

Arbitration Agreement & Retainer

1

Designation of Arbitrator. The undersigned have agreed to the appointment of Jerome F. Rock, Esq. as Arbitrator in the above referenced pending dispute. The arbitration will be conducted on an ad hoc basis by the Arbitrator without the administration services of the American Arbitration Association. Preliminary Hearing and Scheduling Conference and the Arbitration Hearing will be conducted by video conferencing. The Arbitrator has provided the parties with instructions for conducting Arbitration proceedings on Zoom video conferencing.

2

Rules of the Proceedings. The parties agree to proceed under the Commercial or Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association, as determined at the Preliminary Hearing, or on the record during the course of the arbitral proceeding. Since the proceedings are self-administered, and the American Arbitration Association is not in any way associated with these proceedings, the Arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties.

The Preliminary Hearing and Scheduling Conference and the Arbitration Hearing will be conducted by video conferencing. The Arbitrator has provided instructions for conducting Arbitration proceedings on Zoom video conferencing, which is available at the Arbitrator's website, www.JeromeRockLaw.com.

The Arbitrator requests the submission of Narrative Witness Statements for all direct testimony of witnesses under a party's control. The instructions for completing Narrative Witness Statements and the Arbitrator's Narrative Witness Statement Protocol are available at the Arbitrator's website, www.JeromeRockLaw.com.

3

Agreement to Arbitrate. Any controversy or claim arising out of or relating to Case No. 2020-183080-CH initially filed with the Oakland County Circuit Court shall be settled by private arbitration using the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association, revision dated July 1, 2015 and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

4

Arbitrator's Services and Compensation. The Arbitrator's services shall include case management, scheduling, organizing and conducting the pre-hearing administrative conferences, meetings or calls; scheduling the Hearing dates and any adjournments; study time and review of briefs, exhibits and other written materials in preparation for the Hearing; presiding at the arbitration hearing; and preparation of the

Award. All activities will be undertaken using Zoom video conferencing unless the Arbitrator determines the necessity of in person proceedings.

The Arbitrator shall be compensated at the rate of \$400/hr. Hearings cancelled less than 30 days prior to an agreed scheduled Hearing date will incur an additional charge of \$1,500 in addition to accrued fees of the Arbitrator. The Arbitrator's fee shall be shared equally by the parties unless otherwise provided.

Upon acceptance of this Arbitration Agreement & Retainer, **each party** promptly deposit an initial retainer of \$ _____ which will be deposited to the Arbitrator's IOLTA client trust account to be applied against fees charged by the Arbitrator. Based on the complexity and expected level of effort to be expended by the Arbitrator, the Arbitrator may from time to time request additional deposits to the retainer to establish a sufficient fund balance commensurate with the Arbitrator's estimate of the fees to be incurred in the proceedings, including preparation for the hearings, the expected hearing days, as well as decision making and Award preparation.

Interim billings for the Arbitrator's services shall be submitted to the parties on a periodic basis. All interim billings shall be due and payable upon presentation of the Arbitrator's Statement sent by email, and the Arbitrator is authorized to immediately debit the entire amount of the Statement from the remaining balance in the retainer account. The Arbitrator reserves the right to suspend any of the proceedings or cease performing services if retainers or payment has not been received in a timely manner. The parties hereby consent to the suspension/cessation under circumstances of non payment of the requested retainer or Arbitrator's fee by either party.

At the conclusion or other termination of the arbitration proceedings, if the Arbitrator's Fees are less than the balance of any retainer paid by the parties, the unused portion of the retainer shall be promptly returned to the parties.

 **Disclosures.** The Arbitrator has made a reasonable effort to learn and has disclosed to the parties: (a) all business or professional relationships the Arbitrator has had with the parties or their law firms within the past three years; (b) any financial interest the Arbitrator has in any party; (c) any significant social, business or professional relationship the Arbitrator has had with an officer or employee of a party or with an individual representing a party in the arbitration; and (d) any other circumstances that may create doubt regarding the Arbitrator's impartiality in the arbitration. The Arbitrator has submitted the attached Arbitrator Disclosure pursuant to the Rules and the Code of Ethics for Arbitrators promulgated by the American Arbitration Association, and the Arbitrator affirms that none of these disclosures, or any other factors would limit his ability to be impartial, fair and objective as an Arbitrator in the proceeding.

Each party and its law firm has made a reasonable effort to learn and has disclosed to every other party and the Arbitrator any relationships of a nature described in the preceding paragraph not previously identified and disclosed by the Arbitrator.

The parties and the Arbitrator are satisfied that any relationships disclosed pursuant to this paragraph will not affect the Arbitrator's independence or impartiality.

Notwithstanding any such relationships, the parties have chosen the Arbitrator to serve in the arbitration, waiving any claim based on such relationships, and the Arbitrator agrees to so serve.



