• SCOPE: This explanation of conditions furnishes the selected contractor(s) with information to enable them to provide services as listed in this agreement.

• APPLICATION: The services covered by this Agreement shall be furnished by Contractor subject to all the terms and conditions set forth in this Agreement, including the following, which Contractor, in accepting this Agreement, agrees to be bound by and to comply with in all particulars and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance of the performance of all or any portion of the services covered by this Agreement shall constitute unqualified acceptance of all terms and conditions. The terms of any proposal referred to in this Agreement are included and made a part of the Agreement only to the extent of specifying the nature of services ordered, the price therefor, and the performance thereof, and then only to the extent that such terms are consistent with the terms and conditions of this Agreement.

• DEFINITION OF TERMS:

The term “Moravian College” as used herein shall mean Moravian College and Theological Seminary, its subsidiaries, affiliates, successors and assigns.

The term “Contractor and/or Vendor” as used herein shall mean the company awarded this work by Moravian College and its subsidiaries, affiliates, successors and assigns and includes his subcontractors at any tier.

The term “Project” as used herein shall mean the facilities installations, structures, grounds, trees, road and pathways and any other physical portion of Moravian College covered by this Agreement.

The term “Subcontractor” shall mean any individual, firm or corporation, other than an employee of the Contractor, who contracts with Contractor or any other Subcontractor to furnish labor for or labor and materials at the site of the Project. Nothing herein shall be construed as establishing any contractual relationship between Moravian College and any Subcontractor.

• ISSUING OFFICE: Moravian College Facilities Management, Planning and Construction, 1415 Cortland Street, Bethlehem, Pa. 18018, Attention: Kimberly A. Sherr – Assistant Director, Project Management for the following contractual services: professional architect design and engineering services, Moravian Theological Seminary, Bahnson Center.

• TIME: Time is of the essence in this Agreement. If the Contractor does not complete the work as stipulated or fails to achieve tasks by designated milestone dates, Moravian College may treat such failure as a breach hereof. The Contractor agrees to proceed with sufficient adequate qualified forces to finish the work substantially by the completion date. The Contractor waives all claim for damages due to delay attributable to Moravian College, employees of Moravian College or separate contractors and shall be entitled only to an appropriate extension of the time of performance for such unforeseen delays.

• PRICING: All prices shall remain firm. Any additional charges such as shipping, installation, insurance, etc. must be fully itemized. Charges will not be honored if not specified at the time of bidding. Unless specifically exempted, unit prices must be provided and item totals extended on each item. Check your proposal carefully, for it may not be corrected after the proposal closing date.

• SCHEDULE OF VALUE: The proposal shall include a schedule of values of the various parts of the work, aggregating the total Contract price, divided so as to facilitate payments to Subcontractors, made out in such form and supported by such evidence as to its correctness as Moravian College may direct.

• TRANSPORTATION CHARGES: Unless the proposal clearly states otherwise, prices quoted will be considered to include all charges for transportation, packaging, crates, containers, etc., necessary to complete delivery on an F.O.B. destination basis. If quoted F.O.B. shipping point, include freight charges and full value insurance cost.

• TERMS: Moravian College will consider using any cash discounts offered by contractor. However, only discounts for 30 days or more will be considered in computing the net figure of contractor’s proposal for award decisions.

• REJECTION OF BIDS: Moravian College reserves the right to reject any and all proposals received, or to negotiate separately with any source whatsoever in any manner necessary to serve the best interests of the college. Non-compliance with the conditions of the proposal may result in disqualification of any contractor. These proposals are informal and are not read at public opening.

• CHANGES, EXTRAS AND CLAIMS: Provisions for Time and Material Work

Moravian College may, at any time, by a written Agreement fully signed by Moravian Colleges’ duly authorized representative and without notice to any sureties, make any changes in, additions to or deletions from the work to be performed under this Agreement provided that such changes, additions or deletions are reasonably related to the original scope of the work hereunder. If any such changes, additions or deletions so ordered cause an increase or decrease in the cost to the Contractor of its performance hereunder or in the time required for performance, and equitable adjustment shall be made on the basis of such increase or decrease and this Agreement shall be modified in writing accordingly; provided, that (a) in the case of any addition to or deletion from any portion or portions of the Work for which a unit price is specified in this Agreement, any such addition or deletion shall be made solely on the basis of such unit price, (b) in case of any addition to any portion or portions of the Work for which no unit price is established, the increase in the consideration payable hereunder, if any, shall be on the basis of a mutually agreed upon fixed price, or on the basis of a Time and Material charge as provided in the Agreement and (c) in case of any deletion to any portion or portions of the Work for which no unit price is established, Moravian College shall be entitled to a credit based upon the resulting decrease in the Contractor’s costs of performance hereunder, without any deduction from such credit on account of any loss by the Contractor of any expected or anticipated profits, whether or not relating to the deleted work, any claim for which the Contractor hereby expressly waives and releases. In the event Moravian College and Contractor cannot agree to a mutually acceptable fixed price as described in (b) above, a guaranteed maximum price will be established by Moravian College in writing and the Contractor shall perform the Work on a Time and Material basis, however, Moravian College shall in no event be liable for any amount in excess of the guaranteed maximum price as established or modified by Moravian College in writing.

Any claim by the Contractor for an adjustment under this Article must be asserted in writing within ten (10) calendar days from the date a change is ordered. Even though the parties may fail to agree upon the extent or amount of adjustment hereunder, the Contractor shall nevertheless proceed promptly and diligently with the prosecution of the work as so changed; provided however, that Contractor shall not be deemed to prejudice its claims to an adjustment by so proceeding.
If any extra, additional or different Work is performed by the Contractor without a previous written Agreement therefor, signed by Moravian Colleges’ duly authorized representative, no addition to the consideration provided in this Agreement shall be made on account of such extra, additional or different Work, and the Contractor shall be conclusively deemed to have waived and released any claim for extra or additional compensation therefor, or for any damages in connection therewith.

Work performed on the basis of Time and Material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and Holidays) unless the Contractor obtains the prior written consent of Moravian Colleges’ duly authorized representative. If Contractor should perform Work on a premium time basis without obtaining said consent, then all costs relating to the premium time portion shall be borne solely by the Contractor without recourse to Moravian College.

For each and every item of Work performed on a Time and Material basis, Contractor shall submit daily reports to Moravian College’s Physical Plant Department which shall list the time and trades used, materials consumed, and hours and types of rental equipment used. If applicable, said reports shall be submitted no later than the following workday to Moravian Colleges’ representative for approval. Invoices submitted for Work performed on a Time and Material basis must be supported by duly approved copies of said daily reports. Moravian College shall be under no obligation to pay invoices which are not supported.

Contractor shall take and afford Moravian College the advantage of all reasonably available cash and trade discounts, rebates, allowances, credits, salvage and commissions. Contractor shall require its Subcontractors to take and afford Contractor the advantage of all reasonably available cash and trade discounts, rebates, allowances, credits, salvage and commissions, which advantage shall be passed on in full to Moravian College. Contractor shall bear the cost and/or loss of failure to comply with this provision unless such failure is found to be justifiable.

**ENTIRE AGREEMENT: MODIFICATIONS: NOTICES: GOVERNING LAW**

It is expressly agreed that this Agreement constitutes the entire and only agreement between the parties hereto, superseding any previous agreements or understandings; that there are no agreements, understandings or covenants between the parties of any kind, nature or description, expressed or implied, oral or otherwise, pertaining to the Work hereunder, which have not been set forth herein; and that this Agreement cannot be modified, altered, amended, changed or canceled nor any provision hereof waived or abrogated, except by an instrument in writing duly executed and acknowledged on behalf of Moravian College and Moravian College’s office or representative who has executed this Agreement on behalf of Moravian College or by the representative duly authorized in writing by such person.

Notices authorized under this Agreement shall be sufficient and effective only if in writing and sent by prepaid mail or delivered to the parties at their addresses stated in the Agreement Documents to the attention of such persons as have executed this Agreement on behalf of the parties or their representatives duly authorized by them in writing.

This Agreement and all disputes between the parties pertaining to The Work, shall be governed by the laws of the Commonwealth of Pennsylvania.

The situs of this Agreement shall be Bethlehem, Northampton County, Pa.

**TERMINATION:**

Moravian College may, by written notice stating the extent and effective date, cancel and/or terminate this Agreement for convenience in whole or in part, at any time. Moravian College shall pay Contractor as full compensation for performance until such termination: (1) the unit or pro rata Agreement price for the performed and accepted portion; (2) a reasonable amount which Contractor has paid to Subcontractor(s) in connection with Work which has been terminated by Moravian College and based upon subcontract(s) approved by Moravian College; provided compensation hereunder shall in no event exceed the total Agreement price.

Moravian College may by written notice terminate this Agreement for Contractor’s default, in whole or in part at any time, if Contractor refuses or fails to comply with the provisions of this Agreement, or so fails to make progress as to endanger performance and does not cure such failure after written notice within a reasonable period of time, or fails to perform the services within the time specified or any written extension thereof. In such event, Moravian College may purchase or otherwise secure services, and Contractor shall be liable to Moravian College for any excess costs occasioned Moravian College thereby.

If after notice of termination for default, Moravian College determines that the Contractor was not in default or that the failure to perform this Agreement is due to causes beyond the control and without the fault or negligence of Contractor (including, but not restricted to, acts of God acts of the public enemy, acts of Moravian College, acts of government, fires, freight embargoes, unusually severe weather and delays of a Subcontractor or Contractor due to such causes and without the fault or negligence of the Subcontractor or Contractor, termination shall be deemed for the convenience of Moravian College, unless Moravian College shall determine that the services other sources in sufficient time to meet the required performance schedule.

If Moravian College determines that Contractor has been delayed in the Work because of causes beyond the control and without the fault or negligence of Contractor, Moravian College may extend the time for completion of Work called for by this Agreement, when promptly applied for in writing by Contractor; and if such delay is due to failure of Moravian College, not caused or contributed to by Contractor, to perform its obligations in accordance with the terms of the Agreement, the time and price of the Agreement shall be subject to change under the Changes Article. Sole remedy of Contractor in event of delay by failure of Moravian College to perform shall, however, be limited to any money actually and necessarily expended in the work during the period of delay solely by reason of the delay. No allowance will be made for anticipated profits.

The rights and remedies of Moravian College provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**ADMINISTRATION:** The proposal form shall include the name or names of any authorized individuals assigned by the contractor to be responsible for contract administration or service.

**PERSONNEL:** The contractor shall perform its services in a professional and workmanlike manner and shall only use qualified and experienced personnel. All employees shall be sober, conscientious, competent, and courteous. The College may, in writing require the contractor to remove from the campus, any employee(s) he deems incompetent, careless, insubordinate, or otherwise objectionable.

**INDEPENDENT CONTRACTOR:** All of contractor’s employees furnishing services to the College shall be deemed employees solely of contractor and shall not be deemed for any purposes whatsoever employees or agents of, acting for or on behalf of, the College. Contractor shall perform all services as an
independent contractor and shall discharge all its liabilities as such. No acts performed or representations, whether oral or written, made by contractor with respect to third parties shall be binding on the College.

- **SUBCONTRACTORS:** Names and addresses of all Subcontractors shall be furnished to Moravian College, and the selection of subcontractors must be approved by the College. If, in his judgment, any fail to perform the work in strict accordance with the specifications, the Contractor, after due notice from the Owner, shall discharge same, but this shall in no way release the Contractor from his obligations and responsibilities under the contract.

Every subcontractor shall be bound by terms and provisions of the Contract as far as applicable to his work. Nothing contained herein shall create any contractual relation between any subcontractor and Moravian College.

The Contractor shall be fully responsible to Moravian College for acts and omissions of his subcontractors.

- **LIABILITY FOR MORAVIAN COLLEGE - FURNISHED PROPERTY:** Contractor assumes complete liability for all tooling, articles or material furnished by Moravian College in connection with this Agreement and Contractor agrees to pay for all such tooling, articles or material spoiled by it or not otherwise accounted for to Moravian College’s satisfaction. The furnishing to Contractor of any tooling articles, or material in connection with this Agreement shall not, unless otherwise expressly provided, be construed to vest title thereto in Contractor.

- **RISK OF LOSS:** Contractor shall assume and bear all risk of loss or damage to goods provided hereunder until the goods have been incorporated in the work or accepted by Moravian College.

- **LABOR RELATIONS:** Contractor agrees to take immediate and reasonable steps to maintain its provision of service identified under this proposal in the event of any labor action involving its employees.

- **COOPERATION:** Contractor and its subcontractors, if any, shall cooperate with Moravian College and other contractors on the premises and shall so carry on their Work that other cooperating contractors shall not be hindered, delayed, or interfered with in the progress of their Work and so that all of such work shall be a finished and complete job of its kind.

- **PRESENCE ON THE COLLEGE’S PREMISES:** The contractor agrees that all persons working for or on behalf of contractor whose duties bring them upon the College’s premises shall obey the rules and regulations that are established by the College and shall comply with the reasonable directions of the College’s officers. Further, contractor shall be responsible for the acts of its employees and agents while on the College’s premises. Accordingly, contractor agrees to take all necessary measures to prevent injury and loss to persons or property located on the College’s premises. Contractor shall be responsible for all damage to person or property caused by contractor or any of its employees or agents. Contractor shall promptly repair, to the satisfaction of the College, any damage that it, or its employees or agents may cause to the College’s premises or equipment; on contractor’s failure to do so, the College may repair such damage and contractor shall reimburse the College promptly for the cost of the repair. Contractor shall perform the services identified in this bid without interfering in any way with the activities of the College’s faculty, students, staff, or visitors.

- **CONDITIONS OF SITE OF WORK:** The contractor hereby expressly warrants, covenants and agrees that, prior to the execution of this Agreement, it has made a complete and careful examination, independent of any information, representations, descriptions or estimates by Moravian College or any of their representatives, of all of the Agreement Documents applicable to the Contractor’s Work hereunder and of all the conditions and features of the Project site which might be important in the prosecution of its Work, and has fully apprised itself of all obstructions, difficulties or conditions which it will or might encounter in the prosecution of the work. The Contractor expressly agrees that neither Moravian College nor any of its representatives have made any representations of any kind, nature, or description, written or oral, express, implied or otherwise, concerning any of the foregoing, and relying solely and exclusively upon its own evaluation of the conditions which it will or might encounter during the progress of its Work, the Contractor does hereby waive and release any and all demands, claims and causes of action against Moravian College which the Contractor might have, possess or assert by reason of any alleged representations, warranties, tests, estimates, descriptions and statements by Moravian College not expressly set forth in this Agreement.

- **USE OF COLLEGE'S FACILITIES:** Contractor and its employees or agents shall have the right to use only those facilities of the College that are necessary to perform services under this bid and shall have no right of access to any other facilities of the College.

- **RESPONSIBILITY FOR TOOLS, MATERIALS, ETC.:** The College shall assume no responsibility for the loss, theft, mysterious disappearance of, or damage to, equipment, tools, materials, supplies, and other property of contractor or its employees which may be stored at the job site.

- **SIGNS:** Except for usual and customary signage on Contractor’s Motor Vehicles and Motorized Equipment, no signs or name plates of any type identifying Contractors or the work being performed shall be permitted to be displayed on any part of this work on the premises of Moravian College unless otherwise authorized in writing by Moravian College.

- **PUBLICITY:** Any publicity giving reference to this project, whether in the form of press releases, brochures, photographic coverage or verbal announcements, shall be only with the general or specific approval of Moravian College.

- **SAFETY, HEALTH AND FIRE PROTECTION:** Contractor shall take all reasonable precautions in the performance of the Work under this Agreement to protect the health and safety of employees and members of the public and to minimize danger from all regards to life and property, and shall comply with all health, safety and fire protection regulations and requirements (including reporting requirements) of Moravian College. Contractor will supply Material Safety Data Sheets to the Moravian College Department of Campus Security and Safety for all materials that are used by the contractor requiring this documentation by the regulating agency. In the event that Contractor fails to comply with said regulations or requirements of Moravian College, Moravian College without prejudice to any other legal or contractual rights of Moravian College, issue a notice stopping all or any part of the work; thereafter, a start notice for resumption of Work may be issued at the discretion of Moravian College. Contractor shall make no claim for extension of time or for compensation or damages by reason of or in connection with such Work stoppage.

The safety of all persons employed by Contractor and its subcontractors on Moravian College’s premises or any other person who enters Moravian College’s premises for reasons relating to this Agreement, shall be the sole responsibility of Contractor. Contractor shall at all times maintain a harmonious relationship among its employees and shall not employ on the Work any unfit person or anyone not skilled in the Work assigned to him. Contractor shall confine its employers and other persons who come onto Moravian College’s premises at Contractor’s request or for reasons relating to this Agreement and its equipment to that portion of Moravian College’s premises where the Work under this Agreement is to be performed.
• SECURITY: The College shall provide its routine general security patrols, and intrusion, theft, and fire protection, in the service area. If contractor requires additional security, it shall be provided by, or coordinated through, the College’s Department of Campus Security and Safety, for which contractor agrees to pay prevailing charges. Not other security staff may be employed by contractor. Contractor shall follow the College’s policies in dealing with improper conduct, and shall report all incidents to the Department of Campus Security and Safety. Contractor shall not, except in physically dangerous or other emergency situations, summon public emergency agencies except through the College’s Department of Campus Security and Safety, (610) 861-1421.

• SURRENDER OF PREMISES AND EQUIPMENT: On termination or expiration of the contract, contractor shall vacate all parts of the College’s premises occupied by it and shall restore the same (together with all equipment furnished) to the College in the same condition as when originally made available to contractor, reasonable wear and tear excepted. Contractor and the College shall jointly conduct a closing inventory and contractor shall replace or repair all lost, damaged, or destroyed College-supplied equipment to make up any deficiency between opening and closing inventories. Surrendered premises and equipment shall be left in a clean, orderly state satisfactory to Moravian College.

• CERTIFICATE OF INSURANCE: Contractor shall purchase and maintain kinds and limits of insurance as enumerated hereunder from carrier or carriers legally authorized by the Commonwealth of Pennsylvania. Carriers are subject to the approval of Owner. Evidence of coverage must be submitted to Owner at least 14 calendar days before work on site begins. CERTIFICATE MUST SHOW OWNER LISTED AS AN ADDITIONAL INSURED. Certificate shall confirm that policies may not be canceled or changed without 20 days prior written notice to all Insureds. Coverages and limits of insurance shall be:
  - General Liability - $1,000,000 combined single limit, including property damage hazards of explosion, collapse and underground.
  - Workers’ Compensation: Statutory Pennsylvania includes:
    - $100,000 Bodily Injury by Accident - each accident
    - $500,000 Bodily Injury by Disease - policy limit
    - $100,000 Bodily Injury by Disease - each employee
  - Auto Liability - $1,000,000 Combined single limit.
  - Excess Umbrella Liability - $1,000,000 per occurrence: $1,000,000 aggregate.

• INDEMNIFICATION: The Contractor shall indemnify Moravian College, its representatives, assigns and successors and save and hold each of them harmless from any and all loss, liability, fine, penalty or other charge, cost or expense by reason of any claim, fine or penalty, or any action or suit for injury or death of any persons, including agents and employees or for damage to property, including the property of Moravian College and its respective representatives, assigns, and successors, resulting from or arising out of or in connection with the performance of this Agreement by Contractor and Subcontractor selected by Contractor if any. Contractor shall obtain appropriate insurance coverage with respect to such liability. It is specifically understood that the Contractor hereby accepts and assumes exclusive liability for, and shall save and hold Moravian College harmless against the payment of all contributions, taxes or premiums payable under any federal or state unemployment insurance law or any federal or state social security act measured by or upon the payroll of employees, by whomsoever employed, engaged in the performance of Work undertaken by the Contractor in this Agreement, and any and all other taxes which may be levied or assessed because of the Contractor’s employment of persons or the Contractor’s purchase or services or supplies for the performance of its undertakings in this Agreement identical to this Article which Agreement shall name Moravian College and their respective representatives, assigns and successors as beneficiaries of such Indemnification Agreement.

• PERMITS: Contractor agrees to procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory and political subdivision in which the Work under this Agreement is performed. Contractor shall be liable for all damages and shall indemnify and save Moravian College harmless from and against all damages and liability which may arise out of the failure of the Contractor to secure and pay for any such licenses or permits or to comply fully with any and all applicable laws, ordinances, and regulations.

• CLEAN UP: At the Contractor’s expense, the Contractor shall at all times keep Moravian College’s premises where the Work is performed and adjoining premises free from accumulations of waste material or rubbish caused by its employers or Work of any of its Subcontractors, and at the completion of the Work, it shall remove all rubbish from and about the building and all its Subcontractor’s tools, scaffolding and surplus materials. Moravian College dumpsters/containers shall be used unless express written permission is given by Moravian College. In case of dispute between Contractor and his Subcontractors employed or about the structure or structures upon which the Work is to be done, as herein provided, as to responsibility for the removal of the rubbish or in the case the same be not promptly removed as herein required, Moravian College may remove the rubbish and charge the cost to the Contractor.

• INSPECTION: The services, materials, and supplies furnished shall be exactly as specified in this Agreement, free from all defects in Contractor’s performance, design, workmanship and materials, and except as otherwise provided in this Agreement shall be subject to inspection and test by Moravian College at all times and places. It, prior to final acceptance, any services and any materials and supplies furnished therewith are found to be incomplete, or not as specified, Moravian College may reject them, require Contractor to correct them without charge, or require delivery of such materials, supplies, or services at a reduction in price which is equitable under the circumstances. If Contractor is unable or refuses to correct such items within a reasonable time, Moravian College may terminate the Agreement in whole or in part. Contractor shall bear all risks as to rejected services, and, in addition to any costs for which Contractor may become liable to Moravian College under other provisions of this Agreement, shall reimburse Moravian College for all transportation costs, other related costs incurred or payments to Contractor in accordance with the terms of this Agreement for unaccepted services and materials and supplies incidental thereto.

• STANDARD OF PERFORMANCE: Contractor agrees to perform the services specified under this proposal with the standard of care, skill, and diligence normally provided by a professional organization in the performance of such services. Contractor agrees that for purposes of compliance with the requirements of the Occupational Safety and Health Act of 1970 and it’s amendments, services performed for Moravian College shall be deemed entirely within contractor’s responsibility. Contractor shall notify Moravian College’s Department of Physical Plant promptly, in writing, if a charge of non-compliance with the Act has been filed against the contractor and/or College in connection with its services being performed on the premises of Moravian College.

• ASSIGNMENT - DELEGATION - SUBCONTRACTING: This Contract may not be assigned without the prior written consent of Moravian College, and no delegation or subcontract of any obligation or responsibility of the Contractor shall be made without such consent. If Moravian College shall grant consent to any delegation or subcontract, Contractor shall in no respect be relieved of any obligation or responsibility hereof. Contractor shall not subcontract any portion of the work to any person or firm to whom Moravian College makes reasonable and timely objection.

• TAXES: Contractor shall pay when due, all taxes and assessments applicable to contractor. Contractor shall comply with the provisions of the applicable statutes and the regulations of the applicable taxation authority. Moravian College is exempt from State and Federal sales and use taxes unless specified otherwise. A tax exemption certificate will be furnished upon request.
• **NON-DISCRIMINATION/EQUAL OPPORTUNITY/AFFIRMATIVE ACTION:** The policy of the College, both traditionally and currently, is that discrimination against any individual, for reason of race, color, creed, national origin, sex, handicap or age is specifically prohibited. Accordingly, the College uses as one of its purchasing criteria, the affirmative action of its vendors in providing equal employment opportunities for all minority groups.

• **COMPLIANCE WITH LAWS:** Contractor represents that the goods to be furnished or the services to be rendered hereunder have not been or will not be produced or performed and sold in violation of any provision of the Fair Labor Standards Act of 1938, the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972, the Rehabilitation Act of 1973, the Occupational Safety and Health Act of 1970, the Toxic Substance Control Act, or any other applicable Federal, State, or Local Law, ordinance, rule or regulation, and Contractor agrees to make all stipulations required by such laws.

• **EXECUTION AND EFFECTIVE DATE - ACKNOWLEDGMENT:** This Agreement has been executed by the duly authorized officers of Moravian College and of the Contractor. The effective date is that shown under “Date of Order” on the accompanying Moravian College [Purchase Order TBD], which is made part of this agreement.