows:

12.03F Contractor shall notify Owner within 24 hours of the commencement of an event for which it may seek an equitable adjustment in the Contract Price or the Contract Times, or both. If Contractor fails to do so, its right to any equitable adjustment shall be deemed waived. In addition, Contractor shall use its best efforts to mitigate the effect of any delay referred to in this Paragraph 12.03.

XXVII. Modify Paragraph 12.03E by the addition of the phrase "or anyone employed by any of them at any tier" after the word "Supplier" on the fourth line.

XXVIII. Modify Paragraph 14.02A1 by adding the following language at the end.

An Application for Payment shall constitute a representation and warranty by the Contractor that the Work has progressed to the stage indicated and has been properly completed in a good and workmanlike manner in accordance with the Drawings and Specifications.

XXIX. Modify Paragraph 14.02A2 by the deletion of the word "legitimate" on the second-to-the-last line.

XXX. Modify Paragraph 14.05 by adding the word "reasonably" before the word "agree" on the sixth line.

XXXI. Modify Paragraph 14.02D by the insertion of a new Subparagraph 4, providing as follows:

Contractor shall promptly discharge, by payment or bond, any Lien filed in connection with the Work, except to the extent of unjust nonpayment by Owner. If Contractor fails to discharge any Lien within 30 days after its filing, Owner shall have the right to do so and to deduct all costs of doing so, including attorneys' fees, bond premiums and filing fees, from payments next coming due to Contractor

XXXII. Modify Paragraph 15.03A4 by adding the word "demobilization" after the word "reasonable".

XXXIII. Modify Article 15.03 by adding a new Paragraph 15.03C, providing as follows:

If any termination of Contractor for cause is held to be wrongful, it shall then be deemed a termination by the Owner for convenience, and the provisions of Paragraph 15.03 shall apply in all respects.

XXXIV. Modify Article 16 by the deletion of Paragraph 16.01 and insertion of the following in its place:

## DISPUTES

16.1 Claims. A "Claim" is (i) a demand or assertion by one of the parties seeking adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the Agreement or any of the Contract Documents that (ii) the parties' respective project managers and/ or the Engineer have been unable to resolve. The term "Claim" also includes all other disputes, controversies and matters in question between or among the Owner and the Contractor or any Subcontractor or Supplier arising out of or in any way relating to the Agreement, or the Work. Claims must be made by written notice to the other party containing as much detail as reasonably possible. The responsibility to substantiate claims shall rest with the party making the Claim.

16.2 Time Limits on Claims. Except as otherwise specifically provided in the Agreement, Claims by either party must be made promptly and within not more than twenty-one (21) days, unless a longer period is granted in writing, after the claimant first recognizes the condition giving rise to the Claim, whether or not any impact in money or time has been determined.

16.3 Continuing Contract Performance. Pending final resolution of a Claim, Work shall continue unabated, the Contractor shall proceed diligently with performance of the Services, and the Owner shall continue to make payments in accordance with the Contract Documents, except as to amounts in good faith dispute.

16.4 Claims for Additional Cost. Subject to the limitations contained elsewhere in the Agreement, if the Contractor wishes to make a Claim for an adjustment in the contract Price or Contract Times, to the extent the Claim is reasonably discoverable, written notice of it shall be given to the Owner before the Contractor proceeds to execute the Work for which the Claim is made. Prior notice is not required for Claims relating to a bona fide emergency endangering life or property.

16.5 Claims for Additional Time on Account of Weather. If adverse weather conditions are the basis for a Claim, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and shall be valid only to the extent that such adverse weather conditions caused an adverse effect on CPM Schedule.

16.6 Injury or Damage to Person or Property. If either party suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, prompt notice of such injury or damage, whether or not insured, shall be given to all on-site representatives of the parties, and written notice shall thereafter be given within a reasonable time and not exceeding twenty-four (24) hours in the case of serious personal injury or damage or seventy-two (72) hours in all other cases after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter.

16.7 Negotiated Resolution.

16.7.1 All Claims shall initially, prior to arbitration, be submitted first to the Owner's and Contractor's presidents for resolution by mutual agreement. Any mutual agreement reached shall be final and binding upon the parties.

16.7.2 If the presidents fail, after at least one (1) face-to-face meeting, to come to a resolution by mutual agreement within thirty (30) business days, after notice to both presidents of the Claim, the Claim shall be submitted to binding arbitration.

16.7.3 All applicable periods of limitation shall be tolled during the pendency of negotiations under this Paragraph 16.7. If the parties mutually agree to defer resolution of any Claim until completion of the Work or another mutually acceptable date, all applicable limitations periods shall remain tolled until the agreed date.