Confidential Nature of Proceedings. Unless the parties agree otherwise, the parties, their attorneys, and the Arbitrator shall treat the proceedings, any related discovery and the decisions of the Arbitrator, as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and unless otherwise required by law or to protect a legal right of a party.



Exclusion of Arbitrator Testimony and Limitation of Liability. The Arbitrator shall not be subpoenaed or otherwise compelled to testify in any proceeding relating to the subject matter of the arbitration and shall not be required to provide a declaration or finding as to any fact or issue relating to the arbitration proceeding or the dispute which is the subject of the arbitration proceedings. The Arbitrator, and any documents and information in his possession will not be subpoenaed in any proceeding and all parties will oppose any effort to have the Arbitrator or documents subpoenaed and will jointly and severally defend and hold the Arbitrator harmless from costs associated with asserting this position. The parties agree that the Arbitrator will have the same immunity from liability for any act or omission in connection with the arbitration as judges have under Michigan Uniform Arbitration Act, MCL 691.1694.



Neutrality. The Parties understand and agree that the Arbitrator shall act in a strictly neutral capacity as a decision-maker and not as a mediator or advocate for either party. If the parties desire to engage the Arbitrator in the capacity of Mediator to attempt to arrive at a consensual resolution of the claim or dispute prior to the arbitration hearing, the parties and the Arbitrator will enter into a separate agreement for Mediation/Facilitation.



Hearing by Video Conference. Location for In-Person Hearing. The Hearing, as well as Preliminary Conferences will be conducted by Zoom Video conferencing. In-Person proceedings may be undertaken if mutually agreeable to the parties and the Arbitrator. The Arbitrator generally conducts any necessary In-Person hearings at the facilities of the Engineering Society of Detroit, located at 20700 Civic Center Drive, Suite 450, Southfield, MI 48076. Conference room rental costs are allocated equally to the parties.



Applicable Law. The laws of the State of Michigan shall govern the construction and interpretation of this agreement.



Arbitrator's Oath. As evidenced by my signature below, as Arbitrator, I swear or affirm, that I will keep confidential all matters relating to the above-referenced arbitration; that I will maintain a professional demeanor and appearance of impartiality during all phases of this case; that I will endeavor to effectively manage all phases of this case with a commitment to speed, economy and just resolution in a manner

consistent with the parties' expectations; and that I will arbitrate all matters coming before me faithfully and with fairness to all parties.



Counterpart Execution; Binding on Representatives. This Agreement may be executed in any number of counterparts which when taken together shall constitute one fully executed Agreement. This Agreement when so executed shall inure to the benefit of and be binding on the undersigned parties as well as their lawyers, respective representatives or other persons they have caused to be present during these arbitration proceedings.

Arbitrator:
Jerome F. Rock (P27317)

Date: _____

In the Arbitration Matter of:

Attorney for Claimants:

Date: _____

Date: _____

Attorney for Respondent:

Date: _____

Date: _____

Arbitrator's Disclosure

The Arbitrator hereby discloses any past or present relationship with the parties, their counsel, or potential witnesses, direct or indirect, whether financial, professional, social or of any other kind. This is a continuing obligation throughout my service on the case and should any additional direct or indirect contact arise during the course of the arbitration it will be disclosed.

I have diligently conducted a conflicts check, including a thorough review of the information provided to me about this case to date, and that I have performed my obligations and duties to disclose in accordance with the Rules of the American Arbitration Association, Code of Ethics for Arbitrators in Commercial Disputes, the parties' agreement, and applicable law pertaining to arbitrator disclosures.

I make the following disclosures:

1. I do not represent any person in a proceeding involving any party to the arbitration.
2. I have not represented any person against any party to the arbitration.
3. Below are any professional or social relationship with counsel for any party in this proceeding or the firms for which they work:
 4. I have no professional or social relationship with any parties or witnesses identified to date in this proceeding or the entities for which they work.
 5. I have no professional or social relationship of which I am aware with any relative of any of the parties to this proceeding, or any relative of counsel to this proceeding, or any of the witnesses identified to date in the proceeding.
 6. Neither me, nor any member of my family, or any close social or business associate ever served as a neutral in a proceeding in which any of the identified witnesses or named individual parties gave testimony.
 7. Neither me, nor any member of my family, or any close social or business associate been involved in a dispute involving the subject matter contained in the case which I am assigned.
 8. I have never served as an expert witness or consultant to any party, attorney, witness or other arbitrator identified in this case.
 9. None of the party representatives, their law firms or parties appeared before me in past arbitration cases.
 10. I have never sued or been sued by either party or its representative.
 11. Neither me nor my spouse own stock in any of the companies involved in this arbitration.
 12. I am not aware of any other information that may lead to a justifiable doubt as to my impartiality or independence or create an appearance of partiality.

Jerome F. Rock, Arbitrator

Date: