



# AIA<sup>®</sup>

# Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

for the following PROJECT:

**THE OWNER:**

Capitol Region Education Council (CREC)  
111 Charter Oak Avenue  
Hartford, CT 06106

**THE ARCHITECT:**

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**ADDITIONS AND DELETIONS:**

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement to which this A201, as modified, is attached to and made a part thereof, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) an Approval Letter, (4) a Construction Change Directive or (5) a written order for a minor change in the Work issued by the Architect.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### § 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### § 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. The Contract Documents shall govern the execution of the Work.

#### § 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, project manuals, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results and make the Work complete and operable in all respects, except to the extent specifically indicated in the Contract Documents to be the responsibility of the Architect or others.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Contractor and all Subcontractors shall refer to all of the Drawings, including those showing primarily the Work of the mechanical, electrical and other specialized trades, and to all of sections of the Specifications.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.3.1 In the event of conflicting provisions among the Contract Documents that were not called to the Owner's or Architect's attention in writing prior to award of the Contract, the Contract Documents shall be construed according to the following priorities:

Highest Priority	Modifications to the Agreement
Second Priority	Agreement
Third Priority	Addenda (later date to take precedence - if any)
Fourth Priority	General Conditions
Fifth Priority	Bidding Requirements
Sixth Priority	Drawings and Specifications

§ 1.2.4 Contractor and all Subcontractors shall refer to all of the drawings, including those showing primarily the work of the mechanical, electrical and other specialized trades, and to all of the documents of the specifications, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results. If work is required in a manner to make it impossible to produce work of the quality required by or reasonably inferred from the Contract Documents, or should discrepancies appear among the Contract Documents, the Contractor shall request, in writing, an interpretation from the Architect before proceeding with the Work. If the Contractor fails to make such request, no excuse will thereafter be entertained for failure to carry out Work in the required manner or to provide required guarantees, warranties, or bonds, and the Contractor shall not be entitled to any change in the Contract Sum or the Contract Time on account of such failure.

§ 1.2.5 Should conflict occur in or between the Drawings and Specifications, the Contractor is deemed to have included the better quality and larger quantity of work in the Bid.

§ 1.2.6 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials, or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

§ 1.2.7 Where codes, standards, requirements and publications of public and private bodies are referred to in the Specifications, references shall be understood to be to the latest revision prior to the date of receiving bids, except where otherwise indicated.

§ 1.2.8 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding Work and of the construction of the Project generally.

§ 1.2.9 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

§ 1.2.10 Mechanical and Electrical Drawings are diagrammatic only, and are not intended to show exact physical locations or configurations of Work. Such Work shall be installed to clear all obstructions, permit proper clearances for the work of other trades, and present an orderly appearance where exposed. Exact locations of fixtures and outlets shall be obtained from Architect before the Work is roughed in; Work installed without such information from Architect shall be relocated at Contractor's expense.

§ 1.2.11 Test boring and soil test information included with the Contract Documents or otherwise made accessible to Contractor was obtained by Owner for use by Architect in the design of the Work. Owner does not hold out such information to the Contractor as an accurate or approximate indication of sub-surface conditions, and no claim for extra cost or extension of time resulting from a reliance by Contractor on such information shall be allowed except as provided in Section 3.7.4.

### § 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors of their respective Instruments of Service, including the Drawings and Specifications, and the Owner shall be the owner of the Instruments of Service and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner or Owner's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice acceptable to Owner. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents. The Contractor agrees that use of Instruments of Service in electronic form: (a) is not a substitute for professional judgment; (b) does not relieve the Contractor from applying the appropriate standard of care and skill relevant to the use of the Instruments of Service; and (c) is only to be used as a tool to assist the Contractor in connection with the Project.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

*(Paragraph deleted)*

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Owner may furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site. To the extent the foregoing are made available to Contractor they are not deemed Contract Documents and there is no warranty or guaranty, either express or implied, that the conditions indicated by such documents are representative of those existing throughout the areas where the Work is to be performed. If Owner or Architect has made investigations of subsurface characteristics or concealed conditions of areas where the Work is to be performed, such investigations, if any, were made solely for the purposes of Owner's study and Architect's design. Neither such investigations nor the records thereof are a part of the Contract between Owner and Contractor. To the extent such investigations or the records thereof are made

available to Contractor by Owner or Architect, such information is furnished solely for the convenience of Contractor. Neither the Owner nor Architect assumes any responsibility whatsoever with respect to the sufficiency or accuracy of the investigations thus made, the records thereof, or of the interpretations set forth therein or made by Owner or Architect in its use thereof, and there is no warranty or guaranty, either express or implied, that the conditions indicated by such investigations or records thereof are representative of those existing throughout the areas where the Work is to be performed, or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered. In connection with the foregoing, Contractor shall be solely responsible for locating and shall locate prior to performing any Work all utility lines, telephone lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, without limitation, all buried pipelines and buried telephone cables, and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. Not in limitation of the foregoing, before performing any excavation at the Project Contractor shall use the services of Call Before You Dig.

**§ 2.2.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.2.3** Section omitted.

**§ 2.2.4** Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness after receipt from the Contractor of a written request for such information or services. To the extent such Owner information is made available to Contractor, the Contractor shall review such information so as to be well informed as to the scope of the Contract Documents and accuracy of such information and shall promptly report to the Owner and Architect any inaccuracy in such information as a request for information. The Contractor shall be entitled to rely on the accuracy of such information furnished by the Owner; provided, however, the Contractor shall exercise proper precautions related to the safe performance of the Work and shall not be entitled to rely on the accuracy of such information if during such review the Contractor discovered or through the exercise of the Construction Manager's Standard of Care (as such term is defined in Section 1.2 of the Agreement) should have discovered inaccurate information and did not promptly report it to the Owner and Architect. . The Contractor, not the Owner, is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, in its sole and absolute discretion and without prejudice to other remedies the Owner may have, (a) furnish, or employ a person or entity to furnish, labor, services, materials or equipment to correct, remove and/or repair such deficiencies, as the Owner deems most expedient; (b) take such action as the Owner deems necessary to regain and/or maintain the Construction Schedule; and/or (c) withhold payment as permitted under the Contract Documents. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## § 2.5 RIGHTS CUMULATIVE

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner under the Contract Documents, at law, or in equity.

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the Work. The Contractor shall also furnish all necessary water, heat, light, and power.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed (including, without limitation, (i) the location, condition, layout and nature of the Project site and surrounding areas; (ii) anticipated labor and supply costs; and (iii) availability and cost of materials, tools and equipment) and correlated personal observations with requirements of the Contract Documents. During the period that the Contractor is in care, custody and control of the Project site, the Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. During execution of the Work, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, (i) carefully study and compare the various Contract Documents, including, without limitation, the Schematic Design, Design Development and Construction Documents, relative to that portion of the Work, (ii) verify the Owner's design intent is reflected and incorporated into the Contract Documents, (iii) take field measurements of any existing conditions related to that portion of the Work, and (iv) observe any conditions and verify all grades, elevations dimensions or locations at the Project site affecting it. Any defects resulting from the Contractor's failure to comply with its obligations under this paragraph shall be promptly rectified by the Contractor, at its cost and expense and without additional cost to the Owner. The Contractor shall at once report to Architect and Owner, as a request for information ("RFI") or in such form as the Owner directs, any error, inconsistency or omission the Contractor may discover. The Contractor shall not proceed with Work affected by such errors, omissions, inconsistencies or variances without the Architect's response to such RFI. Any necessary change shall be ordered as provided in Article 7, subject to the requirements of Article 1 and other provisions of the Contract Documents. If Contractor proceeds with the Work without such notice to the Owner and Architect having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents the Contractor should have discovered such errors, inconsistencies or omissions, the Contractor shall bear all costs arising therefrom. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and the applicable standards, codes and ordinances as they relate to performance of the Work, the Contractor shall (i) provide the better quality or greater quantity of Work, or (ii) comply with the more stringent requirements; either or both in accordance with the Owner's interpretation.

§ 3.2.3 The Contractor shall through the exercise of the Construction Manager's Standard of Care examine the site of the Work and adjacent premises and the various means of approach to the site, and shall through the exercise of

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the Construction Manager's Standard of Care make investigations in order to inform itself thoroughly as to the character and magnitude of all work involved in the complete execution of the work shown in the Contract Documents. The Contractor shall further inform itself as to the facilities for delivering, handling, and installing the construction plant and other equipment and the conditions and difficulties that will be encountered in the performance of the Work.

§ 3.2.4 The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies, or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized or through the exercise of reasonable diligence should have recognized such errors, inconsistencies, omission, or difference and failed to report it to the Owner and Architect. Contractor shall give Architect and Owner timely and proper notice and documentation of any additional design drawings, specifications, or instructions required to define the Work in greater detail, correct coordination issues, or to permit the proper progress of the Work either prior to starting construction or during construction activities.

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor, and not the Owner, shall be solely responsible for, and have control over, charge of and responsibility for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, notwithstanding any of the rights and authority granted the Owner in the Contract Documents. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures will not be safe with the proper exercise of safety precautions and programs required hereunder, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be responsible for loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall inspect all materials delivered to the site and shall reject any materials that will not conform with the Contract Documents when properly installed.

§ 3.3.5 The Contractor shall be responsible for and coordinate any and all inspections required by any governmental body that has jurisdiction over the Project. Failure to obtain any permits, licenses, or other approvals because of the failure of the Contractor to conform to this requirement shall not extend the Contract Time, and Contractor shall not be entitled to an increase in the Contract Sum therefor.

§ 3.3.6 The Contractor shall confine all operations (including storage of materials) conducted on the Project site to areas authorized or approved by Owner.

§ 3.3.7 The Owner may undertake or award other contracts for additional work at the Project. With regard to the Work of the Owner's third party contractors, subcontractors, and vendors or work that is otherwise not the responsibility of Contractor, Contractor shall fully cooperate with such third parties and shall provide management support to Owner in order to assist the Owner in managing and coordinating such work, which management support shall be limited to providing scheduling input to Owner and the third parties with respect to the delivery and installation of third party services, materials, and equipment that must be integrated with Contractor's Work.

§ 3.3.8 The Contractor shall at all times staff the Project adequately for high quality management and construction work. The Contractor shall have competent supervision continuously on the job during work hours and readily available at all times upon call.

§ 3.3.9 The Contractor shall at all times make provisions to protect the existing building (if any) or new construction from damage due to the Work or due to the weather.

§ 3.3.10 The Owner or the Owner's Designated Representative shall have access to the Work site and all Work. No inspection by the Owner's Designated Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

§ 3.3.11 If part of the Work is adjacent to or dependent upon work by a separate contractor or the Owner's own forces, the Contractor shall meet and coordinate with such separate contractor or forces prior to proceeding with that portion of the Work.

§ 3.3.12 The Contractor shall ensure that personnel performing the Work comply with an Owner-approved logistics plan for the use of the Project site and its surroundings, parking, temporary facilities, utilities, staging and storage for the Project, including phasing, in coordination with the needs of the Owner and the requirements of governmental authorities.

#### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Immediately prior to the Architect's inspection for Substantial Completion, the Contractor shall remove all temporary connections, distribution lines, meters, and associated paraphernalia.

§ 3.4.2 The Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect in consultation with the Owner and in accordance with a Change Order, Approval Letter or Construction Change Directive. Substitutions and alternates may be rejected in the Owner's sole discretion. Substitutions and alternates will be considered only if: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations; (ii) specified products are unavailable through no fault of the Contractor or any Subcontractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in a designated space; (iv) the manufacturer or fabricator refuses to certify or guaranty the performance of the specified product as required; or (v) when, in the sole judgment of the Owner, a substitution would be substantially in the Owner's best interests in terms of cost, time or other considerations.

§ 3.4.2.1 No time extensions shall be allowed nor any responsibility assumed by the Owner if the Contractor submits a request for a substitution, whether such request is approved or denied.

§ 3.4.2.2 Approval by the Owner of any substitution shall not relieve the Contractor requesting the substitution of any responsibility for additional costs incurred by the Architect and other trades for changes made necessary to accommodate the substituted item. Any additional cost, or any loss or damage arising from the substitution of any material or any method for those originally specified shall be borne by Contractor, notwithstanding approval or acceptance of such substitution by Owner or Architect, unless such substitution was made at the written request or direction of Owner or Architect.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 When the Contract Documents require Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules, and regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by Contractor in accordance with the Contract Documents. When the Contract

Documents describe the Work in general terms, but not in complete detail, Contractor understands and acknowledges only the best general practice is to be employed. Any design detail furnished by Contractor shall be in conformance with applicable laws and shall be sufficient for the purposes intended. Contractor shall closely inspect all materials as delivered and all Work as performed and shall promptly reject and return all substandard materials and redo all substandard Work without awaiting Architect's inspection and rejection thereof. Such Contractor inspection of all Project materials shall be performed, in part, to confirm and/or verify that no hazardous materials are incorporated in to the Project or Work and the Contractor shall reject any and all Project materials containing hazardous materials unless the Contract Document specifically require such hazardous materials for the Work.

### § 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly authorized, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers and manufacturers. Manufacturers' warranties and warranties by others shall not relieve the Contractor of any of its responsibilities.

§ 3.5.2 Contractor shall be responsible for determining that all materials furnished for the Work meet all the requirements of the Contract Documents. The Architect or Owner may require Contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the Owner or Architect, would lead to a reasonable certainty that any material used, or proposed to be used in the Work meets the requirements of the Contract Documents. All such data shall be furnished at Contractor's expense. This provision shall not require Contractor to pay for periodic testing of different batches of the same material, unless such testing is specifically required by Contract Documents to be performed at Contractor's expense.

§ 3.5.3 In all cases in which a manufacturer's name, trade name or other proprietary designation is used in connection with materials or articles to be furnished under this Contract, whether or not the phrase "or equal" is used after such name, Contractor shall furnish the product of the named manufacturer(s) without substitution, unless a written request for a substitute has been submitted by Contractor and approved in writing by Owner and Architect as provided in Subparagraph 3.4.2.

§ 3.5.4 The Contract Documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items of mechanical and electrical equipment have been selected to have a coordinated design in relation to the overall appearance of the building. Architect shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits.

§ 3.5.5 The warranty provided in this Section 3.5 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

§ 3.5.6 Contractor shall procure and deliver to Architect, no later than the date claimed by Contractor as the date of Substantial Completion, all special warranties required by the Contract Documents. Delivery by Contractor shall constitute the Contractor's guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions.

§ 3.5.7 The Contractor's warranty on all materials and equipment shall be for a minimum of 12 months after Substantial Completion of the Work or a portion thereof, unless there is a longer period provided for specific materials and equipment in the Contract Documents.

### § 3.6 TAXES

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.2 Contractor shall be familiar with the current regulations of the Department of Revenue Services. The tax on materials, supplies, or products purchased for this Project and exempted by such regulations shall not be included in the Contract Sum.

### § 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government, municipal, quasi public and/or regulatory agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Upon the Owner's request, the Contractor shall cooperate with and assist the Owner in the event the Owner seeks to pursue a reduction of any permit or license fees. Before commencing Work, the Contractor shall submit copies of such permits or written proof that required permits have been obtained.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If Contractor performs Work knowing it to be contrary to any laws, statutes, ordinances, building codes, rules, regulations or recorded covenants or restrictions applicable to the Project Site, Contractor shall assume full responsibility for such work and shall bear and be liable to Owner for the attributable costs and damages arising therefrom and indemnify Owner against the adverse consequences thereof. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Owner and Architect in writing so that the Owner may take such action as at his discretion the Owner may determine to be necessary. The requirements of the foregoing section do not waive the Contractor's responsibility of complying with the requirements of the Contract Documents when such requirements exceed those of laws, ordinances, rules, regulations, and order of any public authority applicable to the Work.

§ 3.7.4 If the Contractor encounters conditions at the Project site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner, in consultation with the Architect, will promptly investigate such conditions and, if it is determined that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall be entitled to an equitable adjustment in the Contract Sum or Contract Time, or both. No request by the Contractor for an equitable adjustment to the Contract Sum or Contract Time under this sub-section or the following sub-section shall be allowed, unless the Contractor has given the required written notice. No change in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions that were disclosed to or that reasonably should have been known to the Contractor in the proper exercise of its obligations hereunder. Further, no request by Contractor for such equitable adjustment shall be allowed if made after the Architect has issued the final Certificate of Payment.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect in writing. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

## § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum may be adjusted accordingly by Change Order or Approval Letter, as applicable. The amount of any such Change Order or Approval Letter shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

## § 3.9 PROJECT MANAGER AND SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent project manager, superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work until the date of Substantial Completion, and for such additional time thereafter as the Owner may determine to be necessary for the expeditious completion of the Work. The project manager and superintendent shall be satisfactory to the Architect and the Owner and shall not be changed except with the written consent of the Owner unless the project manager or superintendent ceases to be in the employ of the Contractor. Owner shall have the right, at any time, to direct a change in Contractor's representatives if their performance is unsatisfactory. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's reasonable discretion. Owner shall have no obligation to direct or monitor Contractor's employees. The project manager shall represent the Contractor, and all notices and other communications given to the project manager shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and the Architect the name and qualifications of a proposed project manager and superintendent.

§ 3.9.3 The Contractor shall not employ a proposed project manager or superintendent to whom the Owner has made objection.

## § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's Construction Schedule (as such term is defined in the Agreement) for the Work, including man-loading/labor required to perform the Work. The Construction Schedule shall not exceed time limits established under the Contract Documents, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Construction Schedule and all schedule updates shall clearly delineate all Subcontractor start and finish dates, realistic activity sequences and durations, critical dates by which Shop Drawings, Product Data, Samples and other submittals must be processed and the times by which products requiring long delivery lead times must be procured, commissioning and closeout process as well as the anticipated dates for the Owner's other contractors, if any, to coordinate their work with the Contractor's Work. The Contractor shall update the Construction Schedule on a monthly basis, or more frequently as required by the Owner, the condition of the Work or the Project, or as necessary to keep the Owner apprised of the progress of the Work. Construction schedule updates shall conspicuously note any changes to the prior submitted schedule update. The Construction Schedule shall not be modified or extended without the prior approval of the Owner in each instance.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract, but in no event later than fifteen (15) days after the award of subcontracts or later than the date of the first submittal to be reviewed by the Architect and Owner, and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Owner's and Architect's approval. The Architect's approval shall not unreasonably be

delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's Construction Schedule, (2) allow the Architect reasonable time to review submittals, and (3) be updated weekly and submitted to the Owner and Architect. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Contractor shall collaborate with the Owner and the Architect to establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other similar submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders, Approval Letter, Construction Change Directives and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. At the completion of the Work, the Contractor shall certify by signing on them that each of the foregoing marked documents is complete and accurate. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.2 No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

§ 3.11.3 The Contractor shall maintain at the Project site on a current basis records of all subcontracts, purchase orders, materials, equipment, maintenance and operating manuals and instructions, warranties, and any other related documents and revisions which arise out of any subcontract or the Work. The Contractor will make records stored at its home office available to the Owner at the Project site on the Owner's request. At the completion of the Project, the Contractor shall promptly deliver all such records to the Owner.

§ 3.11.4 The Contractor shall establish and maintain a log of RFI's that includes date submitted, date response required and date returned. This log shall be updated and submitted to the Owner weekly. The Contractor shall submit all RFI's in writing on a pre-approved form, which shall provide space for the requested information and the response.

§ 3.11.5 Contractor's Daily Report. The Contractor shall prepare a Contractor's Daily Report to the Owner that identifies the Contractor's staff, Contractor's direct labor, subcontractors on the Project site and the areas of Work for the day.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Owner and Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has determined and verified all dimensions, quantities, field dimensions, relations to existing Work, coordination with Work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data or Samples and verification of compliance with all the requirements of the Contract Documents. The accuracy of all such information is the responsibility of the Contractor. In reviewing and approving Shop Drawings, Product Data and Samples, the Architect shall be entitled to rely upon the Contractor's representation that such information is correct and accurate. The Architect's comments made on the Shop Drawings, Samples, or other submitted data during reviews do not relieve the Contractor from compliance with requirements of the Drawings and Specifications and other Contract Documents. Comments made which are construed by the Contractor as altering the Contract Sum must be reported to the Architect immediately. No work action may be taken prior to a resolution or written consent of Architect. Any Work not shown on the Shop Drawings which is shown in the Contract Documents remains part of the Project requirements. The Architect is not responsible for completeness of the Shop Drawings nor as such shall the Shop Drawings supersede the requirements of the Contract Documents. The Contractor is responsible for: determining quantities; confirming and correlating dimensions; selecting fabrication processes and techniques of construction; coordination for all of the Work; overseeing safety; and executing the Work in a satisfactory manner.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order, Approval Letter or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor

shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### § 3.13 USE OF SITE

§ 3.13.1 The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine operations at the Project site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

§ 3.13.2 The Contractor shall at all times cooperate and coordinate with any other contractors and the Owner with respect to schedules and interferences with the Work so as to complete the Project on schedule.

§ 3.13.3 Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other such adversity is solely the responsibility of the Contractor.

### § 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. Structural members shall not be cut except with the prior written permission of the Architect. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 The Contractor shall in all cases exercise extreme care in cutting operations and perform such operations under adequate supervision by competent mechanics skilled in the applicable trade. Openings shall be neatly cut and shall be kept as small as possible to avoid unnecessary damage. Careless and/or avoidable cutting and damage is not permitted and the Contractor will be held responsible for such avoidable or willful cutting or damage.

### § 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract on a daily basis. Furthermore, the Contractor shall be responsible for maintaining cleanliness of surrounding access roads and property adjacent to the Project site. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 Burning of waste materials and rubbish at the Project site is not permitted. Removal and proper disposal of all waste material and rubbish is included in the Contract Sum.

### § 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss (including liability, costs, and attorney's fees related thereto or to enforcement of this Subparagraph) on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to

believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss (including liability, costs, and attorney's fees related thereto or to enforcement of this Subparagraph) unless such information is promptly furnished to the Architect.

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, the Contractor hereby agrees to and shall at all times defend, indemnify and hold Owner and its subsidiaries, affiliates, officers, agents, excluding design professionals, and employees, wholly harmless from any and all losses, costs, expenses (including court costs and attorneys' fees, interest and profits), claims, demands, liability, suits by any person or persons, injuries, damages or death and other liabilities of whatsoever kind or nature arising out of or resulting from the performance (or attempted performance) of the Work, or otherwise caused by, incident to, connected with or arising directly or indirectly out of: (a) the performance of this Contract by the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, (b) any breach or failure to comply with applicable laws, codes or regulations by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, or (c) any act, omission, intentional misconduct or negligence of Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This indemnity shall survive the termination of this Contract.

§ 3.18.2 In any and all claims against any person or entity indemnified under this Section 3.18 by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under insurance coverage required by the Contract Documents, Workmen's Compensation Acts, disability benefits acts or other employee benefits acts.

§ 3.18.3 If Contractor fails to defend any person or entity indemnified hereunder, such person may defend any suit, action or other legal proceeding and the actual costs thereof (including, without limitation, attorneys' fees) shall be included as part of the loss, cost, damage and expense covered by Contractor's indemnity.

§ 3.18.4 To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure by the Owner to make payment when required by the Contract Documents, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any claims, liens, charges (including attorneys' fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work. The Owner shall be entitled to recover from the Contractor all costs and expenses incurred in enforcing this Agreement, including attorneys' fees.

§ 3.18.5 As pertains to Paragraph 3.18, the Owner reserves the right to retain its own counsel and to charge any reasonable counsel fees to the Contractor where there is not a commonality of interests between the Owner and the Contractor or as to claims that are not insured. The Contractor expressly consents to the Owner's selection of legal counsel and waives any waivable conflict.

### § 3.19 ASSIGNMENT

§ 3.19.1 Neither this Contract nor any payments becoming due hereunder shall be assigned by Contractor without the written consent of Owner.

### 3.20 ACCESS TO BOOKS AND RECORDS

§ 3.20.1 Upon forty-eight (48) hour prior notice to Contractor, the Owner shall at all times have the right to inspect and copy the books and records (however kept) of the Contractor for verification of work done, payments due, amounts claimed, obligations owed Subcontractors or suppliers, or any other aspect of the Contractor's obligations regarding the Work and this Agreement. In the event of an emergency, the Owner shall have the right to inspect and copy such books and records without prior notice. The Contractor shall keep books and records adequate to support its costs and charges, to comply with generally accepted accounting principles, and to evidence compliance with this Agreement. At the Owner's request, the Contractor shall promptly provide evidence satisfactory to the Owner of the Contractor's compliance with the Contract Documents.

## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner may employ a successor architect whose status under the Contract Documents shall be that of the Architect.

### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will when directed by Owner be an Owner's representative during construction until Final Payment (as such term is defined in Section 9.10.1). The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. The Architect shall have no authority to order any extra-contractual work or services, contractually bind the Owner or alter the Owner's rights and obligations under the Contract Documents.

§ 4.2.1.1 The Owner shall in its discretion have the option to have the administration of the Contract performed by the Architect, an Owner's representative, a Construction Manager, or other party. As of the date of this Agreement, the Owner has elected to have the administration of the Contract performed by the Owner.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, and to determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect shall report promptly to the Owner any objectionable Work at the time discovered or reasonably should have been discovered. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will issue written reports to Owner and Contractor about the progress and quality of the portion of the Work completed, which reports shall include all (1) known deviations from the Contract Documents and from the most recent Construction Schedule submitted by the Contractor, (2) defects and deficiencies observed in the Work and (3) any Work rejected by the Architect or additional inspections or testing required by the Architect. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other directly about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor unless the Owner indicates otherwise. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment recommending payment on such amounts. The Owner shall make the final decision on whether to make payment to the Contractor in accordance with the Contractor's Applications for Payment, and the Owner shall have the right to communicate with any individual or entity involved in the Project to verify amounts included in Applications for Payment.

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§ 4.2.6 The Owner and Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Owner and/or Architect considers it necessary or advisable, the Architect, with the Owner's consent, will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples. The purpose of such review is to evaluate conformance with the Contract Documents and all applicable laws, statutes, ordinances, and regulations. The Architect's action will be taken in accordance with the Owner approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. The Architect shall endeavor to complete its review within the limits set forth in the Owner approved submittal schedule. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 If requested by the Owner, the Architect will review Change Orders and Approval Letters prepared by the Contractor and the Architect will prepare Construction Change Directives as directed by the Owner, and the Architect may, at the Owner's direction, authorize minor changes in the Work as provided in Section 7.4. The Architect will make recommendations to the Owner regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect, in consultation with the Owner, will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The Architect will issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the Project site.

§ 4.2.11 The Architect will make recommendations on matters concerning performance of the Contractor under, and requirements of, the Contract Documents on written request of the Owner. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to a RFI about the Contract Documents. The Architect's response to such request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness and in no event later than ten (10) days from the date of the Contractor's request, to ensure that there is no negative impact on the Construction Schedule. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the RFI.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor (of any tier) is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution. The Owner may reasonably require the Contractor to change any Subcontractor previously approved, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change. The Contractor shall supply Owner with a list of the names and addresses of all Subcontractors and material suppliers on request and from time to time.

§ 5.2.5 If any of the Subcontractors or personnel involved in the Project is not fulfilling its responsibilities properly, the Owner may require such personnel to be terminated or removed and replaced as expeditiously as possible with Subcontractors or personnel acceptable to the Owner.

§ 5.2.6 Nothing herein shall be construed as an intent to create a contractual or third party beneficiary relationship between the Owner and any of the Subcontractors, except as provided in § 5.4.

§ 5.2.7 The form of each subcontract shall be submitted to the Owner for its review, which shall not be unreasonably delayed. Each subcontract shall expressly provide for the contingent assignment referred to in Section 5.4.1.

### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the

Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors of all tiers. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

**§ 5.3.2** The Contractor shall include in each subcontract an obligation for the Subcontractor to provide immediate notice of any material adverse change to the Subcontractor's financial condition since the date of the award, that there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of Subcontractor's knowledge, threatened against Subcontractor, wherein an unfavorable decision, ruling or filing would materially affect the performance by Subcontractor of its obligations under its subcontract with Contractor. If the Contractor becomes aware of any material change in the financial condition of a Subcontractor or Sub-subcontractor during the progress of the Project, the Contractor shall give the Owner prompt, written notice of such change.

#### **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights under the subcontract.

**§ 5.4.2** The Contractor shall, upon the request of Owner, submit a copy of each subcontract signed by Contractor in connection with the Project. Each subcontract shall contain a contingent assignment of the subcontract to the Owner consistent with Section 5.4..

**§ 5.4.3** Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

**§ 5.4.4** Without limitation on the generality of the foregoing, each Subcontract agreement and each Sub-subcontract agreement shall include, and shall be deemed to include, the following provisions:

- .1 An agreement that the Owner is a third-party beneficiary of the Sub-contract (or Sub-subcontract), entitled to enforce any rights thereunder for its benefit, and that the Owner shall have the same rights and remedies against the Subcontractor (or Sub-subcontractor) as the Contractor (or Subcontractor) has, including but not limited to the right to be compensated for any loss, expense, or damage of any nature whatsoever incurred by the Owner resulting from any breach of representations and warranties, express or implied, if any, arising out of the agreement and any error, omission, or negligence of the Subcontractor (or Sub-subcontractor) in the performance of any of its obligations under the agreement;
- .2 A provision that the agreement shall be terminable upon seven (7) days' written notice by the Contractor (or Subcontractor) or, if the Subcontract (or Sub-subcontract) has been assigned to Owner, by Owner;
- .3 A provision that neither the Contractor nor the Subcontractor (or Sub-subcontractor) shall have the right to require arbitrations of any disputes; and

- .4 A provision requiring the Subcontractor (or Sub-subcontractor) to submit releases and certificates and waivers of liens for work completed by it and its Sub-subcontractors as a condition precedent to the disbursement of the progress payment next due and owing.

§ 5.4.5 The Contractor shall be responsible for any and all Subcontractors working under it and shall carry insurance for all Subcontractors or ensure that they are carrying it themselves so as to relieve the Contractor, Owner, Architect, and their respective officers, directors, agents, and employees of any and all liability arising out of the respective subcontractor's work.

§ 5.4.6 The Owner assumes no responsibility for the overlapping or omission of parts of the Work by various Subcontractors in their agreements with the Contractor, such responsibility being solely with the Contractor.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. The Owner's separate contractors, if any, may have access to those portions of the Project site under construction prior to the anticipated date of Substantial Completion for the purpose of installing items which it is more cost effective for the Owner to have installed during the progress of the Work (i.e., before walls and ceilings are completed). The Owner and Contractor agree to cooperate in scheduling all entries and work by the Owner's separate contractors.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall schedule, coordinate and cooperate fully with all other contractors. The Contractor shall take such steps as the Owner and Contractor after joint review and mutual agreement may require to assure scheduling, coordination, and cooperation among the contractors and the Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement. The Construction Schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

*(Paragraph deleted)*

### § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Pursuant to CREC Change Order Process (as such term is defined in the Agreement) procedures and approval process, Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Approval Letter, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement between the Owner and Contractor; an Approval Letter shall be based upon agreement between the Owner and Contractor; a Construction Change Directive may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect, at the direction of the Owner.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Approval Letter, Construction Change Directive or order for a minor change in the Work.

### § 7.2 CHANGE ORDERS AND APPROVAL LETTERS

*(Paragraphs deleted)*

§ 7.2.1.1 A Change Order is a written instrument prepared by the Contractor and signed by the Owner and Contractor, which states their agreement upon all of the following:

- .1 The change in the Work for work that out is outside the scope of work set forth in the Guaranteed Maximum Price Amendment (as such term is defined in the Agreement);
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.1.2 The Architect's signature on a Change Order indicates its recommendation of the change but shall not be a condition to its validity

§ 7.2.2.1 An Approval Letter is a written instrument prepared by the Contractor and signed by the Contractor and Owner, which states their agreement upon a change in the Work for Work that is part of the scope of work set forth in the Guaranteed Maximum Price Amendment. The cost of such Approval Letter change in the Work is a Cost of the Work included within the Guaranteed Maximum Price established by the Guaranteed Maximum Price Amendment.

§ 7.2.2.2 The Architect's signature on an Approval Letter indicates its recommendation of the change but shall not be a condition to its validity

§ 7.2.3 Architect or Owner shall provide no oral orders or directives to change the Work and Contractor is not obligated to follow any such oral directives or orders. All such directives or orders shall be made in writing by the Owner, upon consultation with the Architect. The Contractor specifically agrees that if it proceeds on an oral order to change the Work, it shall waive any claim for additional compensation for such work and the Contractor shall not be excused from compliance with the Contract Documents. The requirements set forth in this Article 7 are the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, no oral, express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work shall be the basis for any claim to an increase in the Contract Sum

or Contract Time. Changes in the Work may be made without notice to Contractor's sureties, and absence of such notice shall not relieve such sureties of any of their obligations to Owner.

§ 7.2.4 Agreement on any Change Order or Approval Letter shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Contract Time and the Construction Schedule.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directives shall be prepared by the Owner or Architect, at the direction of the Owner, and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order or Approval Letter.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be *(Paragraphs deleted)* as provided in Section 7.3.7.

§ 7.3.4 If quantities originally contemplated in establishing Unit Prices are materially changed in a proposed Change Order, Approval Letter or Construction Change Directive so that application of such Unit Prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable Unit Prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the adjustment shall be recorded on the basis of reasonable expenditures based upon the costs set forth below and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead, such overhead amount being included in the General Conditions Lump Sum Amount, and profit, such profit amount being included in the Construction Manager's Fee, as such General Conditions Lump Sum Amount and Construction Manager's Fee are adjusted for increases in the Cost of the Work as set forth in Section 5.1.1 the Agreement and, if applicable, in Section 5.1.2 of the Agreement for Subcontractor's overhead and profit. In such case, the Contractor shall keep and present, in such form as the Owner may require, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following costs; provided, however the following costs are not included for the purposes of this Section 7.3.7 to the extent the following costs are under the Contract Documents included in the General Conditions Lump Sum Amount:

- .1 Costs of labor at the rates set forth in labor rates set forth in the Construction Staffing Matrix (the "Labor Rates"), which Construction Staffing Matrix is an exhibit attached to and part of the Agreement;
- .2 Unit Prices for materials, supplies and equipment and if there are no applicable Unit Prices for such then costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others (provided that the rates were previously agreed to by the Owner and the Owner

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shall not be charged for idle time for Contractor-owned equipment including that owned by the Contractor's affiliated companies, the Contractor's officers, owners, or employees, Subcontractors, Sub-subcontractors, or their agents or employees, or any other persons or entities performing any portion of the Work);

- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work at the rates set forth in Article 6 of the Agreement; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change based upon the labor rates set forth in Article 6 of the Agreement.

Under no circumstances shall the compensation to the Contractor and Subcontractors in connection with Change Orders or Approval Letters be more than the Contractor's and Subcontractor's costs set forth in this Subparagraph 7.3.7 plus no more than the overhead and profit amounts set forth Sections 5.1.1 and 5.1.2 of the Agreement.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit, at the rates set forth in Sections 5.1.1 and 5.1.2 of the Agreement shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may not request payment for Work completed under the Construction Change Directive in Applications for Payment absent the Owner's express, written consent. The Architect, in consultation with the Owner, will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect and Owner determine to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the change will be recorded as a Change Order.

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect, subject to the Owner's approval, may order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Contractor. The Architect shall provide prompt, written notice to the Owner of any minor change in the Work ordered by the Architect.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date determined in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11

to be furnished by the Contractor and Owner, and or prior to receiving written notice to proceed from the Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

**§ 8.2.3** The Contractor shall proceed expeditiously in accordance with the Construction Schedule with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall at all times ensure that each Subcontractor is providing and maintaining sufficient skilled workmen, materials and equipment to achieve Substantial Completion within the Contract Time. Absent Change Orders signed by the Owner or a delay for which the Contractor is entitled to an extension of time by Section 8.3.1, the Contractor shall not make any claims for additional payment of straight time, overtime or premium time in undertaking to achieve Substantial Completion of the Work in accordance with the Construction Schedule.

### **§ 8.3 DELAYS AND EXTENSIONS OF TIME**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work by Owner or Architect; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation; or by other causes Owner determines may reasonably justify delay, then the Contract Time shall be extended by Change Order for a reasonable time as determined by Owner.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents; provided, however, Contractor shall be entitled to additional compensation for delays in the progress of the Work only to the extent that the actual Substantial Completion date for the entire Project (including all phases) exceeds thirty (30) days beyond the contractual Substantial Completion date, as may be adjusted by Change Order. Furthermore, the Contractor's sole remedy for delays excusable under Section 8.3.1 is an extension of time as provided herein and additional compensation, exclusive of any damages claimed by the Contractor on account of compensable claims by Subcontractors or suppliers, limited to, as determined by the Owner, either of the following: (i) an equitable adjustment to the General Conditions Lump Sum Amount, or (ii) Contractor's actual costs of supervision and field personnel at the Project site attributable to such delay based upon the Labor Rates.

**§ 8.3.4** Contractor shall include in each subcontract the following language: "Subcontractor acknowledges that delays resulting from changes in the work, extreme weather, changes to the sequencing of the work, material shortages, transportation, strikes and other causes are inherent in the construction process. Subcontractor acknowledges that it has accounted for delays in its prices and agrees to bring no claims for money damages as a result of any delay or hindrance. In the event that Subcontractor claims that it has been delayed or hindered, it shall submit a request for a time extension to Contractor in the manner and pursuant to the time periods set forth in the Contract Documents. If it is determined that Subcontractor has been delayed or hindered through no fault of its own, the time for performance hereunder will be extended and the extension of time will be Subcontractor's sole remedy for the delay. Under no circumstances will the Contractor or Owner be liable to the Subcontractor for damages resulting from any delays or hindrances."

**§ 8.3.6** The Contractor shall not be entitled to any delay costs for delay to any early completion date elected by the Contractor or those for whom it is responsible.

**§ 8.3.7** If, in the opinion of the Owner, the Contractor falls behind the approved Construction Schedule, the Contractor shall take all steps necessary to improve its progress, including those that may be required by the Owner, without additional costs to the Owner. In these circumstances, the Owner may require the Contractor, at no additional cost to Owner, to increase the number of shifts, overtime operations, days of work, and/or the amount of construction planned, and to submit for approval any supplementary schedules or "recovery" schedules in such detail and form as the Owner deems necessary to demonstrate how the approved rate of progress shall be regained.

**§ 8.3.8** Requests for extension of time shall set forth in detail the circumstances of such claim, the dates upon which claimed delay began and ended, and the number of days' extension of time requested. The Contractor shall provide supporting documentation as the Owner may require, including a revised critical path method Construction Schedule indicating the effect of the circumstances that form the basis for the claim. The Contractor shall not be entitled to

an extension of time for each and every one of a number of causes which have a concurrent and interrelated effect on the progress of the Work.

**§ 8.4** The Contractor shall not be entitled to an adjustment of the Contract Sum or Contract Time on account of delays: (i) that it could have avoided or mitigated using the Contractor's commercially reasonable professional efforts; (ii) that do not impact the critical path; (iii) for which there is available float in the chain of activities affected by the delay; (iv) that were caused by, or could have been reasonably anticipated and avoided by, the Contractor or those for whom the Contractor is responsible; or (v) are of a duration of one day or less.

**§ 8.5** The Owner may direct the Contractor to take such action, including adding, increasing or supplementing the workforce, the number of shifts, the days of work and/or overtime operations, as necessary to minimize threatened delays to Substantial Completion, and the Contractor shall adjust the Construction Schedule on account of such directives. The Contract Sum may be adjusted on account of such acceleration only to the extent that the acceleration is due to a delay that is excusable under § 8.3.1.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### **§ 9.2 SCHEDULE OF VALUES**

A schedule of values allocating the entire Contract Sum to the various portions of the Work is attached to and part of the Agreement. This schedule shall be used as a basis for reviewing the Contractor's Applications for Payment.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** Timelines for progress payments shall be as set forth in the Agreement. In accordance with such timelines, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values for completed portions of the Work. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, including, without limitation, copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Interest shall not accrue or be payable on retainage. The Contractor's applications for payment shall specifically indicate that all applicable taxes are included, and the Contractor shall require the same of its Subcontractors.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.1.3** If requested by Owner, the Contractor shall provide conditional lien waivers and releases for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive any payment. All lien waivers and releases shall be provided in the form required by the Owner. This Paragraph shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers and releases or other documents or data establishing payment or satisfaction of obligations.

**§ 9.3.1.4** Applications for Payment shall be submitted on AIA Documents G702 and G703 or other forms approved by Owner. The schedule of values shall be balanced and not contain any "front end loading." On the standard form for each Certificate for Payment, the Contractor shall also certify that all bills and/or Subcontractors have been paid for which previous Certificates of Payment have been issued and upon which payment has been made; if partial payment has been made, then Contractor shall identify payments made to Subcontractors and suppliers. With the final application for payment, the Contractor shall furnish data and documents establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out

of the Contract, to the extent and in such form as may be designated by the Owner as set forth in Section 9.10.2(5) below for all Work furnished by the Contractor, Subcontractors, Sub-subcontractors, material suppliers, or other persons furnishing labor or materials for the Work, as a precondition to Final Payment. Notwithstanding the foregoing, in the event that Contractor is unable to furnish such data and documents with the final application for payment to the Owner for all Work furnished by minor Subcontractors, minor Sub-subcontractors, or minor material suppliers (for the purposes of this section 9.3.1.4, collectively referred to as "Minor Subcontractors"), provided that (i) the total amounts claimed to be owed by such Minor Subcontractors does not exceed Twenty Thousand Dollars (\$20,000.00) (the total amounts claimed to be owed are referred to as the "Minor Subcontractors Disputed Amount" for the purposes of this Section 9.3.1.4) and (ii) that Contractor provides a written certification of Contractor to Owner accurately confirming that there is a bona fide dispute between the Contractor and such Minor Subcontractors as to the amounts owed to such Minor Subcontractors, then Owner shall pay Contractor the Final Payment in accordance with the provisions of the Contract Documents but Owner may withhold up to one hundred fifty percent (150%) of the Minor Subcontractors Disputed Amount from such payment(s) which funds Owner shall retain pending resolution of such disputes, which resolution shall include an application or applications for payment from Contractor, and such data and documents establishing payment or satisfaction of obligations as set forth above and in Section 9.10.2(5) below for all such Minor Subcontractors and compliance with all other provisions of the Contract Documents.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner in writing, payment may similarly be made for materials and equipment suitably stored off the site at a bonded location agreed upon in writing and subject to and any other requirements established by Owner. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment free and clear of all liens, claims, security interests, or encumbrances whatsoever, that the vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, and that the Contractor shall remain responsible for protection of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**§ 9.3.4** The Contractor's Applications for Payment shall be accompanied by:

- .1 A list of names and addresses of each person or entity that furnished labor, services, materials or equipment on behalf of the Contractor;
- .2 Partial releases and lien waivers, in a form approved by the Owner, from the Contractor, Subcontractors and Sub-subcontractors for all labor, services, materials and equipment furnished to the Project through the date covered such Application for Payment, conditioned on performance of the Work and receipt of payment, and excluding any permitted retainage and unresolved Claims submitted in accordance with the Contract Documents;
- .3 Applications for Payment and invoices from all persons or entities whose Work is included in the Contractor's Application for Payment;
- .4 A Construction Schedule update prepared in accordance with the Schedule Requirements (as such term is defined in the Agreement), including, without limitation, an accurate and updated cash flow projection for the duration of the Project;
- .5 Written warranties from Subcontractors, manufacturers and installers covering portions of the Work that have reached Substantial Completion; and
- .6 Such other data, accounts and receipts substantiating costs included in the Application for Payment as reasonably requested by the Owner.

§ 9.3.5 The Contractor's Applications for Payment shall be signed and notarized, which signature shall constitute a representation and warranty by the Contractor that:

- .1 the amounts sought are due and earned in accordance with the Contract Documents;
- .2 all applicable taxes are included in such Application for Payment;
- .3 the Work is progressing in accordance with the Construction Schedule and the Substantial Completion date established herein;
- .4 the Contractor shall use the amounts requested to discharge their financial obligations on account of labor, services, materials or equipment furnished to the Project and included in the Application for Payment;
- .5 the Contractor has discharged the Contractor's financial obligations on account of labor, services, materials or equipment furnished to the Project for which the Owner has made payment;
- .6 to the best of the Contractor's knowledge, there are no claims of liens, security interests or encumbrances in favor of persons or entities that provided services, labor, materials and/or equipment to the Project on their behalf; and
- .7 title to all Work covered by the application has passed to the Owner no later than the time of payment.

#### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect recommends is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. Notwithstanding the foregoing, the Owner has final determination as to whether to approve a Certificate of Payment and the amounts properly due.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents and that the Architect recommends that the Owner release payment to the Contractor in the amount requested. The foregoing representations are subject to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment or payment on a Certificate of Payment will not be a representation that the Architect or Owner has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Notwithstanding anything to the contrary in the Contract Documents, the Owner shall not be obligated to release payment to the Contractor until the Owner is satisfied that the Work has progressed to the point indicated in the Application for Payment, that the quality of the Work is in accordance with the Contract Documents and that withholding permitted under the Contract Documents is not required. Payment by the Owner on any Certificate for Payment shall not be deemed to waive any of the Owner's rights to later claim that the Work covered by a Certificate for Payment was not properly completed or not completed in accordance with the Contract Documents.

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect shall advise the Owner to withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Owner may withhold payment and the Architect shall also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;

- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for claims of nonpayment by Subcontractors of any tier for services or labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 losses for which the Owner is entitled to indemnity from the Contractor under the Contract Documents

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 The Owner may, in its sole and absolute discretion, issue joint checks to the Contractor and to any Subcontractor, including, without limitation, Sub-subcontractors (of any tier) or material or equipment suppliers for Work properly performed or material or equipment suitably delivered and such payment shall be deemed to have been made on account of the payee and all tiers between the payee and the Owner. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment. Any payment made by the Owner by joint check shall not be construed as a promise to assume the debt of any joint payee, nor as a continuing obligation to make joint payments, nor as an assumption or establishment of a direct contractual relationship with the payee unless expressly stated in a separate written agreement with such payee.

#### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Owner shall not be deemed in default by reason of withholding payment in accordance with the Contract Documents or while any default by Contractor or any Subcontractor remains uncured.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than five (5) days after receipt of payment of good available funds from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor (of all tiers), require each such Subcontractor to make payments to Sub-subcontractors in a similar manner. Upon Owner's request, (i) the Contractor shall provide Owner with proof of payment(s) to Subcontractors; and (ii) Subcontractors (of all tiers) shall provide Owner with proof of payment(s) to Sub-subcontractors.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor.

#### § 9.7 FAILURE OF PAYMENT

§ 9.7.1 If, through no fault of the Contractor, the Owner does not pay the Contractor the amount properly due within thirty (30) days after the date established in the Contract Documents for payment, then the Contractor may, upon seven (7) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 The Contractor is obligated to continue and complete all its Work and obligations under the Contract when Claims are pending or the Parties are in the process of dispute resolution. The Contractor shall not stop, suspend, or delay any portion of the Work, and will be responsible for all expenses, costs and fees arising from any such stop, suspension or delay.

#### § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work will not be considered suitable for Substantial Completion review, and the Contractor shall not be deemed to have achieved Substantial Completion until: (i) all installations of the Work are complete; (ii) all Project systems included in the Work have been started up, tested and commissioned, and are operational as designed and scheduled; (iii) to the extent reasonably required, the Contractor has instructed Owner's personnel in the operation of all systems and equipment; and (iv) the Contractor has arranged for and obtained all designated or required governmental inspections and certifications necessary for legal use and occupancy of the completed Project, including without limitation, a permanent or temporary certificate of occupancy and/or a certificate of completion for the Project.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and the Owner a comprehensive list of items to be completed or corrected prior to Final Payment, which list shall include a detailed estimate of the Cost of the Work for each of such items (the "Punch List"). Failure to include an item on the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The amounts set forth in the Application(s) for payment(s) prepared and submitted by the Contractor for Punch List item Work shall approximately match the detailed estimate for such items set for in the Punch List.

§ 9.8.3 Upon receipt of the Contractor's Punch List, the Architect, in consultation with the Owner, will determine whether the Work or designated portion thereof is substantially complete as defined in Section 9.8.1. The Architect shall, if necessary, update the Contractor's Punch List prior to Final Payment as necessary prior to appending it to the Certificate of Substantial Completion. If the Architect's inspection discloses any item, whether or not included on the Contractor's Punch List, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion for review and approval with the Owner. Such Certificate, when approved, shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items, including, without limitation, the Punch List items accompanying the Certificate. Notwithstanding the foregoing, Contractor shall finish all such items on or before the date thirty (30) days after the date of Substantial Completion. If the Contractor fails to complete all such items within such time and is not diligently pursuing completion of such items, Owner shall, after providing Contractor with written notice, have the remaining Work completed by any means in the event Contractor has not completed such items within ten (10) days

of such notice. Owner will deduct all expenditures to complete such items from the Final Payment due the Contractor and Contractor shall be liable for any excess costs incurred to complete such items. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, and upon completion of close out items related to such Work, if any, the Owner shall make payment of a portion of the retainage applying to such Work or designated portion thereof in accordance with the terms of the Agreement. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, which final Application for Payment shall, in part, be based upon the Punch List, the Architect and Owner will promptly make such inspection and, when the Architect and Owner find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect with the consent of Owner will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents, including, without limitation, that all building systems are functioning satisfactorily in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable (the "Final Payment"). The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to Final Payment have been fulfilled.

**§ 9.10.2** Neither Final Payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner reasonable evidence of compliance with all requirements of the Contract Documents, including but not limited to: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to Final Payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner; and (6) acceptance of the Work by applicable local and state agencies and departments. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments

are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.2.1 As a precondition to receiving Final Payment, the Contractor shall deliver to the Owner a complete set of "as-built" Drawings, consisting of marked-up field plans showing final as-built field conditions, dimensions and conditions including, without limitation, those relating to the heating, air-conditioning and ventilation systems and the electrical, plumbing and life safety systems, recording the Work as actually performed to the extent that the information differs from or supplements original Contract Documents. Such complete set of "as-built" Drawings shall be provided by the Contractor to the Owner in (i) a digital media form of electronic media that is capable of being manipulated and/or modified by software (e.g. Revit or other similar software); and (ii) as a PDF document.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing Final Payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of Final Payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of warranties required by the Contract Documents.

§ 9.10.5 Acceptance of Final Payment by the Contractor, or any final payment by a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§10.1.2 The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else. The Contractor shall notify the Owner in writing of all bodily injury, property damage, death, theft, or vandalism relating to the Project within one working day of such occurrence. Upon the request of the Owner, the Contractor shall provide the Owner with all safety programs for the Work or any portion of the Work.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their

protection from damage, injury or loss. The Contractor shall immediately notify the Owner of any injury to persons or property if damaged on the Project site or related to the Work.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel .

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe or any hazardous condition.

#### § 10.2.8 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, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time as promptly as practicable after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. Notwithstanding the foregoing, the Contractor shall promptly report in writing to the Owner and Architect, within forty-eight (48) hours, all accidents arising out of or in connection with the Work that caused death, bodily injury or property damage, giving full details and statements of any witnesses; provided, however, such reports shall be made immediately by telephone or messenger to the Owner and Architect in the event of death, serious bodily injury or serious property damage.

#### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Contractor shall take all reasonable precautions to avoid further contamination or the spread or disturbance of potentially hazardous substances or materials. As used in the Agreement and the General Conditions, "hazardous material" shall be defined as any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Project site, is either: (1) regulated or monitored by any governmental authority; or (2) a basis for liability of the Owner to any governmental agency or third party under any applicable statute, code, ordinance, regulation, rule and/or common law theory.

§ 10.3.2 Promptly after providing Owner with the Contractor's written notice, the Contractor shall provide Owner with a Change Order proposal for the Contractor to obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is

found to be present, the Contractor shall provide the Owner with a Change Order proposal for the work to be performed by Contractor to cause it to be rendered harmless, which work shall include, without limitation, (i) the Contractor's due diligence and research as to disposal facilities for competitive pricing and scheduling purposes; and (ii) the Contractor's supervision and direction of the abatement (removal or safe containment) of such material or substance in order that such abatement work is performed in the most cost effective manner. The Contractor shall furnish in writing to the Owner and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Owner and the Architect will promptly reply to the Contractor in writing stating whether or not either has reasonable objection to the persons or entities proposed by Contractor. If either the Owner or Architect has an objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner and the Architect have no reasonable objection. When the material or substance has been determine to be or rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, if applicable, the Contract Time may be extended appropriately and the Contract Sum may be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, except to the extent Contractor contributed to or exacerbated the hazardous condition.

**§ 10.3.3** The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are expressly required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.4** The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently or recklessly handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.5** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred, unless the Contractor knew or had reason to know that its activities, even if directed by Owner, violated applicable law.

*(Paragraph deleted)*

**§ 10.3.6** Prior to introducing any hazardous materials to the Project site, the Contractor shall provide a material safety data sheet (MSDS), information about precautionary measures necessary to protect persons or property and an indication of the type of labeling system in use.

**§ 10.3.7** In the event that during the performance of the Work the activities of the Contractor or any Subcontractor, or any person or entity for which the Contractor is responsible, causes the incursion of mold at the Project site, the Contractor shall be responsible for and bear the entire cost of mitigation of any mold to the satisfaction of the Owner.

## **§ 10.4 EMERGENCIES**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7, except to the extent such emergency Work was not attributable to any act, omission, or negligence of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, in which event no additional compensation or extension of time shall be paid or granted.

## **ARTICLE 11 INSURANCE AND BONDS**

### **§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

**§ 11.1.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor, or by a sub-subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

**§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of Final Payment and termination of any coverage required to be maintained after Final Payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The insurance required herein shall not reduce or limit any party's obligation in connection with its performance on the Project.

**§ 11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance at least fifteen (15) days prior to expiration. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. The Contractor shall upon receipt of any such prior written notice promptly provide a copy thereof to Owner, but in no event more than ten (10) days after Contractor's receipt of such prior written notice. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Failure of the Contractor to keep the Contractor's required insurance policies in force during the Work covered by this Agreement or any extensions thereof or extra or additional Work agreed to by the Contractor, shall constitute a material breach of this Agreement, entitling Owner, notwithstanding anything to the contrary contained herein, to immediately cancel and terminate this Agreement for cause.

**§ 11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner and the Architect as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

## **§ 11.2 OWNER'S LIABILITY INSURANCE**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

## **§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a so-called builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Final Payment has been made as provided in Section 9.10 or until no person or entity other

than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements. Nothing contained in the Contract Documents shall be construed to, nor is intended to, constitute any indemnification of the Contractor by the Owner for any loss, cost or damage arising out of any cause insured under this Paragraph.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs of such deductibles, except to the extent loss is caused by the negligent act, intentional misconduct or omission of the Contractor.

§ 11.3.1.4 This property insurance shall not cover portions of the Work stored off the site or portions of the Work in transit and Contractor shall be responsible for insuring such portions of the Work stored off the site or portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

### § 11.3.2 BOILER AND MACHINERY INSURANCE

To the extent deemed necessary by the Owner, the Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work with the Owner as the named insured and the Contractor, Subcontractor, and Sub-subcontractors as the named loss payees. Testing and start-up, other than electrical insulation breakdown test or hydrostatic, pneumatic or gas pressure tests, are included under this insurance.

### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, to the extent covered and paid by such insurance, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after Final Payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of

Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ 11.3.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of a certificate of insurance for each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### **§ 11.3.7 WAIVERS OF SUBROGATION**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by insurance, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.9** The Owner shall deposit in a separate account proceeds received from property insurance purchased pursuant to § 11.3, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Contractor, and at Owner's election, any subcontractor, shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Any such bonds shall be in an amount equal to the cost of the contract awarded, listing Owner as a dual obligee in the case of Subcontractors, and in a form acceptable to the Owner. The required bonds shall be provided by a surety company or companies acceptable to the Owner, authorized to transact such business in the State of Connecticut.

**§ 11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

#### **§ 11.5 PROFESSIONAL LIABILITY INSURANCE**

**§ 11.5.1** The Contractor shall purchase and maintain Professional Liability insurance from the Contractor's usual sources as primary coverage for the Contractor's liability for professional services rendered under the Contract. The cost of purchasing and maintaining such insurance coverage at the rates set forth in Article 6 of the Agreement shall

be included in the Contract Sum. The minimum limits of liability purchased with such coverage shall be as set forth in the Contract Documents.

§ 11.5.2 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Professional Liability Insurance coverage under Section 11.5.

#### § 11.6 OWNER'S INSURANCE REQUIREMENTS

§ 11.6.1 In addition to the requirements set forth in this Article 11, certain of the Owner's insurance requirements are set forth in the RFQ/P (as such term is defined in the Agreement), which RFQ/P insurance requirements (the "RFQ/P Insurance Requirements") are deemed a part of and incorporated into this Article 11. In the event of inconsistencies within or between parts of this Article 11 and the RFQ/P Insurance Requirements, the Contractor shall comply with the more stringent requirements; in accordance with the Owner's interpretation.

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Owner's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner or Architect, be uncovered for the Owner's or Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Owner or Architect has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

#### § 12.2 CORRECTION OF WORK

##### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall ensure that all Work is being performed in accordance with the requirements of the Contract Documents. The Contractor shall reject Work which does not conform to the requirements of the Contract Documents. The Contractor shall promptly correct, repair, replace or re-execute Work, whether or not rejected by the Architect or Owner, that is defective or fails to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall correct such defects and any condition resulting therefrom reasonably promptly, or sooner if such condition threatens the safety of the occupants of the Project. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

##### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 Contractor covenants and agrees that it will, upon notice from Owner, immediately repair, replace, restore, correct and cure at Contractor's expense, all defects, deficiencies, errors and omissions in workmanship and materials and all failures to comply with the Contract Documents which appear within one (1) year from the date of Substantial Completion of the Project; provided, however, that: (i) this warranty and guarantee on the part of Contractor, and Contractor's obligation to correct defective, deficient or non-conforming Work as hereinbefore provided, shall remain and continue in full force and effect as to those components of the Project specified in the Contract Documents for the extended periods specified in the Contract Documents, likewise commencing on the date of Substantial Completion unless otherwise indicated in the Contract Documents; and (ii) with respect to any incomplete or defective item of Work completed or corrected by Contractor after Final Completion of the Project (i.e., punchlist work) this warranty and guarantee shall commence when such incomplete or defective item of Work is satisfactorily completed or corrected by Contractor in each instance. Contractor shall pay for and, if requested, repair, replace, restore, correct and cure any damage or injury, whenever the same shall occur or appear during the applicable warranty period, resulting from any defects, omissions or failures in workmanship and materials. The foregoing guarantee and warranty shall not shorten any longer warranty period or longer period of Contractor's

liability provided for by law or in the Plans, Drawings or Specifications or in any other Contract Document or otherwise received from Contractor or any supplier or Subcontractor or Contractor or from any manufacturer, nor supersede the terms of any special warranty given by Contractor, imposed by law or required by the Contract Documents, but shall be in addition thereto.

§ 12.2.2 The period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.3 Upon completion of any Work under or pursuant to Section 12.2, the one (1) year correction period in connection with the Work requiring correction shall be renewed and recommence.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner. Notwithstanding anything to the contrary contained herein, it is understood and agreed that the warranty and guarantee set forth in this Paragraph shall not affect, limit or impair Owner's right against Contractor and its surety with regard to latent defects in the Work which do not appear within the applicable warranty period and which could not, by the exercise of reasonable care and due diligence, be ascertained or discovered by Owner within such warranty period. Contractor shall be and remain liable and responsible to correct and cure any such latent defects which are reported to Contractor by Owner in writing within one (1) year after any such latent defects first appear or could, by the exercise of reasonable care and due diligence, be ascertained or discovered by Owner.

§ 12.2.4 Notwithstanding anything to the contrary contained herein, if Contractor fails to promptly commence and diligently perform and complete all corrective Work required under this Paragraph from time to time (whether punch list or warranty work), Owner shall have the right (but not the obligation) in each instance, at Owner's election, to cause such corrective work to be done by others and recover the costs thereof, together with damages and reasonable attorney fees, from Contractor and his surety, in addition to all other rights and remedies available to Owner against Contractor and his surety hereunder and at law and in equity for such default by Contractor.

§ 12.2.5 On Substantial Completion of the Work, representatives of the Contractor and the Owner's Representative shall inspect the Project. Any items still incomplete or not consistent with the plans and specifications will be incorporated in a punch list, and the list given to the Contractor who will complete items on the punch list within thirty (30) days of receipt of the punch list. If the Contractor fails to complete all items on the punch list within thirty (30) days, the Owner's Representative or the Owner shall, without further notice to the Contractor, have the remaining Work completed by any means, and the Owner's Designated Representative or the Owner will deduct all expenditures from the Final Payment due the Contractor, and Contractor and Subcontractor shall be liable for any excess costs incurred.

§ 12.2.6 The punch list shall in no way relieve the Contractor of his responsibility to do all the Work specified or shown in the Contract Documents.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not Final Payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. The Contractor may not assign, transfer, convey, pledge, or otherwise dispose of its interest, or any part thereof, in this Agreement. All such assignments by the Contractor are void. If the Contractor attempts to make such an assignment without such consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to the State of Connecticut Department of Education. Further, the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the foregoing to the extent required or requested by Owner.

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by overnight, registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate set forth in the Agreement

### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law.

### § 13.8 NO WAIVER OR APPROVAL

§ 13.8.1 No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach of this Agreement, except as may be specifically agreed in writing. Neither the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use of occupancy of the Work, or any part thereof, the making of Final Payment, or any other action or inaction, on the part of the Owner or Architect shall constitute a waiver of claims by the Owner or an acceptance of any Work which is not in accordance with the Contract Documents either by the activities or duties of the representation of the Owner or Architect, or by inspections, tests, or approvals required or performed by the Owner or Architect or anyone else.

### § 13.9 RECORDING

§ 13.9.1 This Agreement shall not be recorded. If this Agreement shall be recorded contrary to this provision, such recording shall be ineffective and Owner is hereby authorized for and on behalf of, and in the name of Contractor to execute and have recorded a discharge of any such recording.

### § 13.10 SEVERABILITY

§ 13.10.1 The invalidity in whole or in part of any article, section, subsection, sentence, clause, phrase or word, or other provision of these General Conditions and any exhibits or documents attached thereto shall not affect the remaining portions thereof.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents, after notice has been provided pursuant to Section 9.7.

§ 14.1.2 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon seven (7) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed, including reasonable overhead and profit on Work properly executed and actual costs and damages incurred by reason of such termination.

§ 14.1.3 If the Work is suspended by the Owner for a period of ninety (90) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

*(Paragraph deleted)*

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;

- .2 fails to make payment to Subcontractors pursuant to its obligations under this Agreement, after payment by Owner, for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents, including, without limitation, the failure of the Contractor or the Subcontractors to proceed expeditiously in the performance of the work in accordance with the Construction Schedule;
- .5 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;
- .6 is declared bankrupt, has a petition in bankruptcy filed against it, or if the Contractor files for bankruptcy protection; or
- .7 causes or threatens to cause or create labor unrest, dispute, picketing, slowdowns, work stoppage, strike or disharmony.

§ 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery intended to be incorporated into the Project;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished and the Owner's damages arising out of the cause of termination are determined by the Owner.

*(Paragraph deleted)*

§ 14.2.4 In the event that a termination by the Owner for cause is ultimately deemed wrongful by a trier of fact, such termination shall conclusively be deemed to be a termination for convenience by Owner under 14.4 of this Agreement, and the Contractor's sole rights and remedies against the Owner shall be as set forth in 14.4.3.

§ 14.2.5 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for actual increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1 by Change Order. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Under such circumstances, this Agreement shall terminate on the date set forth in the notice from the Owner. The Contractor agrees to immediately prepare to cease performing all services on the date of termination and shall otherwise cease, to the extent practicable, incurring costs chargeable to the Owner under this Contract as of the date of termination. To the extent that the Owner elects (and Contractor hereby grants to the Owner the right to elect to do so in connection with termination of this Contract) to take legal assignment of subcontracts or purchase orders

(including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Section and otherwise under this Contract, at the Owner's sole cost and expense, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts or purchase orders and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. Otherwise, Contractor shall terminate such subcontracts and purchase orders as of the Contract termination date or as soon as possible thereafter. In the event a termination by the Owner for cause is not in accordance with the terms of the Contract Documents or otherwise determined improper, it shall be deemed a termination for convenience under this Section.

**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, as directed by Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders or assign them to Owner.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work properly executed, which payment shall consist of the Cost of the Work of such properly executed Work, which Cost of the Work shall include an equitable amount of the Lump Sum General Conditions Amount as determined by the Owner, and the Construction Manager's Fee computed upon the Cost of the Work of such properly executed Work at the rate set forth in Section 5.1.1 of the Agreement and actual and direct costs and damages incurred by reason of such termination, however the Contractor and any party claiming through or under the Contractor shall not be entitled to any overhead or profit on the Work not so executed.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 CLAIMS**

#### **§ 15.1.1 DEFINITION**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### **§ 15.1.2 NOTICE OF CLAIMS**

Claims by the Contractor or Subcontractors (of any tier) must be initiated by written notice to the Owner and must be initiated within 14 days after occurrence of the event giving rise to such Claim or within 14 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. If the Contractor fails to make a Claim within the specified time, it hereby acknowledges that its failure to do so greatly prejudices the Owner and the Claim will be deemed waived. Upon receipt from the Contractor of a written notice of Claim as provided in Paragraph 15.1.1, the Owner shall review such Claim and if the Owner determines that any Work in dispute should proceed, Owner shall issue to the Contractor a written order to proceed in which Owner shall approve or deny the Contractor's Claim, in whole or in part, or shall instruct the Contractor to proceed with the Work subject to a later determination by the Owner of the Contractor's right to extra payment.

#### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

To the extent that the Owner, when issuing the written order to proceed described in 15.1.2 approves Contractor's Claim, the Contract Sum shall be subsequently adjusted, as provided in Paragraph 7.2. If the Owner, when issuing a written order to proceed, denies, in whole or in part, Contractor's Claim, the Contractor shall have the right to separately pursue all remedies available under the Contract Documents, but the Contractor shall nonetheless proceed with the Work without delay, in any case and Owner shall continue to make payments in accordance with and subject to the Contract Documents.

#### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

*(Paragraph deleted)*

§ 15.1.5.1. If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. In the case of a continuing delay, the Contractor shall file with the Owner written reports on the delay identifying the continuing cause of the delay no less than once a week during the duration of the delay.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were unusually severe for the period of time, could not have been reasonably anticipated and had an adverse effect on the critical path of the scheduled construction.

§ 15.1.5.3 Any change request seeking an extension of the Contract Time shall contain:

- .1 a detailed description of the nature of each cause of delay, the date or dates upon which each cause of delay began and ended (as known or as projected), the number of days of delay attributable to each such cause, and the impact of such delay upon the Construction Schedule;
- .2 the Construction Schedule in effect at the start of the delay, showing that the portion of the Work that was, or will be, delayed is on the critical path and that no float remains or will be available for the delayed activities at the start of the delay;
- .3 a schedule analysis of the impact of the delay on the critical path in the Construction Schedule at the time of the delay, including any proposed adjustment to the Contract Time; and
- .4 such other supporting data that the Owner may reasonably request.

### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

*(Paragraphs deleted)*

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to litigation.

§ 15.3.2 Any Claim which is not resolved by mediation shall be litigated in a court of competent jurisdiction in the location of the Project. The parties waive their rights to a jury trial. Prior to litigation, the parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association or other mutually acceptable dispute resolution administrator in accordance with the American Arbitration Association's Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of litigation but, in such event, mediation shall proceed in advance of litigation proceedings, which litigation shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 **BINDING DISPUTE RESOLUTION**

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 hereof, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction in the location of the Project.

§ 16 **LIMITATION OF LIABILITY**

The Owner shall be liable only to the extent of its interest in the Project; and no representative, officer, director, partner, agent or employee of the Owner (or any partner of a partner or any agent or employee of a partner) shall ever be personally or individually liable with respect to the Contract Documents or the Work. Each Subcontract shall include the foregoing limitation, which shall be effective if the Owner ever succeeds to the Contractor's rights and obligations under a Subcontract.

*(Paragraphs deleted)*



# **Additions and Deletions Report for** **AIA<sup>®</sup> Document A201<sup>™</sup> – 2007**

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## **PAGE 1**

~~(Name and location or address)~~

### **THE OWNER:**

Capitol Region Education Council (CREC)

111 Charter Oak Avenue

Hartford, CT 06106

~~(Name, legal status and address)~~

...

~~(Name, legal status and address)~~

...

(Topics and numbers in bold are section headings.)(Numbers and Topics in Bold are Section Headings)

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3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, ~~13.7~~, 13.7.1, 14.1, 15.2

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the ~~Agreement, Agreement to which this A201, as modified, is attached to and made a part thereof,~~ Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) an Approval Letter, (4) a Construction Change Directive or ~~(4)-(5)~~ a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.~~

...

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. The Contract Documents shall govern the execution of the Work.

...

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, project manuals, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

## § 1.1.8 ~~INITIAL DECISION MAKER~~ INITIAL DECISION MAKER

...

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated ~~results~~-results and make the Work complete and operable in all respects, except to the extent specifically indicated in the Contract Documents to be the responsibility of the Architect or others.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Contractor and all Subcontractors shall refer to all of the Drawings, including those showing primarily the Work of the mechanical, electrical and other specialized trades, and to all of sections of the Specifications.

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§ 1.2.3.1 In the event of conflicting provisions among the Contract Documents that were not called to the Owner's or Architect's attention in writing prior to award of the Contract, the Contract Documents shall be construed according to the following priorities:

<u>Highest Priority</u>	<u>Modifications to the Agreement</u>
<u>Second Priority</u>	<u>Agreement</u>
<u>Third Priority</u>	<u>Addenda (later date to take precedence - if any)</u>
<u>Fourth Priority</u>	<u>General Conditions</u>
<u>Fifth Priority</u>	<u>Bidding Requirements</u>
<u>Sixth Priority</u>	<u>Drawings and Specifications</u>

§ 1.2.4 Contractor and all Subcontractors shall refer to all of the drawings, including those showing primarily the work of the mechanical, electrical and other specialized trades, and to all of the documents of the specifications, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results. If work is required in a manner to make it impossible to produce work of the quality required by or reasonably inferred from the Contract Documents, or should discrepancies appear among the Contract Documents, the Contractor shall request, in writing, an interpretation from the Architect before proceeding with the Work. If the Contractor fails to make such request, no excuse will thereafter be entertained for failure to carry out Work in the required manner or to provide required guarantees, warranties, or bonds, and the Contractor shall not be entitled to any change in the Contract Sum or the Contract Time on account of such failure.

§ 1.2.5 Should conflict occur in or between the Drawings and Specifications, the Contractor is deemed to have included the better quality and larger quantity of work in the Bid.

§ 1.2.6 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials, or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

§ 1.2.7 Where codes, standards, requirements and publications of public and private bodies are referred to in the Specifications, references shall be understood to be to the latest revision prior to the date of receiving bids, except where otherwise indicated.

§ 1.2.8 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding Work and of the construction of the Project generally.

§ 1.2.9 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

§ 1.2.10 Mechanical and Electrical Drawings are diagrammatic only, and are not intended to show exact physical locations or configurations of Work. Such Work shall be installed to clear all obstructions, permit proper clearances for the work of other trades, and present an orderly appearance where exposed. Exact locations of fixtures and outlets shall be obtained from Architect before the Work is roughed in; Work installed without such information from Architect shall be relocated at Contractor's expense.

§ 1.2.11 Test boring and soil test information included with the Contract Documents or otherwise made accessible to Contractor was obtained by Owner for use by Architect in the design of the Work. Owner does not hold out such information to the Contractor as an accurate or approximate indication of sub-surface conditions, and no claim for extra cost or extension of time resulting from a reliance by Contractor on such information shall be allowed except as provided in Section 3.7.4.

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§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and the Owner shall be the owner of the Instruments of Service and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's Owner or Owner's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service; notice acceptable to Owner. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. Owner.

...

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents. The Contractor agrees that use of Instruments of Service in electronic form: (a) is not a substitute for professional judgment; (b) does not relieve the Contractor from applying the appropriate standard of care and skill relevant to the use of the Instruments of Service; and (c) is only to be used as a tool to assist the Contractor in connection with the Project.

...

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. Owner may furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal

description of the site. To the extent the foregoing are made available to Contractor they are not deemed Contract Documents and there is no warranty or guaranty, either express or implied, that the conditions indicated by such documents are representative of those existing throughout the areas where the Work is to be performed. If Owner or Architect has made investigations of subsurface characteristics or concealed conditions of areas where the Work is to be performed, such investigations, if any, were made solely for the purposes of Owner's study and Architect's design. Neither such investigations nor the records thereof are a part of the Contract between Owner and Contractor. To the extent such investigations or the records thereof are made available to Contractor by Owner or Architect, such information is furnished solely for the convenience of Contractor. Neither the Owner nor Architect assumes any responsibility whatsoever with respect to the sufficiency or accuracy of the investigations thus made, the records thereof, or of the interpretations set forth therein or made by Owner or Architect in its use thereof, and there is no warranty or guaranty, either express or implied, that the conditions indicated by such investigations or records thereof are representative of those existing throughout the areas where the Work is to be performed, or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered. In connection with the foregoing, Contractor shall be solely responsible for locating and shall locate prior to performing any Work all utility lines, telephone lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, without limitation, all buried pipelines and buried telephone cables, and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. Not in limitation of the foregoing, before performing any excavation at the Project Contractor shall use the services of Call Before You Dig.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for ~~construction,~~ the use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 ~~The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.~~Section omitted.

§ 2.2.4 ~~The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness after receipt from the Contractor of a written request for such information or services. To the extent such Owner information is made available to Contractor, the Contractor shall review such information so as to be well informed as to the scope of the Contract Documents and accuracy of such information and shall promptly report to the Owner and Architect any inaccuracy in such information as a request for information. The Contractor shall be entitled to rely on the accuracy of such information furnished by the Owner; provided, however, the Contractor shall exercise proper precautions related to the safe performance of the Work and shall not be entitled to rely on the accuracy of such information if during such review the Contractor discovered or through the exercise of the Construction Manager's Standard of Care (as such term is defined in Section 1.2 of the Agreement) should have discovered inaccurate information and did not promptly report it to the Owner and Architect. The Contractor, not the Owner, is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.~~

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If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or ~~repeatedly~~ fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, in its sole and absolute discretion and without prejudice to other remedies the Owner may have, correct such deficiencies. (a) furnish, or employ a person or entity to furnish, labor, services, materials or equipment to correct, remove and/or repair such deficiencies, as the Owner deems most expedient; (b) take such action as the Owner deems necessary to regain and/or maintain the Construction Schedule; and/or (c) withhold payment as permitted under the Contract Documents. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect.~~ If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **§ 2.5 RIGHTS CUMULATIVE**

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner under the Contract Documents, at law, or in equity.

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**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents. Documents and shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the Work. The Contractor shall also furnish all necessary water, heat, light, and power.

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**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed (including, without limitation, (i) the location, condition, layout and nature of the Project site and surrounding areas; (ii) anticipated labor and supply costs; and (iii) availability and cost of materials, tools and equipment) and correlated personal observations with requirements of the Contract Documents. During the period that the Contractor is in care, custody and control of the Project site, the Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. During execution of the Work, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, (i) carefully study and compare the various Contract Documents- Documents, including, without limitation, the Schematic Design, Design Development and Construction Documents, relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall (ii) verify the Owner's design intent is reflected and incorporated into the Contract Documents, (iii) take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. (iv) observe any conditions and verify all grades, elevations dimensions or locations at the Project site affecting it. Any defects resulting from the Contractor's failure to comply with its obligations under this paragraph shall be promptly rectified by the Contractor, at its cost and expense and without additional cost to the Owner. The Contractor shall at once report to Architect and Owner, as a request for information ("RFI") or in such form as the Owner directs, any error, inconsistency or omission the Contractor may discover. The Contractor shall not proceed with Work affected by such errors, omissions, inconsistencies or variances without the Architect's response to such RFI. Any necessary change shall be ordered as provided in Article 7, subject to the requirements of Article 1 and other provisions of the Contract Documents. If Contractor proceeds with the Work without such notice to the Owner and Architect having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents the Contractor should have discovered such errors, inconsistencies or omissions, the Contractor shall bear all costs arising therefrom. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed

design professional, unless otherwise specifically provided in the Contract Documents. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and the applicable standards, codes and ordinances as they relate to performance of the Work, the Contractor shall (i) provide the better quality or greater quantity of Work, or (ii) comply with the more stringent requirements; either or both in accordance with the Owner's interpretation.

~~§ 3.2.3~~ The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. shall through the exercise of the Construction Manager's Standard of Care examine the site of the Work and adjacent premises and the various means of approach to the site, and shall through the exercise of the Construction Manager's Standard of Care make investigations in order to inform itself thoroughly as to the character and magnitude of all work involved in the complete execution of the work shown in the Contract Documents. The Contractor shall further inform itself as to the facilities for delivering, handling, and installing the construction plant and other equipment and the conditions and difficulties that will be encountered in the performance of the Work.

~~§ 3.2.4~~ If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies, or omissions in the Contract Documents, Documents or for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. Documents unless the Contractor recognized or through the exercise of reasonable diligence should have recognized such errors, inconsistencies, omission, or difference and failed to report it to the Owner and Architect. Contractor shall give Architect and Owner timely and proper notice and documentation of any additional design drawings, specifications, or instructions required to define the Work in greater detail, correct coordination issues, or to permit the proper progress of the Work either prior to starting construction or during construction activities.

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~~§ 3.3.1~~ The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor, and not the Owner, shall be solely responsible for, and have control over, charge of and responsibility for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters, notwithstanding any of the rights and authority granted the Owner in the Contract Documents. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, will not be safe with the proper exercise of safety precautions and programs required hereunder, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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~~§ 3.3.4~~ The Contractor shall inspect all materials delivered to the site and shall reject any materials that will not conform with the Contract Documents when properly installed.

~~§ 3.3.5~~ The Contractor shall be responsible for and coordinate any and all inspections required by any governmental body that has jurisdiction over the Project. Failure to obtain any permits, licenses, or other approvals because of the

failure of the Contractor to conform to this requirement shall not extend the Contract Time, and Contractor shall not be entitled to an increase in the Contract Sum therefor.

§ 3.3.6 The Contractor shall confine all operations (including storage of materials) conducted on the Project site to areas authorized or approved by Owner.

§ 3.3.7 The Owner may undertake or award other contracts for additional work at the Project. With regard to the Work of the Owner's third party contractors, subcontractors, and vendors or work that is otherwise not the responsibility of Contractor, Contractor shall fully cooperate with such third parties and shall provide management support to Owner in order to assist the Owner in managing and coordinating such work, which management support shall be limited to providing scheduling input to Owner and the third parties with respect to the delivery and installation of third party services, materials, and equipment that must be integrated with Contractor's Work.

§ 3.3.8 The Contractor shall at all times staff the Project adequately for high quality management and construction work. The Contractor shall have competent supervision continuously on the job during work hours and readily available at all times upon call.

§ 3.3.9 The Contractor shall at all times make provisions to protect the existing building (if any) or new construction from damage due to the Work or due to the weather.

§ 3.3.10 The Owner or the Owner's Designated Representative shall have access to the Work site and all Work. No inspection by the Owner's Designated Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

§ 3.3.11 If part of the Work is adjacent to or dependent upon work by a separate contractor or the Owner's own forces, the Contractor shall meet and coordinate with such separate contractor or forces prior to proceeding with that portion of the Work.

§ 3.3.12 The Contractor shall ensure that personnel performing the Work comply with an Owner-approved logistics plan for the use of the Project site and its surroundings, parking, temporary facilities, utilities, staging and storage for the Project, including phasing, in coordination with the needs of the Owner and the requirements of governmental authorities.

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Immediately prior to the Architect's inspection for Substantial Completion, the Contractor shall remove all temporary connections, distribution lines, meters, and associated paraphernalia.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect in consultation with the Owner and in accordance with a Change Order or Construction Change Directive. Substitutions and alternates may be rejected in the Owner's sole discretion. Substitutions and alternates will be considered only if: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations; (ii) specified products are unavailable through no fault of the Contractor or any Subcontractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in a designated space; (iv) the manufacturer or fabricator refuses to certify or guaranty the performance of the specified product as required; or (v) when, in the sole judgment of the Owner, a substitution would be substantially in the Owner's best interests in terms of cost, time or other considerations.

§ 3.4.2.1 No time extensions shall be allowed nor any responsibility assumed by the Owner if the Contractor submits a request for a substitution, whether such request is approved or denied.

§ 3.4.2.2 Approval by the Owner of any substitution shall not relieve the Contractor requesting the substitution of

any responsibility for additional costs incurred by the Architect and other trades for changes made necessary to accommodate the substituted item. Any additional cost, or any loss or damage arising from the substitution of any material or any method for those originally specified shall be borne by Contractor, notwithstanding approval or acceptance of such substitution by Owner or Architect, unless such substitution was made at the written request or direction of Owner or Architect.

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§ 3.4.4 When the Contract Documents require Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules, and regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by Contractor in accordance with the Contract Documents. When the Contract Documents describe the Work in general terms, but not in complete detail, Contractor understands and acknowledges only the best general practice is to be employed. Any design detail furnished by Contractor shall be in conformance with applicable laws and shall be sufficient for the purposes intended. Contractor shall closely inspect all materials as delivered and all Work as performed and shall promptly reject and return all substandard materials and redo all substandard Work without awaiting Architect's inspection and rejection thereof. Such Contractor inspection of all Project materials shall be performed, in part, to confirm and/or verify that no hazardous materials are incorporated in to the Project or Work and the Contractor shall reject any and all Project materials containing hazardous materials unless the Contract Document specifically require such hazardous materials for the Work.

~~The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.~~

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly authorized, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers and manufacturers. Manufacturers' warranties and warranties by others shall not relieve the Contractor of any of its responsibilities.

§ 3.5.2 Contractor shall be responsible for determining that all materials furnished for the Work meet all the requirements of the Contract Documents. The Architect or Owner may require Contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the Owner or Architect, would lead to a reasonable certainty that any material used, or proposed to be used in the Work meets the requirements of the Contract Documents. All such data shall be furnished at Contractor's expense. This provision shall not require Contractor to pay for periodic testing of different batches of the same material, unless such testing is specifically required by Contract Documents to be performed at Contractor's expense.

§ 3.5.3 In all cases in which a manufacturer's name, trade name or other proprietary designation is used in connection with materials or articles to be furnished under this Contract, whether or not the phrase "or equal" is used after such name, Contractor shall furnish the product of the named manufacturer(s) without substitution, unless a written request for a substitute has been submitted by Contractor and approved in writing by Owner and Architect as provided in Subparagraph 3.4.2.

§ 3.5.4 The Contract Documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items of mechanical and electrical equipment have been selected to have a coordinated design in relation to the overall appearance of the building. Architect shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits.

§ 3.5.5 The warranty provided in this Section 3.5 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

§ 3.5.6 Contractor shall procure and deliver to Architect, no later than the date claimed by Contractor as the date of Substantial Completion, all special warranties required by the Contract Documents. Delivery by Contractor shall constitute the Contractor's guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions.

§ 3.5.7 The Contractor's warranty on all materials and equipment shall be for a minimum of 12 months after Substantial Completion of the Work or a portion thereof, unless there is a longer period provided for specific materials and equipment in the Contract Documents.

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~~The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.2 Contractor shall be familiar with the current regulations of the Department of Revenue Services. The tax on materials, supplies, or products purchased for this Project and exempted by such regulations shall not be included in the Contract Sum.

#### § 3.7

#### PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by ~~government~~ government, municipal, quasi public and/or regulatory agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Upon the Owner's request, the Contractor shall cooperate with and assist the Owner in the event the Owner seeks to pursue a reduction of any permit or license fees. Before commencing Work, the Contractor shall submit copies of such permits or written proof that required permits have been obtained.

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§ 3.7.3 ~~If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.~~ any laws, statutes, ordinances, building codes, rules, regulations or recorded covenants or restrictions applicable to the Project Site, Contractor shall assume full responsibility for such work and shall bear and be liable to Owner for the attributable costs and damages arising therefrom and indemnify Owner against the adverse consequences thereof. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Owner and Architect in writing so that the Owner may take such action as at his discretion the Owner may determine to be necessary. The requirements of the foregoing section do not waive the Contractor's responsibility of complying with the requirements of the Contract Documents when such requirements exceed those of laws, ordinances, rules, regulations, and order of any public authority applicable to the Work.

§ 3.7.4 ~~Concealed or Unknown Conditions.~~ If the Contractor encounters conditions at the Project site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract

Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. ~~The Architect~~ Owner, in consultation with the Architect, will promptly investigate such conditions and, if the Architect determines it is determined that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, ~~will recommend~~ the Contractor shall be entitled to an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. No request by the Contractor for an equitable adjustment to the Contract Sum or Contract Time under this sub-section or the following sub-section shall be allowed, unless the Contractor has given the required written notice. No change in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions that were disclosed to or that reasonably should have been known to the Contractor in the proper exercise of its obligations hereunder. Further, no request by Contractor for such equitable adjustment shall be allowed if made after the Architect has issued the final Certificate of Payment.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and ~~Architect~~ Architect in writing. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

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.1 ~~Allowances~~ allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

...

.3 ~~Whenever~~ whenever costs are more than or less than allowances, the Contract Sum ~~shall be adjusted accordingly by Change Order. The amount of the Change Order may be adjusted accordingly by Change Order or Approval Letter, as applicable. The amount of any such Change Order or Approval Letter shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.~~

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## § 3.9 PROJECT MANAGER AND SUPERINTENDENT

**§ 3.9.1** The Contractor shall employ a competent project manager, superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent the Work until the date of Substantial Completion, and for such additional time thereafter as the Owner may determine to be necessary for the expeditious completion of the Work. The project manager and superintendent shall be satisfactory to the Architect and the Owner and shall not be changed except with the written consent of the Owner unless the project manager or superintendent ceases to be in the employ of the Contractor. Owner shall have the right, at any time, to direct a change in Contractor's representatives if their performance is unsatisfactory. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's reasonable discretion. Owner shall have no obligation to direct or monitor Contractor's employees. The project manager shall represent the Contractor, and all notices and other communications given to the project manager shall be as binding as if given to the Contractor.

~~§ 3.9.2~~ The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through and the Architect the name and qualifications of a proposed superintendent. ~~The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.~~ project manager and superintendent.

~~§ 3.9.3~~ The Contractor shall not employ a proposed project manager or superintendent to whom the Owner or Architect has made reasonable and timely objection. ~~The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~

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~~§ 3.10.1~~ The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's ~~construction schedule for the Work. The schedule shall not exceed time limits current~~ Construction Schedule (as such term is defined in the Agreement) for the Work, including man-loading/labor required to perform the Work. The Construction Schedule shall not exceed time limits established under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work of the Work. The Construction Schedule and all schedule updates shall clearly delineate all Subcontractor start and finish dates, realistic activity sequences and durations, critical dates by which Shop Drawings, Product Data, Samples and other submittals must be processed and the times by which products requiring long delivery lead times must be procured, commissioning and closeout process as well as the anticipated dates for the Owner's other contractors, if any, to coordinate their work with the Contractor's Work. The Contractor shall update the Construction Schedule on a monthly basis, or more frequently as required by the Owner, the condition of the Work or the Project, or as necessary to keep the Owner apprised of the progress of the Work. Construction schedule updates shall conspicuously note any changes to the prior submitted schedule update. The Construction Schedule shall not be modified or extended without the prior approval of the Owner in each instance.

~~§ 3.10.2~~ The Contractor shall prepare a submittal schedule, promptly after being awarded the ~~Contract~~ Contract, but in no event later than fifteen (15) days after the award of subcontracts or later than the date of the first submittal to be reviewed by the Architect and Owner, and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Owner's and Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's ~~construction schedule, and Construction Schedule,~~ (2) allow the Architect reasonable time to review ~~submittals.~~ submittals, and (3) be updated weekly and submitted to the Owner and Architect. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Contractor shall collaborate with the Owner and the Architect to establish and implement procedures for expediting the processing and approval of Shop Drawings, Project Data, Samples and other similar submittals.

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~~The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.~~ § 3.11.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders, Approval Letter, Construction Change Directives and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. At the completion of the Work, the Contractor shall certify by signing on them that each of the foregoing marked documents is complete and accurate. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.2 No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

§ 3.11.3 The Contractor shall maintain at the Project site on a current basis records of all subcontracts, purchase orders, materials, equipment, maintenance and operating manuals and instructions, warranties, and any other related documents and revisions which arise out of any subcontract or the Work. The Contractor will make records stored at its home office available to the Owner at the Project site on the Owner's request. At the completion of the Project, the Contractor shall promptly deliver all such records to the Owner.

§ 3.11.4 The Contractor shall establish and maintain a log of RFI's that includes date submitted, date response required and date returned. This log shall be updated and submitted to the Owner weekly. The Contractor shall submit all RFI's in writing on a pre-approved form, which shall provide space for the requested information and the response.

§ 3.11.5 Contractor's Daily Report. The Contractor shall prepare a Contractor's Daily Report to the Owner that identifies the Contractor's staff, Contractor's direct labor, subcontractors on the Project site and the areas of Work for the day.

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§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Owner and Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has ~~(1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.~~ determined and verified all dimensions, quantities, field dimensions, relations to existing Work, coordination with Work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data or Samples and verification of compliance with all the requirements of the Contract Documents. The accuracy of all such information is the responsibility of the Contractor. In reviewing and approving Shop Drawings, Product Data and Samples, the Architect shall be entitled to rely upon the Contractor's representation that such information is correct and accurate. The Architect's comments made on the Shop Drawings, Samples, or other submitted data during reviews do not relieve the Contractor from compliance with requirements of the Drawings and Specifications and other Contract Documents. Comments made which are construed by the Contractor as altering the Contract Sum must be reported to the Architect immediately. No work action may be taken prior to a resolution or written consent of Architect. Any Work not shown on the Shop Drawings which is shown in the Contract Documents remains part of the Project requirements. The Architect is not responsible for completeness of the Shop Drawings nor as such shall the Shop Drawings supersede the requirements of the Contract Documents. The Contractor is responsible for: determining quantities; confirming and correlating dimensions; selecting fabrication processes and techniques of construction; coordination for all of the Work; overseeing safety; and executing the Work in a satisfactory manner.

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§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change ~~Order~~ Order, Approval Letter or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ § 3.13.1 The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine operations at the Project site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

§ 3.13.2 The Contractor shall at all times cooperate and coordinate with any other contractors and the Owner with respect to schedules and interferences with the Work so as to complete the Project on schedule.

§ 3.13.3 Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other such adversity is solely the responsibility of the Contractor.

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§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. Structural members shall not be cut except with the prior written permission of the Architect. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 The Contractor shall in all cases exercise extreme care in cutting operations and perform such operations under adequate supervision by competent mechanics skilled in the applicable trade. Openings shall be neatly cut and shall be kept as small as possible to avoid unnecessary damage. Careless and/or avoidable cutting and damage is not permitted and the Contractor will be held responsible for such avoidable or willful cutting or damage.

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~~§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract.~~ Contract on a daily basis. Furthermore, the Contractor shall be responsible for maintaining cleanliness of surrounding access roads and property adjacent to the Project site. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

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§ 3.15.3 Burning of waste materials and rubbish at the Project site is not permitted. Removal and proper disposal of all waste material and rubbish is included in the Contract Sum.

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The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss (including liability, costs, and attorney's fees related thereto or to enforcement of this Subparagraph) on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss (including liability, costs, and attorney's fees related thereto or to enforcement of this Subparagraph) unless such information is promptly furnished to the Architect.

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, law, the Contractor hereby agrees to and shall at all times defend, indemnify and hold Owner and its subsidiaries, affiliates, officers, agents, excluding design professionals, and employees, wholly harmless from any and all losses, costs, expenses (including court costs and attorneys' fees, interest and profits), claims, demands, liability, suits by any person or persons, injuries, damages or death and other liabilities of whatsoever kind or nature arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, the performance (or attempted performance) of the Work, or otherwise caused by, incident to, connected with or arising directly or indirectly out of: (a) the performance of this Contract by the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, (b) any breach or failure to comply with applicable laws, codes or regulations by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18, any of them may be liable, or (c) any act, omission, intentional misconduct or negligence of Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This indemnity shall survive the termination of this Contract.

§ 3.18.2 In any and all claims against any person or entity indemnified under this Section 3.18 by ~~an~~ any employee of the Contractor, ~~a~~ any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts they any of them may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts, any Subcontractor under insurance coverage required by the Contract Documents, Workmen's Compensation Acts, disability benefits acts or other employee benefits acts.

§ 3.18.3 If Contractor fails to defend any person or entity indemnified hereunder, such person may defend any suit, action or other legal proceeding and the actual costs thereof (including, without limitation, attorneys' fees) shall be included as part of the loss, cost, damage and expense covered by Contractor's indemnity.

§ 3.18.4 To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure by the Owner to make payment when required by the Contract Documents, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any claims, liens, charges (including attorneys' fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work. The Owner shall be entitled to recover from the Contractor all costs and expenses incurred in enforcing this Agreement, including attorneys' fees.

§ 3.18.5 As pertains to Paragraph 3.18, the Owner reserves the right to retain its own counsel and to charge any reasonable counsel fees to the Contractor where there is not a commonality of interests between the Owner and the Contractor or as to claims that are not insured. The Contractor expressly consents to the Owner's selection of legal counsel and waives any waivable conflict.

### **§ 3.19 ASSIGNMENT**

§ 3.19.1 Neither this Contract nor any payments becoming due hereunder shall be assigned by Contractor without the written consent of Owner.

### **3.20 ACCESS TO BOOKS AND RECORDS**

§ 3.20.1 Upon forty-eight (48) hour prior notice to Contractor, the Owner shall at all times have the right to inspect and copy the books and records (however kept) of the Contractor for verification of work done, payments due, amounts claimed, obligations owed Subcontractors or suppliers, or any other aspect of the Contractor's obligations

regarding the Work and this Agreement. In the event of an emergency, the Owner shall have the right to inspect and copy such books and records without prior notice. The Contractor shall keep books and records adequate to support its costs and charges, to comply with generally accepted accounting principles, and to evidence compliance with this Agreement. At the Owner's request, the Contractor shall promptly provide evidence satisfactory to the Owner of the Contractor's compliance with the Contract Documents.

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§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the ~~Owner, Contractor~~ Owner and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner ~~shall employ a successor architect as to whom the Contractor has no reasonable objection and~~ may employ a successor architect whose status under the Contract Documents shall be that of the Architect.

...

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will when directed by Owner be an Owner's representative during construction until ~~the date the Architect issues the final Certificate for Payment. Final Payment~~ (as such term is defined in Section 9.10.1). The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. The Architect shall have no authority to order any extra-contractual work or services, contractually bind the Owner or alter the Owner's rights and obligations under the Contract Documents.

§ 4.2.1.1 The Owner shall in its discretion have the option to have the administration of the Contract performed by the Architect, an Owner's representative, a Construction Manager, or other party. As of the date of this Agreement, the Owner has elected to have the administration of the Contract performed by the Owner.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become ~~generally familiar with~~ familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, and to determine ~~in general~~ if the Work ~~observed~~ is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect shall report promptly to the Owner any objectionable Work at the time discovered or reasonably should have been discovered. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will ~~keep the Owner reasonably informed~~ issue written reports to Owner and Contractor about the progress and quality of the portion of the Work completed, ~~and report to the Owner~~ which reports shall include all (1) known deviations from the Contract Documents and from the most recent ~~construction schedule~~ Construction Schedule submitted by the Contractor, ~~and~~ (2) defects and deficiencies observed ~~in the Work~~ the Work and (3) any Work rejected by the Architect or additional inspections or testing required by the Architect. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other ~~through the Architect~~ directly about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through

~~the Contractor.~~ Contractor unless the Owner indicates otherwise. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment ~~in such amounts recommending payment on such amounts.~~ The Owner shall make the final decision on whether to make payment to the Contractor in accordance with the Contractor's Applications for Payment, and the Owner shall have the right to communicate with any individual or entity involved in the Project to verify amounts included in Applications for Payment.

§ 4.2.6 The ~~Owner and~~ Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the ~~Owner and/or~~ Architect considers it necessary or advisable, ~~the Architect~~ the Architect, with the Owner's consent, will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and ~~Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.~~ Samples. The purpose of such review is to evaluate conformance with the Contract Documents and all applicable laws, statutes, ordinances, and regulations. The Architect's action will be taken in accordance with the ~~Owner approved~~ Owner approved submittal schedule ~~approved by the Architect~~ or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. The Architect shall endeavor to complete its review within the limits set forth in the Owner approved submittal schedule. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 ~~The Architect will prepare Change Orders and Construction Change Directives, and may~~ If requested by the Owner, the Architect will review Change Orders and Approval Letters prepared by the Contractor and the Architect will prepare Construction Change Directives as directed by the Owner, and the Architect may, at the Owner's direction, authorize minor changes in the Work as provided in Section 7.4. The Architect will ~~investigate and make determinations and recommendations~~ make recommendations to the Owner regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 ~~The Architect~~ Architect, in consultation with the Owner, will conduct inspections to determine the date or dates of Substantial Completion and the date of final ~~completion;~~ completion. The Architect will issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. ~~The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.~~ Project site.

§ 4.2.11 The Architect will ~~interpret and decide matters concerning performance~~ make recommendations on matters concerning performance of the Contractor under, and requirements of, the Contract Documents on written request of ~~either the Owner or Contractor.~~ the Owner. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations

and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith. Contractor.

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**§ 4.2.14** The Architect will review and respond to ~~requests for information~~ a RFI about the Contract Documents. The Architect's response to such ~~requests~~ request will be made in writing within any time limits agreed upon or otherwise with reasonable ~~promptness~~ promptness and in no event later than ten (10) days from the date of the Contractor's request, to ensure that there is no negative impact on the Construction Schedule. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the ~~requests for information~~ RFI.

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**§ 5.1.2** A Sub-subcontractor (of any tier) is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through and~~ and the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The ~~Architect~~ Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner ~~or the Architect~~ or the Architect has reasonable objection to any such proposed person or entity or (2) that the ~~Architect~~ Owner requires additional time for review. Failure of the Owner ~~or Architect~~ or Architect to reply within the ~~14 day~~ 14 day period shall constitute notice of no reasonable objection.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner ~~or Architect~~ or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner ~~or Architect~~ or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner ~~or Architect~~ or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner ~~or Architect~~ or Architect makes reasonable objection to such substitution. The Owner may reasonably require the Contractor to change any Subcontractor previously approved, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change. The Contractor shall supply Owner with a list of the names and addresses of all Subcontractors and material suppliers on request and from time to time.

**§ 5.2.5** If any of the Subcontractors or personnel involved in the Project is not fulfilling its responsibilities properly, the Owner may require such personnel to be terminated or removed and replaced as expeditiously as possible with Subcontractors or personnel acceptable to the Owner.

**§ 5.2.6** Nothing herein shall be construed as an intent to create a contractual or third party beneficiary relationship between the Owner and any of the Subcontractors, except as provided in § 5.4.

**§ 5.2.7** The form of each subcontract shall be submitted to the Owner for its review, which shall not be unreasonably delayed. Each subcontract shall expressly provide for the contingent assignment referred to in Section 5.4.1.

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by ~~these the Contract Documents~~, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. ~~Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors.~~ Sub-subcontractors of all tiers. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, ~~and, upon written request of the Subcontractor, and~~ identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

**§ 5.3.2** The Contractor shall include in each subcontract an obligation for the Subcontractor to provide immediate notice of any material adverse change to the Subcontractor's financial condition since the date of the award, that there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of Subcontractor's knowledge, threatened against Subcontractor, wherein an unfavorable decision, ruling or filing would materially adversely affect the performance by Subcontractor of its obligations under its subcontract with Contractor. If the Contractor becomes aware of any material change in the financial condition of a Subcontractor or Sub-subcontractor during the progress of the Project, the Contractor shall give the Owner prompt, written notice of such change.

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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights ~~and obligations~~ under the subcontract.

**§ 5.4.2** ~~Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.~~ The Contractor shall, upon the request of Owner, submit a copy of each subcontract signed by Contractor in connection with the Project. Each subcontract shall contain a contingent assignment of the subcontract to the Owner consistent with Section 5.4..

**§ 5.4.3** ~~Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

**§ 5.4.4** Without limitation on the generality of the foregoing, each Subcontract agreement and each Sub-subcontract agreement shall include, and shall be deemed to include, the following provisions:

- .1 An agreement that the Owner is a third-party beneficiary of the Sub-contract (or Sub-subcontract), entitled to enforce any rights thereunder for its benefit, and that the Owner shall have the same rights and remedies against the Subcontractor (or Sub-subcontractor) as the Contractor (or Subcontractor) has, including but not limited to the right to be compensated for any loss, expense, or damage of any nature whatsoever incurred by the Owner resulting from any breach of representations and warranties, express or implied, if any, arising out of the agreement and any error, omission, or negligence of the Subcontractor (or Sub-subcontractor) in the performance of any of its obligations under the agreement;

- .2 A provision that the agreement shall be terminable upon seven (7) days' written notice by the Contractor (or Subcontractor) or, if the Subcontract (or Sub-subcontract) has been assigned to Owner, by Owner;
- .3 A provision that neither the Contractor nor the Subcontractor (or Sub-subcontractor) shall have the right to require arbitrations of any disputes; and
- .4 A provision requiring the Subcontractor (or Sub-subcontractor) to submit releases and certificates and waivers of liens for work completed by it and its Sub-subcontractors as a condition precedent to the disbursement of the progress payment next due and owing.

§ 5.4.5 The Contractor shall be responsible for any and all Subcontractors working under it and shall carry insurance for all Subcontractors or ensure that they are carrying it themselves so as to relieve the Contractor, Owner, Architect, and their respective officers, directors, agents, and employees of any and all liability arising out of the respective subcontractor's work.

§ 5.4.6 The Owner assumes no responsibility for the overlapping or omission of parts of the Work by various Subcontractors in their agreements with the Contractor, such responsibility being solely with the Contractor.

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§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. The Owner's separate contractors, if any, may have access to those portions of the Project site under construction prior to the anticipated date of Substantial Completion for the purpose of installing items which it is more cost effective for the Owner to have installed during the progress of the Work (i.e., before walls and ceilings are completed). The Owner and Contractor agree to cooperate in scheduling all entries and work by the Owner's separate contractors.

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§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall ~~participate with other separate contractors and the Owner in reviewing their construction schedules. The schedule, coordinate and cooperate fully with all other contractors. The Contractor shall take such steps as the Owner and Contractor after joint review and mutual agreement may require to assure scheduling, coordination, and cooperation among the contractors and the Contractor shall make any revisions to the ~~construction schedule~~ Construction Schedule deemed necessary after a joint review and mutual agreement. The ~~construction schedules~~ Construction Schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.~~

~~§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.~~

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If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and ~~the Architect will~~ allocate the cost among those responsible.

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§ 7.1.1 Pursuant to CREC Change Order Process (as such term is defined in the Agreement) procedures and approval process, Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Approval Letter, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and between the Owner and Contractor; an Approval Letter shall be based upon agreement between the Owner and Contractor; a Construction Change Directive may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone. Architect, at the direction of the Owner.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Approval Letter, Construction Change Directive or order for a minor change in the Work.

## § 7.2 CHANGE ORDERS AND APPROVAL LETTERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.1.1 A Change Order is a written instrument prepared by the Contractor and signed by the Owner and Contractor, which states their agreement upon all of the following:

- .1 The change in the Work for work that out is outside the scope of work set forth in the Guaranteed Maximum Price Amendment (as such term is defined in the Agreement);
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.1.2 The Architect's signature on a Change Order indicates its recommendation of the change but shall not be a condition to its validity

§ 7.2.2.1 An Approval Letter is a written instrument prepared by the Contractor and signed by the Contractor and Owner, which states their agreement upon a change in the Work for Work that is part of the scope of work set forth in the Guaranteed Maximum Price Amendment. The cost of such Approval Letter change in the Work is a Cost of the Work included within the Guaranteed Maximum Price established by the Guaranteed Maximum Price Amendment.

§ 7.2.2.2 The Architect's signature on an Approval Letter indicates its recommendation of the change but shall not be a condition to its validity

§ 7.2.3 Architect or Owner shall provide no oral orders or directives to change the Work and Contractor is not obligated to follow any such oral directives or orders. All such directives or orders shall be made in writing by the Owner, upon consultation with the Architect. The Contractor specifically agrees that if it proceeds on an oral order to change the Work, it shall waive any claim for additional compensation for such work and the Contractor shall not be excused from compliance with the Contract Documents. The requirements set forth in this Article 7 are the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, no oral, express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work shall be the basis for any claim to an increase in the Contract Sum or Contract Time. Changes in the Work may be made without notice to Contractor's sureties, and absence of such notice shall not relieve such sureties of any of their obligations to Owner.

§ 7.2.4 Agreement on any Change Order or Approval Letter shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Contract Time and the Construction Schedule.

~~§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect. Directives shall be prepared by the Owner or Architect, at the direction of the Owner, and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.~~

~~§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. Order or Approval Letter.~~

~~§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:~~

- ~~1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;~~
- ~~2 Unit prices stated in the Contract Documents or subsequently agreed upon;~~
- ~~3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or~~
- ~~4 As as provided in Section 7.3.7.~~

~~§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated quantities originally contemplated in establishing Unit Prices are materially changed in a proposed Change Order. Order, Approval Letter or Construction Change Directive so that application of such unit prices. Unit Prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices. Unit Prices shall be equitably adjusted.~~

~~§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.~~

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~~§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment. adjustment shall be recorded on the basis of reasonable expenditures based upon the costs set forth below and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, overhead, such overhead amount being included in the General Conditions Lump Sum Amount, and profit, such profit amount being included in the Construction Manager's Fee, as such General Conditions Lump Sum Amount and Construction Manager's Fee are adjusted for increases in the Cost of the Work as set forth in Section 5.1.1 the Agreement and, if applicable, in Section 5.1.2 of the Agreement for Subcontractor's overhead and profit. In such case, the Contractor shall keep and present, in such form as the Architect may prescribe. Owner may require, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following: the following costs; provided, however the following costs are not included for the purposes of this Section 7.3.7 to the extent the following costs are under the Contract Documents included in the General Conditions Lump Sum Amount:~~

- ~~1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance; labor at the rates set forth in labor rates set forth in the Construction Staffing Matrix (the "Labor Rates"), which Construction Staffing Matrix is an exhibit attached to and part of the Agreement;~~
- ~~2 Costs Unit Prices for materials, supplies and equipment and if there are no applicable Unit Prices for such then costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;~~
- ~~3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; or others (provided that the rates were previously agreed to by the Owner and the Owner shall not be charged for idle time for Contractor-owned equipment including that owned by the Contractor's affiliated companies, the Contractor's officers, owners, or employees,~~

- Subcontractors, Sub-subcontractors, or their agents or employees, or any other persons or entities performing any portion of the Work);
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; the Work at the rates set forth in Article 6 of the Agreement; and
  - .5 Additional costs of supervision and field office personnel directly attributable to the ~~change~~ change based upon the labor rates set forth in Article 6 of the Agreement.

Under no circumstances shall the compensation to the Contractor and Subcontractors in connection with Change Orders or Approval Letters be more than the Contractor's and Subcontractor's costs set forth in this Subparagraph 7.3.7 plus no more than the overhead and profit amounts set forth Sections 5.1.1 and 5.1.2 of the Agreement.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and ~~profit~~ profit, at the rates set forth in Sections 5.1.1 and 5.1.2 of the Agreement shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may not request payment for Work completed under the Construction Change Directive in Applications for Payment. ~~The Architect Payment absent the Owner's express, written consent. The Architect, in consultation with the Owner, will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, and Owner determine to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.~~

§ 7.3.10 When the Owner and Contractor agree with a determination ~~made by the Architect~~ concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the ~~Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.~~ change will be recorded as a Change Order.

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~~The Architect has authority to Architect, subject to the Owner's approval, may order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.~~ the Contractor. The Architect shall provide prompt, written notice to the Owner of any minor change in the Work ordered by the Architect.

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§ 8.1.3 The date of Substantial Completion is the date ~~certified by the Architect~~ determined in accordance with Section 9.8.

...

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner, and or prior to receiving written notice to proceed from the Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously in accordance with the Construction Schedule with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall at all times ensure that each Subcontractor is providing and maintaining sufficient skilled workmen, materials and equipment to achieve Substantial Completion within the Contract Time. Absent Change Orders signed by the Owner or a delay for which the Contractor is entitled to an extension of time by Section 8.3.1, the Contractor shall not make any

claims for additional payment of straight time, overtime or premium time in undertaking to achieve Substantial Completion of the Work in accordance with the Construction Schedule.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the ~~Work;~~ Work by Owner or Architect; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending ~~mediation and arbitration;~~ mediation; or by other causes ~~that the Architect-Owner determines may reasonably justify delay,~~ then the Contract Time shall be extended by Change Order for such a reasonable time as the Architect may determine. ~~determined by Owner.~~

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract ~~Documents.~~ Documents; provided, however, Contractor shall be entitled to additional compensation for delays in the progress of the Work only to the extent that the actual Substantial Completion date for the entire Project (including all phases) exceeds thirty (30) days beyond the contractual Substantial Completion date, as may be adjusted by Change Order. Furthermore, the Contractor's sole remedy for delays excusable under Section 8.3.1 is an extension of time as provided herein and additional compensation, exclusive of any damages claimed by the Contractor on account of compensable claims by Subcontractors or suppliers, limited to, as determined by the Owner, either of the following: (i) an equitable adjustment to the General Conditions Lump Sum Amount, or (ii) Contractor's actual costs of supervision and field personnel at the Project site attributable to such delay based upon the Labor Rates.

§ 8.3.4 Contractor shall include in each subcontract the following language: "Subcontractor acknowledges that delays resulting from changes in the work, extreme weather, changes to the sequencing of the work, material shortages, transportation, strikes and other causes are inherent in the construction process. Subcontractor acknowledges that it has accounted for delays in its prices and agrees to bring no claims for money damages as a result of any delay or hindrance. In the event that Subcontractor claims that it has been delayed or hindered, it shall submit a request for a time extension to Contractor in the manner and pursuant to the time periods set forth in the Contract Documents. If it is determined that Subcontractor has been delayed or hindered through no fault of its own, the time for performance hereunder will be extended and the extension of time will be Subcontractor's sole remedy for the delay. Under no circumstances will the Contractor or Owner be liable to the Subcontractor for damages resulting from any delays or hindrances."

§ 8.3.6 The Contractor shall not be entitled to any delay costs for delay to any early completion date elected by the Contractor or those for whom it is responsible.

§ 8.3.7 If, in the opinion of the Owner, the Contractor falls behind the approved Construction Schedule, the Contractor shall take all steps necessary to improve its progress, including those that may be required by the Owner, without additional costs to the Owner. In these circumstances, the Owner may require the Contractor, at no additional cost to Owner, to increase the number of shifts, overtime operations, days of work, and/or the amount of construction planned, and to submit for approval any supplementary schedules or "recovery" schedules in such detail and form as the Owner deems necessary to demonstrate how the approved rate of progress shall be regained.

§ 8.3.8 Requests for extension of time shall set forth in detail the circumstances of such claim, the dates upon which claimed delay began and ended, and the number of days' extension of time requested. The Contractor shall provide supporting documentation as the Owner may require, including a revised critical path method Construction Schedule indicating the effect of the circumstances that form the basis for the claim. The Contractor shall not be entitled to an extension of time for each and every one of a number of causes which have a concurrent and interrelated effect on the progress of the Work.

§ 8.4 The Contractor shall not be entitled to an adjustment of the Contract Sum or Contract Time on account of delays: (i) that it could have avoided or mitigated using the Contractor's commercially reasonable professional efforts; (ii) that do not impact the critical path; (iii) for which there is available float in the chain of activities

affected by the delay; (iv) that were caused by, or could have been reasonably anticipated and avoided by, the Contractor or those for whom the Contractor is responsible; or (v) are of a duration of one day or less.

§ 8.5 The Owner may direct the Contractor to take such action, including adding, increasing or supplementing the workforce, the number of shifts, the days of work and/or overtime operations, as necessary to minimize threatened delays to Substantial Completion, and the Contractor shall adjust the Construction Schedule on account of such directives. The Contract Sum may be adjusted on account of such acceleration only to the extent that the acceleration is due to a delay that is excusable under § 8.3.1.

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~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, is attached to and part of the Agreement. This schedule shall be used as a basis for reviewing the Contractor's Applications for Payment.~~

...

~~§ 9.3.1 At least ten days before the date established for each progress payment, Timelines for progress payments shall be as set forth in the Agreement. In accordance with such timelines, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, values for completed portions of the Work. Such application shall be notarized, if required, notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as including, without limitation, copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Interest shall not accrue or be payable on retainage. The Contractor's applications for payment shall specifically indicate that all applicable taxes are included, and the Contractor shall require the same of its Subcontractors.~~

~~§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.~~

...

~~§9.3.1.3 If requested by Owner, the Contractor shall provide conditional lien waivers and releases for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive any payment. All lien waivers and releases shall be provided in the form required by the Owner. This Paragraph shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers and releases or other documents or data establishing payment or satisfaction of obligations.~~

~~§9.3.1.4 Applications for Payment shall be submitted on AIA Documents G702 and G703 or other forms approved by Owner. The schedule of values shall be balanced and not contain any "front end loading." On the standard form for each Certificate for Payment, the Contractor shall also certify that all bills and/or Subcontractors have been paid for which previous Certificates of Payment have been issued and upon which payment has been made; if partial payment has been made, then Contractor shall identify payments made to Subcontractors and suppliers. With the final application for payment, the Contractor shall furnish data and documents establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner as set forth in Section 9.10.2(5) below for all Work furnished by the Contractor, Subcontractors, Sub-subcontractors, material suppliers, or other persons furnishing labor or materials for the Work, as a precondition to Final Payment. Notwithstanding the foregoing, in the event that Contractor is unable to furnish such data and documents with the final application for payment to the Owner for all Work furnished by minor Subcontractors, minor Sub-subcontractors, or minor material suppliers (for the purposes of this section 9.3.1.4, collectively referred to as "Minor Subcontractors"), provided that (i) the total amounts claimed to be owed by such Minor Subcontractors does not exceed Twenty Thousand Dollars (\$20,000.00) (the total amounts claimed to be owed are referred to as the "Minor Subcontractors Disputed Amount")~~

for the purposes of this Section 9.3.1.4) and (ii) that Contractor provides a written certification of Contractor to Owner accurately confirming that there is a bona fide dispute between the Contractor and such Minor Subcontractors as to the amounts owed to such Minor Subcontractors, then Owner shall pay Contractor the Final Payment in accordance with the provisions of the Contract Documents but Owner may withhold up to one hundred fifty percent (150%) of the Minor Subcontractors Disputed Amount from such payment(s) which funds Owner shall retain pending resolution of such disputes, which resolution shall include an application or applications for payment from Contractor, and such data and documents establishing payment or satisfaction of obligations as set forth above and in Section 9.10.2(5) below for all such Minor Subcontractors and compliance with all other provisions of the Contract Documents.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, Owner in writing, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing, bonded location agreed upon in writing and subject to and any other requirements established by Owner. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment, payment free and clear of all liens, claims, security interests, or encumbrances whatsoever, that the vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, and that the Contractor shall remain responsible for protection of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**§ 9.3.4** The Contractor's Applications for Payment shall be accompanied by:

- .1 A list of names and addresses of each person or entity that furnished labor, services, materials or equipment on behalf of the Contractor;
- .2 Partial releases and lien waivers, in a form approved by the Owner, from the Contractor, Subcontractors and Sub-subcontractors for all labor, services, materials and equipment furnished to the Project through the date covered such Application for Payment, conditioned on performance of the Work and receipt of payment, and excluding any permitted retainage and unresolved Claims submitted in accordance with the Contract Documents;
- .3 Applications for Payment and invoices from all persons or entities whose Work is included in the Contractor's Application for Payment;
- .4 A Construction Schedule update prepared in accordance with the Schedule Requirements (as such term is defined in the Agreement), including, without limitation, an accurate and updated cash flow projection for the duration of the Project;
- .5 Written warranties from Subcontractors, manufacturers and installers covering portions of the Work that have reached Substantial Completion; and
- .6 Such other data, accounts and receipts substantiating costs included in the Application for Payment as reasonably requested by the Owner.

**§ 9.3.5** The Contractor's Applications for Payment shall be signed and notarized, which signature shall constitute a representation and warranty by the Contractor that:

- .1 the amounts sought are due and earned in accordance with the Contract Documents;
- .2 all applicable taxes are included in such Application for Payment;
- .3 the Work is progressing in accordance with the Construction Schedule and the Substantial Completion date established herein;

- .4 the Contractor shall use the amounts requested to discharge their financial obligations on account of labor, services, materials or equipment furnished to the Project and included in the Application for Payment;
- .5 the Contractor has discharged the Contractor's financial obligations on account of labor, services, materials or equipment furnished to the Project for which the Owner has made payment;
- .6 to the best of the Contractor's knowledge, there are no claims of liens, security interests or encumbrances in favor of persons or entities that provided services, labor, materials and/or equipment to the Project on their behalf; and
- .7 title to all Work covered by the application has passed to the Owner no later than the time of payment.

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§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect ~~determines~~ recommends is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. Notwithstanding the foregoing, the Owner has final determination as to whether to approve a Certificate of Payment and the amounts properly due.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. ~~Documents and that the Architect recommends that the Owner release payment to the Contractor in the amount requested.~~ The foregoing representations are subject to ~~an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion,~~ to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment or payment on a Certificate of Payment will not be a representation that the Architect or Owner has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Notwithstanding anything to the contrary in the Contract Documents, the Owner shall not be obligated to release payment to the Contractor until the Owner is satisfied that the Work has progressed to the point indicated in the Application for Payment, that the quality of the Work is in accordance with the Contract Documents and that withholding permitted under the Contract Documents is not required. Payment by the Owner on any Certificate for Payment shall not be deemed to waive any of the Owner's rights to later claim that the Work covered by a Certificate for Payment was not properly completed or not completed in accordance with the Contract Documents.

...

§ 9.5.1 The Architect ~~may~~ shall advise the Owner to withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. ~~The Architect may~~ Owner may withhold payment and the Architect shall also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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- .3 failure of the Contractor to make payments properly to Subcontractors or for claims of nonpayment by Subcontractors of any tier for services or labor, materials or equipment;
- ...
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated ~~delay;~~  
~~or~~
- ~~.7 repeated delay;.7~~ failure to carry out the Work in accordance with the Contract ~~Documents.~~  
Documents; or
- ~~.8 losses for which the Owner is entitled to indemnity from the Contractor under the Contract Documents~~
- ...

~~§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, The Owner may, in its sole and absolute discretion, issue joint checks to the Contractor and to any Subcontractor Subcontractor, including, without limitation, Sub-subcontractors (of any tier) or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. delivered and such payment shall be deemed to have been made on account of the payee and all tiers between the payee and the Owner. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment. Any payment made by the Owner by joint check shall not be construed as a promise to assume the debt of any joint payee, nor as a continuing obligation to make joint payments, nor as an assumption or establishment of a direct contractual relationship with the payee unless expressly stated in a separate written agreement with such payee.~~

...

~~§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Owner shall not be deemed in default by reason of withholding payment in accordance with the Contract Documents or while any default by Contractor or any Subcontractor remains uncured.~~

~~§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven-five (5) days after receipt of payment of good available funds from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor (of all tiers), require each such Subcontractor to make payments to Sub-subcontractors in a similar manner. Upon Owner's request, (i) the Contractor shall provide Owner with proof of payment(s) to Subcontractors; and (ii) Subcontractors (of all tiers) shall provide Owner with proof of payment(s) to Sub-subcontractors.~~

...

~~§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.~~

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~~§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any~~

~~fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~Contractor.

...

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. § 9.7.1 If, through no fault of the Contractor, the Owner does not pay the Contractor the amount properly due within thirty (30) days after the date established in the Contract Documents for payment, then the Contractor may, upon seven (7) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 The Contractor is obligated to continue and complete all its Work and obligations under the Contract when Claims are pending or the Parties are in the process of dispute resolution. The Contractor shall not stop, suspend, or delay any portion of the Work, and will be responsible for all expenses, costs and fees arising from any such stop, suspension or delay.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work will not be considered suitable for Substantial Completion review, and the Contractor shall not be deemed to have achieved Substantial Completion until: (i) all installations of the Work are complete; (ii) all Project systems included in the Work have been started up, tested and commissioned, and are operational as designed and scheduled; (iii) to the extent reasonably required, the Contractor has instructed Owner's personnel in the operation of all systems and equipment; and (iv) the Contractor has arranged for and obtained all designated or required governmental inspections and certifications necessary for legal use and occupancy of the completed Project, including without limitation, a permanent or temporary certificate of occupancy and/or a certificate of completion for the Project.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and the Owner a comprehensive list of items to be completed or corrected prior to final payment. Final Payment, which list shall include a detailed estimate of the Cost of the Work for each of such items (the "Punch List"). Failure to include an item on such list the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The amounts set forth in the Application(s) for payment(s) prepared and submitted by the Contractor for Punch List item Work shall approximately match the detailed estimate for such items set for in the Punch List.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to Punch List, the Architect, in consultation with the Owner, will determine whether the Work or designated portion thereof is substantially complete. complete as defined in Section 9.8.1. The Architect shall, if necessary, update the Contractor's Punch List prior to Final Payment as necessary prior to appending it to the Certificate of Substantial Completion. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, Punch List, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a

Certificate of Substantial Completion ~~that for review and approval with the Owner.~~ Such Certificate, when approved, shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which ~~the Contractor shall finish all items on the list accompanying the Certificate.~~ the Contractor shall finish all items, including, without limitation, the Punch List items accompanying the Certificate. Notwithstanding the foregoing, Contractor shall finish all such items on or before the date thirty (30) days after the date of Substantial Completion. If the Contractor fails to complete all such items within such time and is not diligently pursuing completion of such items, Owner shall, after providing Contractor with written notice, have the remaining Work completed by any means in the event Contractor has not completed such items within ten (10) days of such notice. Owner will deduct all expenditures to complete such items from the Final Payment due the Contractor and Contractor shall be liable for any excess costs incurred to complete such items. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, and upon completion of close out items related to such Work, if any, the Owner shall make payment of a portion of the retainage applying to such Work or designated portion ~~thereof.~~ thereof in accordance with the terms of the Agreement. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

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§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. ~~Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.~~

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§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, which final Application for Payment shall, in part, be based upon the Punch List, the Architect and Owner will promptly make such inspection and, when the Architect finds and Owner find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect with the consent of Owner will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents, including, without limitation, that all building systems are functioning satisfactorily in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. ~~payable (the "Final Payment").~~ The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to ~~final payment~~ Final Payment have been fulfilled.

§ 9.10.2 Neither ~~final payment~~ Final Payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner reasonable evidence of compliance with all requirements of the Contract Documents, including but not limited to: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after ~~final payment~~ Final Payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to

the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to ~~final payment~~ Final Payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the ~~Owner~~-Owner; and (6) acceptance of the Work by applicable local and state agencies and departments. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.2.1 As a precondition to receiving Final Payment, the Contractor shall deliver to the Owner a complete set of "as-built" Drawings, consisting of marked-up field plans showing final as-built field conditions, dimensions and conditions including, without limitation, those relating to the heating, air-conditioning and ventilation systems and the electrical, plumbing and life safety systems, recording the Work as actually performed to the extent that the information differs from or supplements original Contract Documents. Such complete set of "as-built" Drawings shall be provided by the Contractor to the Owner in (i) a digital media form of electronic media that is capable of being manipulated and/or modified by software (e.g. Revit or other similar software); and (ii) as a PDF document.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing ~~final payment,~~ Final Payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of ~~final payment~~-Final Payment shall constitute a waiver of Claims by the Owner except those arising from

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.3 terms of ~~special~~ warranties required by the Contract Documents.

§ 9.10.5 Acceptance of ~~final payment by the Contractor,~~ Final Payment by the Contractor, or any final payment by a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

...

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. § 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§10.1.2 The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else. The Contractor shall notify the Owner in writing of all bodily injury, property damage, death, theft, or vandalism relating to the Project within one working day of such occurrence. Upon the request of the Owner, the Contractor shall provide the Owner with all safety programs for the Work or any portion of the Work.

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§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. The Contractor shall immediately notify the Owner of any injury to persons or property if damaged on the Project site or related to the Work.

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§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel~~personnel.

...

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe or any hazardous condition.

...

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time ~~not exceeding 21 days~~ as promptly as practicable after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. Notwithstanding the foregoing, the Contractor shall promptly report in writing to the Owner and Architect, within forty-eight (48) hours, all accidents arising out of or in connection with the Work that caused death, bodily injury or property damage, giving full details and statements of any witnesses; provided, however, such reports shall be made immediately by telephone or messenger to the Owner and Architect in the event of death, serious bodily injury or serious property damage.

...

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Contractor shall take all reasonable precautions to avoid further contamination or the spread or disturbance of potentially hazardous substances or materials. As used in the Agreement and the General Conditions, "hazardous material" shall be defined as any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Project site, is either: (1) regulated or monitored by any governmental authority; or (2) a basis for liability of the Owner to any governmental agency or third party under any applicable statute, code, ordinance, regulation, rule and/or common law theory.

§ 10.3.2 ~~Upon receipt of the Contractor's written notice, the Owner shall Promptly after providing Owner with the Contractor's written notice, the Contractor shall provide Owner with a Change Order proposal for the Contractor to obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner the Contractor shall provide the Owner with a Change Order proposal for the work to be performed by Contractor to cause it to be rendered harmless, which work shall include, without limitation, (i) the Contractor's due diligence and research as to disposal facilities for competitive pricing and scheduling purposes; and (ii) the Contractor's supervision and direction of the abatement (removal or safe containment) of such material or substance in order that such abatement work is performed in the most cost effective manner. The Contractor shall furnish in writing to the Contractor-Owner and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor-Owner and the Architect will promptly reply to the Owner-Contractor in writing stating whether or not~~

either has reasonable objection to the persons or entities proposed by the ~~Owner-Contractor~~. If either the ~~Contractor~~ Owner or Architect has an objection to a person or entity proposed by the ~~Owner, the Owner-Contractor, the Contractor~~ shall propose another to whom the ~~Contractor-Owner~~ and the Architect have no reasonable objection. When the material or substance has been determine to be or rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, if applicable, the Contract Time shall may be extended appropriately and the Contract Sum shall may be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and ~~start up~~start-up, except to the extent Contractor contributed to or exacerbated the hazardous condition.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are expressly required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances, and negligently or recklessly handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred, unless the Contractor knew or had reason to know that its activities, even if directed by Owner, violated applicable law.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.3.6 Prior to introducing any hazardous materials to the Project site, the Contractor shall provide a material safety data sheet (MSDS), information about precautionary measures necessary to protect persons or property and an indication of the type of labeling system in use.

§ 10.3.7 In the event that during the performance of the Work the activities of the Contractor or any Subcontractor, or any person or entity for which the Contractor is responsible, causes the incursion of mold at the Project site, the Contractor shall be responsible for and bear the entire cost of mitigation of any mold to the satisfaction of the Owner.

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article ~~7-7~~, except to the extent such emergency Work was not attributable to any act, omission, or negligence of the Contractor, any Subcontractor,

anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, in which event no additional compensation or extension of time shall be paid or granted.

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§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a ~~Subcontractor~~ Subcontractor, or by a sub-subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

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§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of ~~final payment~~ Final Payment and termination of any coverage required to be maintained after ~~final payment~~ Final Payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The insurance required herein shall not reduce or limit any party's obligation in connection with its performance on the Project.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of ~~insurance~~ insurance at least fifteen (15) days prior to expiration. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the ~~Owner~~ Contractor. The Contractor shall upon receipt of any such prior written notice promptly provide a copy thereof to Owner, but in no event more than ten (10) days after Contractor's receipt of such prior written notice. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Failure of the Contractor to keep the Contractor's required insurance policies in force during the Work covered by this Agreement or any extensions thereof or extra or additional Work agreed to by the Contractor, shall constitute a material breach of this Agreement, entitling Owner, notwithstanding anything to the contrary contained herein, to immediately cancel and terminate this Agreement for cause.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the ~~Owner, the Architect and the Architect's consultants~~ Owner and the Architect as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

...

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a so-called builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost ~~basis without optional deductibles~~ basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until ~~final payment~~ Final Payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, ~~falsework, testing and startup,~~ temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss requirements. Nothing contained in the Contract Documents shall be construed to, nor is intended to, constitute any indemnification of the Contractor by the Owner for any loss, cost or damage arising out of any cause insured under this Paragraph.

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§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs ~~not covered because of such deductibles~~ of such deductibles, except to the extent loss is caused by the negligent act, intentional misconduct or omission of the Contractor.

§ 11.3.1.4 This property insurance shall not cover portions of the Work stored off the site, and also site or portions of the Work in transit and Contractor shall be responsible for insuring such portions of the Work stored off the site or portions of the Work in transit.

...

~~The~~ To the extent deemed necessary by the Owner, the Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds. Work with the Owner as the named insured and the Contractor, Subcontractor, and Sub-subcontractors as the named loss payees. Testing and start-up, other than electrical insulation breakdown test or hydrostatic, pneumatic or gas pressure tests, are included under this insurance.

...

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, to the extent covered and paid by such insurance, including consequential losses due to fire or other hazards however caused.

...

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after ~~final payment~~ Final Payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of a certificate of insurance for each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

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The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees,

for damages caused by fire or other causes of loss to the extent covered by ~~property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, insurance,~~ except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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**§ 11.3.9** ~~If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary.~~ The Owner shall deposit in a separate account proceeds ~~so received,~~ received from property insurance purchased pursuant to § 11.3, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. ~~If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

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**§ 11.4.1** ~~The Owner shall have the right to require the Contractor to~~ Contractor, and at Owner's election, any subcontractor, shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Any such bonds shall be in an amount equal to the cost of the contract awarded, listing Owner as a dual obligee in the case of Subcontractors, and in a form acceptable to the Owner. The required bonds shall be provided by a surety company or companies acceptable to the Owner, authorized to transact such business in the State of Connecticut.

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## **§ 11.5 PROFESSIONAL LIABILITY INSURANCE**

**§ 11.5.1** The Contractor shall purchase and maintain Professional Liability insurance from the Contractor's usual sources as primary coverage for the Contractor's liability for professional services rendered under the Contract. The cost of purchasing and maintaining such insurance coverage at the rates set forth in Article 6 of the Agreement shall be included in the Contract Sum. The minimum limits of liability purchased with such coverage shall be as set forth in the Contract Documents.

**§ 11.5.2** The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Professional Liability Insurance coverage under Section 11.5.

## **§ 11.6 OWNER'S INSURANCE REQUIREMENTS**

**§ 11.6.1** In addition to the requirements set forth in this Article 11, certain of the Owner's insurance requirements are set forth in the RFQ/P (as such term is defined in the Agreement), which RFQ/P insurance requirements (the "RFQ/P Insurance Requirements") are deemed a part of and incorporated into this Article 11. In the event of inconsistencies within or between parts of this Article 11 and the RFQ/P Insurance Requirements, the Contractor shall comply with the more stringent requirements; in accordance with the Owner's interpretation.

§ 12.1.1 If a portion of the Work is covered contrary to the Owner's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner or Architect, be uncovered for the Owner's or Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Owner or Architect has not specifically requested to examine prior to its being covered, the ~~Architect-Owner~~ may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

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The Contractor shall ~~promptly correct Work rejected by the Architect or failing to ensure that all Work is being performed in accordance with the requirements of the Contract Documents.~~ The Contractor shall reject Work which does not conform to the requirements of the Contract Documents. The Contractor shall promptly correct, repair, replace or re-execute Work, whether or not rejected by the Architect or Owner, that is defective or fails to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall correct such defects and any condition resulting therefrom reasonably promptly, or sooner if such condition threatens the safety of the occupants of the Project. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

...

§ 12.2.2.1 ~~In addition to the Contractor's obligations under Section 3.5, if, within one year after Contractor covenants and agrees that it will, upon notice from Owner, immediately repair, replace, restore, correct and cure at Contractor's expense, all defects, deficiencies, errors and omissions in workmanship and materials and all failures to comply with the Contract Documents which appear within one (1) year from the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.~~ Project; provided, however, that: (i) this warranty and guarantee on the part of Contractor, and Contractor's obligation to correct defective, deficient or non-conforming Work as hereinbefore provided, shall remain and continue in full force and effect as to those components of the Project specified in the Contract Documents for the extended periods specified in the Contract Documents, likewise commencing on the date of Substantial Completion unless otherwise indicated in the Contract Documents; and (ii) with respect to any incomplete or defective item of Work completed or corrected by Contractor after Final Completion of the Project (i.e., punchlist work) this warranty and guarantee shall commence when such incomplete or defective item of Work is satisfactorily completed or corrected by Contractor in each instance. Contractor shall pay for and, if requested, repair, replace, restore, correct and cure any damage or injury, whenever the same shall occur or appear during the applicable warranty period, resulting from any defects, omissions or failures in workmanship and materials. The

foregoing guarantee and warranty shall not shorten any longer warranty period or longer period of Contractor's liability provided for by law or in the Plans, Drawings or Specifications or in any other Contract Document or otherwise received from Contractor or any supplier or Subcontractor or Contractor or from any manufacturer, nor supersede the terms of any special warranty given by Contractor, imposed by law or required by the Contract Documents, but shall be in addition thereto.

**§ 12.2.2** ~~The one year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.~~

**§ 12.2.3** ~~The one year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. Upon completion of any Work under or pursuant to Section 12.2, the one (1) year correction period in connection with the Work requiring correction shall be renewed and recommence.~~

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner. Notwithstanding anything to the contrary contained herein, it is understood and agreed that the warranty and guarantee set forth in this Paragraph shall not affect, limit or impair Owner's right against Contractor and its surety with regard to latent defects in the Work which do not appear within the applicable warranty period and which could not, by the exercise of reasonable care and due diligence, be ascertained or discovered by Owner within such warranty period. Contractor shall be and remain liable and responsible to correct and cure any such latent defects which are reported to Contractor by Owner in writing within one (1) year after any such latent defects first appear or could, by the exercise of reasonable care and due diligence, be ascertained or discovered by Owner.

**§ 12.2.4** ~~The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents. Notwithstanding anything to the contrary contained herein, if Contractor fails to promptly commence and diligently perform and complete all corrective Work required under this Paragraph from time to time (whether punch list or warranty work), Owner shall have the right (but not the obligation) in each instance, at Owner's election, to cause such corrective work to be done by others and recover the costs thereof, together with damages and reasonable attorney fees, from Contractor and his surety, in addition to all other rights and remedies available to Owner against Contractor and his surety hereunder and at law and in equity for such default by Contractor.~~

**§ 12.2.5** ~~Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work. On Substantial Completion of the Work, representatives of the Contractor and the Owner's Representative shall inspect the Project. Any items still incomplete or not consistent with the plans and specifications will be incorporated in a punch list, and the list given to the Contractor who will complete items on the punch list within thirty (30) days of receipt of the punch list. If the Contractor fails to complete all items on the punch list within thirty (30) days, the Owner's Representative or the Owner shall, without further notice to the Contractor, have the remaining Work completed by any means, and the Owner's Designated Representative or the Owner will deduct all expenditures from the Final Payment due the Contractor, and Contractor and Subcontractor shall be liable for any excess costs incurred.~~

**§ 12.2.6** The punch list shall in no way relieve the Contractor of his responsibility to do all the Work specified or shown in the Contract Documents.

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If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as

appropriate and equitable. Such adjustment shall be effected whether or not ~~final payment~~ Final Payment has been made.

...

The Contract shall be governed by the law of the place where the Project is ~~located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 15.4. located.

...

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. ~~Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party~~ The Contractor may not assign, transfer, convey, pledge, or otherwise dispose of its interest, or any part thereof, in this Agreement. All such assignments by the Contractor are void. If the Contractor attempts to make such an assignment without such consent, ~~that party~~ the Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to the State of Connecticut Department of Education. Further, ~~the Owner may, without consent of the Contractor,~~ assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate ~~such assignment~~ the foregoing to the extent required or requested by Owner.

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Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by overnight, registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

...

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at ~~such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ the rate set forth in the Agreement

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The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, ~~but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.~~ law.

**§ 13.8 NO WAIVER OR APPROVAL**

§ 13.8.1 No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach of this Agreement, except as may be specifically agreed in writing. Neither the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use of occupancy of the Work, or any part thereof, the making of Final Payment, or any other action or inaction, on the part of the Owner or Architect shall constitute a waiver of claims by the Owner or an acceptance of any Work which is not in accordance with the Contract Documents either by the activities or duties of the representation of the Owner or Architect, or by inspections, tests, or approvals required or performed by the Owner or Architect or anyone else.

**§ 13.9 RECORDING**

§ 13.9.1 This Agreement shall not be recorded. If this Agreement shall be recorded contrary to this provision, such recording shall be ineffective and Owner is hereby authorized for and on behalf of, and in the name of Contractor to execute and have recorded a discharge of any such recording.

**§ 13.10 SEVERABILITY**

§ 13.10.1 The invalidity in whole or in part of any article, section, subsection, sentence, clause, phrase or word, or other provision of these General Conditions and any exhibits or documents attached thereto shall not affect the remaining portions thereof.

...

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~ sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

...

- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1. Documents, after notice has been provided pursuant to Section 9.7.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365 day period, whichever is less. If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon seven (7) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed, including reasonable overhead and profit on Work properly executed and actual costs and damages incurred by reason of such termination.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven the Work is suspended by the Owner for a period of ninety (90) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages, as provided in Section 14.1.3.

~~§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~

...

- ~~.1 repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;
- ~~.2 fails to make payment to Subcontractors pursuant to its obligations under this Agreement, after payment by Owner, for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;~~
- ~~.3 repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; ~~or~~
- ~~.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.~~Documents, including, without limitation, the failure of the Contractor or the Subcontractors to proceed expeditiously in the performance of the work in accordance with the Construction Schedule;
- .5 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;
- .6 is declared bankrupt, has a petition in bankruptcy filed against it, or if the Contractor files for bankruptcy protection; or
- .7 causes or threatens to cause or create labor unrest, dispute, picketing, slowdowns, work stoppage, strike or disharmony.

~~§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety, may:~~

- ~~.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; intended to be incorporated into the Project;~~

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~~§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.~~finished and the Owner's damages arising out of the cause of termination are determined by the Owner.

~~§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.~~

~~§ 14.2.4 In the event that a termination by the Owner for cause is ultimately deemed wrongful by a trier of fact, such termination shall conclusively be deemed to be a termination for convenience by Owner under 14.4 of this Agreement, and the Contractor's sole rights and remedies against the Owner shall be as set forth in 14.4.3.~~

~~§ 14.2.5 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.~~

...

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for actual increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. ~~Adjustment of the Contract Sum shall include profit.~~ 14.3.1 by Change Order. No adjustment shall be made to the extent

...

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Under such circumstances, this Agreement shall terminate on the date set forth in the notice from the Owner. The Contractor agrees to immediately prepare to cease performing all services on the date of termination and shall otherwise cease, to the extent practicable, incurring costs chargeable to the Owner under this Contract as of the date of termination. To the extent that the Owner elects (and Contractor hereby grants to the Owner the right to elect to do so in connection with termination of this Contract) to take legal assignment of subcontracts or purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Section and otherwise under this Contract, at the Owner's sole cost and expense, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts or purchase orders and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. Otherwise, Contractor shall terminate such subcontracts and purchase orders as of the Contract termination date or as soon as possible thereafter. In the event a termination by the Owner for cause is not in accordance with the terms of the Contract Documents or otherwise determined improper, it shall be deemed a termination for convenience under this Section.

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- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, as directed by Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase ~~orders.~~ orders or assign them to Owner.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work properly executed, which payment shall consist of the Cost of the Work of such properly executed Work, which Cost of the Work shall include an equitable amount of the Lump Sum General Conditions Amount as determined by the Owner, and the Construction Manager's Fee computed upon the Cost of the Work of such properly executed Work at the rate set forth in Section 5.1.1 of the Agreement and actual and direct costs and damages incurred by reason of such termination, along with reasonable overhead and profit on the Work not however the Contractor and any party claiming through or under the Contractor shall not be entitled to any overhead or profit on the Work not so executed.

...

Claims by either the Owner or Contractor the Contractor or Subcontractors (of any tier) must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 Owner and must be initiated within 14 days after occurrence of the event giving rise to such Claim or within 21-14 days after the claimant Contractor first recognizes the condition giving rise to the Claim, whichever is later. If the Contractor fails to make a Claim within the specified time, it hereby acknowledges that its failure to do so greatly prejudices the Owner and the Claim will be deemed waived. Upon receipt from the Contractor of a written notice of Claim as provided in Paragraph 15.1.1, the Owner shall review such Claim and if the Owner determines that any Work in dispute should proceed, Owner shall issue to the Contractor a written order to proceed in which Owner shall approve or deny the Contractor's Claim, in whole or in part, or shall instruct the Contractor to proceed with the Work subject to a later determination by the Owner of the Contractor's right to extra payment.

...

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the To the extent that the Owner,

when issuing the written order to proceed described in 15.1.2 approves Contractor's Claim, the Contract Sum shall be subsequently adjusted, as provided in Paragraph 7.2. If the Owner, when issuing a written order to proceed, denies, in whole or in part, Contractor's Claim, the Contractor shall have the right to separately pursue all remedies available under the Contract Documents, but the Contractor shall nonetheless proceed with the Work without delay, in any case and Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker, and subject to the Contract Documents.

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~~§ 15.1.5.4 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.~~

§ 15.1.5.1. If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. In the case of a continuing delay, the Contractor shall file with the Owner written reports on the delay identifying the continuing cause of the delay no less than once a week during the duration of the delay.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were ~~abnormal~~ unusually severe for the period of time, could not have been reasonably anticipated and had an adverse effect on the critical path of the scheduled construction.

§ 15.1.5.3 Any change request seeking an extension of the Contract Time shall contain:

- .1 a detailed description of the nature of each cause of delay, the date or dates upon which each cause of delay began and ended (as known or as projected), the number of days of delay attributable to each such cause, and the impact of such delay upon the Construction Schedule;
- .2 the Construction Schedule in effect at the start of the delay, showing that the portion of the Work that was, or will be, delayed is on the critical path and that no float remains or will be available for the delayed activities at the start of the delay;
- .3 a schedule analysis of the impact of the delay on the critical path in the Construction Schedule at the time of the delay, including any proposed adjustment to the Contract Time; and
- .4 such other supporting data that the Owner may reasonably request.

...

## § 15.2 INITIAL DECISION

~~§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~

~~§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~

~~§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial~~

Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

~~§ 15.2.4~~ If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

~~§ 15.2.5~~ The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

~~§ 15.2.6~~ Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

~~§ 15.2.6.1~~ Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

~~§ 15.2.7~~ In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

~~§ 15.2.8~~ If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

~~§ 15.3.1~~ Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to ~~binding dispute resolution~~ litigation.

~~§ 15.3.2~~ Any Claim which is not resolved by mediation shall be litigated in a court of competent jurisdiction in the location of the Project. The parties waive their rights to a jury trial. Prior to litigation, the parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its or other mutually acceptable dispute resolution administrator in accordance with the American Arbitration Association's Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of ~~of binding dispute resolution proceedings~~ litigation but, in such event, mediation shall proceed in advance of ~~binding dispute resolution~~ litigation proceedings, which litigation shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. ~~If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

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## **§ 15.4 ARBITRATION BINDING DISPUTE RESOLUTION**

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 hereof, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction in the location of the Project.

## **§ 16 LIMITATION OF LIABILITY**

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The Owner shall be liable only to the extent of its interest in the Project; and no representative, officer, director, partner, agent or employee of the Owner (or any partner of a partner or any agent or employee of a partner) shall ever be personally or individually liable with respect to the Contract Documents or the Work. Each Subcontract shall include the foregoing limitation, which shall be effective if the Owner ever succeeds to the Contractor's rights and obligations under a Subcontract.

~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

#### ~~§ 15.4.4 CONSOLIDATION OR JOINDER~~

~~§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.~~

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Victor Morganthaler, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:25:20 on 02/22/2016 under Order No. 6204946249\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

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*(Title)*

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*(Dated)*