## 16.8 Arbitration.

16.8.1 A Claim that has not been resolved in accordance with the terms and provisions of Paragraph 8.1 hereof is a "Dispute" that shall be settled by arbitration in accordance with the terms and provisions set forth in Paragraphs 16.8.2 through 16.8.9.

16.8.2 All arbitration proceedings shall be conducted in accordance with the "Modified Fast Track" Construction Industry Arbitration Rules set forth below in Paragraph 16.8.2.1 (the "MFTR"). Arbitration shall be commenced within a reasonable time after the parties fail to resolve a Claim in accordance with the provisions of Paragraph 16.7. In no event shall demand for arbitration be made or permitted after the date when the institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

### 16.8.2.1 Modified Fast Track Rules

#### **F-1. Applicability**

The Modified Fast Track Rules ("MFTR") shall apply to all arbitration proceedings under the Agreement, regardless of the amount in controversy. The MFTR shall be applied as described herein, in addition to any other portion of the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") that are not in conflict with the Arbitration provisions of the General Conditions (Part 09.1, *et seq.*) and the MFTR.

#### **F-2. Limitation On Extensions**

In the absence of extraordinary circumstances, the AAA may grant a party no more than one seven (7) business-day extension of the time in which to respond to a demand for arbitration or counterclaim as provided in Section F-3. In extraordinary instances, the AAA or the arbitrators may grant an additional extension.

#### **F-3. Changes of Claim or Counterclaim**

A party may at any time prior to the close of the hearing increase or decrease the amount of its claim or counterclaim. Any new or different claim or counterclaim, as opposed to an increase or decrease in the amount of a pending claim or counterclaim, shall be made in writing and filed with the AAA, and a copy shall be mailed to the other party, who shall have a period of five (5) business days from the date of such mailing

within which to file an answer with the AAA. The arbitrators shall determine whether such new or different claims or counterclaims shall be heard together with or separately from a pending claim or counterclaim, toward the goal of assuring a just, speedy, and economical determination of all disputes.

**F-4. Communication of Notices**

The parties shall accept all notice from the AAA by mail, overnight delivery, telephone or electronic facsimile ("fax"). Such notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any notice hereunder, the proceeding shall nonetheless be valid if notice has, in fact, been given by telephone.

**F-5. Appointment and Qualification of Arbitrator**

The arbitrators shall be appointed and qualified as provided in Paragraph 8.1.5 of the General Conditions.

**F-6. Preliminary Telephone Conferences**

Unless otherwise agreed by the parties and the arbitrators, as promptly as practicable after the submission of a claim, a preliminary telephone conference shall be held among the parties or their attorneys or representatives, and the arbitrators.

**F-7. Exchange Of Exhibits**

At least five (5) business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrators are authorized to resolve any disputes concerning the exchange of exhibits.

**F-8. Discovery**

Discovery shall be limited and shall be permitted only as agreed by the parties or as ordered by the arbitrators when the demands of justice require it, toward the goal of assuring a just, speedy, and economical determination of all disputes.

**F-9. Date, Time, And Place Of Hearing**

Where no party's claim exceeds Ten Thousand Dollars (\$10,000), exclusive of claimed interest and arbitration fees and costs, the dispute shall be resolved by submission of documents, unless any party requests an oral hearing, or the arbitrators determine that an oral hearing is necessary. The arbitrators shall establish a fair and equitable procedure for the submission of documents.

In all other cases, unless the parties agree otherwise, there shall be a hearing. The arbitrators shall set the date, time, place of the hearing, and number of hearing days, which shall be scheduled to commence within ninety (90) days after submission to the AAA of the initial demand for

arbitration as to the claim. The AAA will notify the parties in advance of the hearing date. A formal notice of hearing will also be sent by the AAA to the parties.

#### **F-10. The Hearing**

Unless the arbitrators determine otherwise, each party shall have equal opportunity to submit its proofs and complete its case. The arbitrators shall determine the order of the hearing, and may require further submission of documents within five (5) business days after the hearing.

There will be a stenographic record. The moving party, or the complainant (as the case may be) shall make arrangements directly with a stenographer, and shall notify the other party of these arrangements in advance of the hearing. A copy shall be made available for inspection by the other party and the arbitrators, at the expense of the ordering party.

#### **F-11. Time of Award**

Unless otherwise agreed by the parties, the award shall be rendered no later than seven (7) business days from the date of the closing of the hearing.

#### **F-12. Time Standards**

The arbitration shall be completed by settlement or award within one hundred twenty (120) days after submission of the demand for arbitration, unless all parties and the arbitrators agree otherwise or the arbitrators extend this time in extraordinary cases when the demands of justice require it.

#### **F-13. Arbitrator's Compensation**

Arbitrators will receive compensation as determined pursuant to Paragraph 16.8.9 of the General Conditions.

16.8.3 All demands for arbitration must contain a statement of the Dispute sufficient for the arbitrators and the other party to understand it.

16.8.4 Discovery shall be limited to the exchange of documents relevant to the Dispute, except as otherwise ordered by the arbitrators pursuant to the MFTR.

16.8.5 If the monetary value of the dispute is less than \$250,000, the arbitration panel shall consist of one individual. Otherwise, the arbitration panel shall consist of three (3) individuals. It shall be selected from the list supplied by the American Arbitration in accordance with the Association's standard procedures.

16.8.6 Any person may join any other person who participated in the Work to arbitration of a Dispute under this Article, so long as the subject matter of the Dispute involves all

such persons and presence of such person or entity is required if complete relief is to be accorded in the arbitration, and such person or entity has consented to arbitration.

16.8.1 The Owner and Contractor may in their joint sole discretion agree to waive the provisions of this Article.

16.8.7 The arbitrators shall liberally allow for the admission of evidence that is helpful in the resolution of the Dispute.

16.8.8 The agreement herein among the parties to arbitrate shall be specifically enforceable in any court having jurisdiction thereof. Any award rendered by the arbitrators pursuant to any arbitration shall be final and binding upon the parties hereto, and judgment may be entered upon it in accordance with Applicable Law in any court of competent jurisdiction. The parties agree that this matter involves interstate commerce and, as such, the Federal Arbitration Act will be applicable to any arbitration arising out of the Agreement.

16.8.9 Each party in any arbitration proceeding shall be responsible for its own costs, expenses and charges, including, without limitation, attorneys' fees. The fees paid to the arbitrators shall be divided equally among the parties to the proceeding. The arbitrators shall fix their own compensation on a reasonable basis, together with the time and manner of payment.

16.9 Memorialization. The resolution of all Disputes under this Article resulting in a change in the Contract Price or the Construction Times shall be memorialized by a Change Order.

16.10 Waiver. Claims must be asserted and pursued strictly (not substantially) in accordance with the provisions of this Article shall be deemed to have been waived and forever barred, regardless of whether the other party is prejudiced thereby.

16.11 Survival. The provisions of this Article shall survive completion of the Work and termination of the Agreement.

**END OF SECTION**



Harbor Shores Handbook  
for Supporting  
Local Employment and the Local Business Consortium

Final: January 20, 2010

## **The purpose of this document:**

As a contractor and/or service provider selected by Harbor Shores Community Redevelopment LLC (HSCRI), you have an obligation to achieve and comply with the goals of HSCRI. The purpose of this handbook is to outline the policies and procedures in the implementation of local and minority contracting and hiring processes you are required to follow and the process by which you will show good faith efforts required to meet these obligations.

## **Background**

Benton Harbor was once the economic hub for Southwest Michigan. 25 years ago the community suffered from the loss of most of the manufacturing industry, the base of the economic infrastructure. The results were despair as unemployment, poverty, school dropouts dominated the community as the economic and social structures were being destroyed.

In the past few years, the community has come together, united in their commitment to improve the lives of all the residents in Benton Harbor. Led by the Whirlpool Corporation, Whirlpool Foundation and individual business leaders, organizations have been formed like Cornerstone Alliance and the Consortium for Community Development. These organizations and their partners worked with the community to put plans together to address the physical, human and emotional redevelopment of an entire community.

Visual change needed to happen first in order to bring divided communities together. Demolition and beautification projects, housing initiatives, new manufacturing facilities and an arts district were created as part of this physical development strategy. Human bridges had to be built to remove the emotional barriers. Walls between communities had to be torn down.

Harbor Shores Community Redevelopment Inc. (HSCRI) was formed. Comprised of three non-profit organizations (Whirlpool Corporation, Council for World-Class Communities, and Cornerstone Alliance), HSCRI was organized for the principal purpose of fostering redevelopment and revitalization of blighted real property and remediation of environmental contamination; encouraging the creation of employment and educational opportunities, economic growth, and housing; relieving the causes of racial segregation and disharmony.

The initiative that HSCRI created to enable changes in Benton Harbor was Harbor Shores, the first beach and resort community in Southwest Michigan. Anchored by a Jack Nicklaus Signature Golf Course, Harbor Shores, is a 530 acre mixed use real estate development spanning parts of Benton Harbor, St. Joseph, and Benton Charter Township. Harbor Shores is designed to transform the community, to generate revitalization for Benton Harbor, and to create opportunity for an

improved quality of life for all our citizens. The very foundation of Harbor Shores is to be the economic enabler and catalyst to drive systemic change and transformation.

The entities within HSCRI are committed to connecting the economic impact of Harbor Shores with the needs of the community. This Plan is designed to create community transformation via five strategic areas:

- Individual
- Business
- Students and schools
- Community
- Leadership development and citizen participation

### **Consideration:**

You have been selected to provide contracting/construction services to HSCRI. This broad-based project is made possible through unique public/private collaboration. Utilizing the resources of multiple donors to the not for profit organizations that make up HSCRI, the project sets forth an aggressive plan to transform a community in need. State and federal governmental resources are being utilized as part of this overarching transformational project that created the capacity by which your contract or service agreement with HSCRI has been provided. It is for that reason the commitment to make a good faith effort to meet the goals of HSCRI have been incorporated into this agreement and set forth below.

### **HSCRI's Commitment to supporting Local Hiring and Spending**

HSCRI serves as an enabler for community transformation by producing significant economic impact through job creation and increased local tax base in Benton Harbor, Benton Charter Township and Saint Joseph. This financial impact will come from new residential and commercial development, as well as increased consumer spending. More importantly, the resort amenities at Harbor Shores will attract new businesses to the area. A plan has been implemented to accomplish the community transformation goals of HSCRI.

For more information on the background of HSCRI go to [www.harborshorescommunitydevelopment.com](http://www.harborshorescommunitydevelopment.com).

### **Goals as a contractor or service provider to the Harbor Shores Development:**

As a contractor or service provider, you will make every effort to comply with the following steps and to meet or exceed the pertinent measures:

- Strengthen local businesses by providing training; encouraging local businesses to hire locally.
- Materials/Services/Vendors—Contractors are required to report dollars spent on raw materials and services with businesses located within the geographical area covered by the Local Business Consortium (LBC).
- Meet a threshold of 25% of suppliers to be small and or minority enterprises and or;
- 20% of labor (# of jobs) must be from the economically distressed areas of the 49022 Zip Code.
- 40% of all labor associated with the maintenance of Jean Klock Park and the adjacent trail system will be from within the City of Benton Harbor.

Harbor Shores defines “local” as follows:

- With respect to **Suppliers** – businesses located in the Cornerstone Service Area/Local Business Consortium Trading area (zip code areas 49022, 49023, 49085, 49127).
- With respect to 20% of local **Workforce** – contractors, subcontractors, and workers residing in the economically distressed areas of the 49022 zip code.

In addition, all of the work performed by you, or any subcontractors, vendors or others that are retained in the completion of your work within Harbor Shores must adhere to the following:

**Requirements:**

- You shall be required to submit a written report on a quarterly basis indicating your organization’s, your contractor’s, your subcontractor’s and other’s associated with your organization’s compliance with each of the goals stated above.

**Your statement of compliance will include:**

- Total number of individuals employed as part of your contract, or those through your subcontractors, that are employed in the 49022 zip code. If less than 20% of your total workforce is from the economically distressed areas within the 49022 zip code, you must outline the steps that you have followed to attempt to identify and obtain workers from within the 49022 zip code to meet the 20% local hiring requirement.
- Verification that not less than 25% of your subcontractors qualify as local small and/or minority businesses as defined and approved by the LBC

- Verification of the dollar amount spent on raw materials, services and goods, etc. that have been procured from local vendors.

Within 90 days of receiving your quarterly report Harbor Shores may issue a notice of non-compliance outlining the steps to be taken by both parties to become compliant.

If the contractor has not demonstrated a good faith effort to become compliant Harbor Shores retains the right to impose penalties which may be as severe as cancellation of the contract.

### **HSCRI Partners**

HSCRI has partnered with the Local Business Consortium and Michigan Works! to provide assistance in meeting these requirements when ever possible.

### **Local Business Consortium (LBC)**

The Cornerstone Alliance's Local Business Consortium (LBC), is designed to be a forum for the inclusion of existing local businesses into the planning and development of Harbor Shores. The LBC targets opportunities for small businesses that are located within the communities impacted by HSCRI. A special emphasis is given to minority and women-owned business enterprises. The LBC will identify qualified contractors, subcontractors, suppliers/vendors, etc. for the Harbor Shores Development. They will provide a directory of recommended businesses.

As a contractor and service provider to Harbor Shores that has not met the goals stated above, you must evidence you procured this list, interviewed prospective candidates and made the LBC aware of why you have not met the prerequisite targets for Small and Minority businesses.

LBC Contacts:	Greg Vaughn	<a href="mailto:gvaughn@cstonealliance.org">gvaughn@cstonealliance.org</a>
	Marshall Downs	<a href="mailto:mardowns@cstonealliance.org">mardowns@cstonealliance.org</a>
	269-925-6100	

### **Michigan Works!**

Michigan Works will be the central Job Center for all Harbor Shores Development related job postings.

Any contractor and or subcontractor must verify that 25% of all labor used on the project reside in the economically distressed areas within the 49022 zip code. If this target is not met, the contractor and or service provider must verify they have utilized the services for hiring within the Michigan! Works process.

This organization has been preparing residents to qualify for Harbor Shores Development positions throughout the past few years by providing training to develop skills needed on the project. Michigan Works! will provide assistance in identifying the information and resources necessary to make the best human resources decisions. They will provide guided assistance in utilizing the following resources:

- a. Michigan Talent Bank – an electronic resume bank that allows employers to post job openings online via the internet. Job seekers can search job openings directly. Employers may also search the resume databank for potential candidates.
- b. Michigan Works! will work closely with the Contractors to build a targeted recruiting plan, help to identify potential local labor pools, best practices for marketing to those labor pools, and identify potential solutions for any human resources challenges.
- c. Michigan Works has been preparing to build a qualified workforce that will meet the 20% criteria. Extensive job training has been provided and additional training opportunities will be created to meet the future needs of the contractors as they arise.
- d. Michigan Works! partners with local training providers to identify training resources that best meets their needs. In some cases special trainings will be developed to meet special requirements.

### **Job Postings Process**

HSCRI Shores has worked with Michigan Works! to implement and create procedures to hire locally and place job orders. They are able to offer the assistance necessary to enable the contractors to conform to the guidelines of doing work within the Harbor Shores Development.

1. Contractors and sub-contractors identify hiring needs by providing a work order and job description to Michigan Works!
2. Create a work order and job description. Write Harbor Shores on the "location" line. Harbor Shores' positions will then be identified internally.
3. The Contractors and sub-contractors will work with an assigned case worker. (listed below) All job orders will be submitted to the case worker.

4. Veterans have the first opportunity to view the available jobs in the first 24 hours (federal law)
5. After 24 hours, Michigan Works will send all postings to the City of Benton Harbor Job Bank as well as post all the jobs on the Michigan Works site.
6. Michigan Works will sort and rank applications according to ability.
  - Fills all qualifications
  - Some qualifications
  - No qualifications
7. Michigan Works will provide a “book” of all candidates that have successfully completed a training program. Again, all candidates will be ranked according to ability.
8. Michigan Works! will prepare applications for pick-up or delivery.
9. Michigan Works will offer two options of receiving applications
  - Receive applications from Michigan Works that have been reviewed and ranked according to ability.
  - Receive applications directly from applicants.
10. Contractors have been asked to wait 5 business days before hiring to ensure all parties have sufficient time to apply for the opportunities.
11. All hiring decisions and employment offers will be made by contractors and subcontractors.

For purposes of meeting the terms of the requirement of hiring 20% locally (when possible) a Michigan Works! case worker will be tracking all new employees. Michigan Works! will contact all contractors and subcontractors after their hiring process.

The questions that will be asked:

- Number of applicants received
- Number of interviews conducted by employer
- Number hired by employer
- Hires by zip code
- Hires living within the economically distressed areas of the 49022 zip code.
- Number of individuals/applicants not meeting job requirements
- Number of individuals not interested in interviewing.
- Names of individuals hired from sources other than Michigan Works!

Harbor Shores will receive a monthly report from Michigan Works!.

Case workers:      Bev Stark      [starkey@miworks.org](mailto:starkey@miworks.org)      1-269-927-2237 Ext 1163  
                         Rosie Aviles:      [avilesr@miworks.org](mailto:avilesr@miworks.org)      1-269-927-1799 Ext. 1147

**Dispute Resolution:**

By agreeing to the terms and agreement of this document, any dispute or disagreement will be resolved by representatives of Harbor Shores and the Contractor.

**Acceptance**

I have reviewed the materials enclosed herein and agree with the provisions set forth as part of my agreement with HSCRI.

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Harbor Shores Contractor/Service Provider

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Managing Director  
Evergreen Development Company on  
behalf of HSCRI