



# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

### PCCI Comments

#### for the following PROJECT:

*(Name and location or address)*

Central Nine Career Center- Additions and Renovations  
1999 US 31 South  
Greenwood, IN 46143

#### THE OWNER:

*(Name, legal status and address)*

Central Nine Career Center  
1999 US 31 South  
Greenwood, IN 46143

#### THE ARCHITECT:

*(Name, legal status and address)*

Lancer + Beebe, LLC  
220 N College Ave  
Indianapolis, IN 46202

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### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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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, 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) a Construction Change Directive, or (4) 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 or proposal requirements.

#### **§ 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, or reasonably inferable from 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. The Work shall include all work described in the Drawings and Specifications.

#### **§ 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.

#### **§ 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, 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. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### **§ 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

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binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents or reasonably inferable from them as being necessary to produce the intended results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 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.

§ 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.

§ 1.2.4 In the event of conflicts or discrepancies among the Contract Documents, the Contract Documents shall be interpreted on the basis of the following priorities:

First	Modifications and Addenda to the Agreement, with those of later date having precedence over those of earlier date;
Second	Agreement;
Third	General Conditions of the Contract;
Fourth	Addenda to Drawings and Specifications, with those of later date having precedence over those of earlier date;
Fifth	Drawings and Specifications.

Larger scale drawings shall take precedence over smaller scale drawings. All dimensions shall be determined by figures rather than scaled dimensions. The Contractor acknowledges and agrees that (a) the Contractor has had an opportunity during the preconstruction, bidding, or negotiation stage to request figures for any scaled dimensions shown in the Contract Documents to the extent the Contractor deems necessary to establish the Contract Sum and (b) prior to ordering any materials or equipment or performing any Work shown in the Contract Documents only by scaled dimensions, the Contractor shall either (i) submit a request for information to the Architect to provide such figures, or (ii) submit a Shop Drawing proposing such figures for the Architect's review and action. Should the Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quantity of the Work unless otherwise directed by written Addendum. Notwithstanding the order of priority of documents set forth in this Section: (1) any matters contained in the Specifications which have been omitted from the Drawings or vice versa shall be construed as though contained in both; and (2) in the event of any duplication, conflict, or discrepancy between Drawings and Specifications, Drawings shall control as to any conflict regarding location or quantity, and Specifications shall control as to any conflict regarding quality of performance. Work not particularly detailed or specified shall be performed in the same manner as similar portions of the Work that are detailed or specified.

### § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, (3) the titles of other documents published by the American Institute of Architects or (4) as defined in the Agreement.

### § 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 § 1.5.1 The Drawings, Specifications, and other Instruments of Service, and other design documents (collectively, "Design Documents"), including those in electronic form, whether prepared by the Architect or other parties, are the property of the Owner, the Architect, or other parties, who will retain all common law, statutory, or other reserved rights (including copyrights). As set forth more fully in Section 3.11, the Contractor shall maintain at the site for the Owner a record copy of such documents which shall be marked currently to record changes and selections made during construction, and which shall be delivered to the Architect and the Owner upon completion of the Work as provided in Sections 3.11 and 9.10.2. The Contractor may elect, at the Contractor's own expense, to prepare and retain the Contractor's own record set. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Design Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the copyright or other reserved rights held by the Owner, Architect, or other parties.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

## § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, all notices, demands, requests, or approvals to be given under this Contract shall be given in writing and conclusively shall be deemed served: (a) when delivered by courier, overnight delivery service, or certified, registered, or regular mail to the recipient or the regular business office of the recipient; (b) when successfully delivered to the recipient's designated facsimile number, as shown by a fax confirmation; or (c) when successfully delivered to the recipient's designated electronic mail address, provided that for notice by e-mail to be effective, at least one other responsible individual besides the recipient on behalf of the Owner or the Contractor, as the case may be, must be copied, and if the recipient provides notice (through an auto-reply or other means) that he or she is not checking e-mail for a certain period due to a vacation or other circumstances, the notice is not effective until the recipient actually opens and views the e-mail. Notwithstanding the foregoing, notices of nonpayment, notices of breach of the Contract, and notices of default under the Contract Documents must be transmitted by overnight delivery with proof of delivery to the recipient or the regular business office of the recipient.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

## § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

## § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## 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

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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.

**§ 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 [Intentionally Deleted] Evidence of the Owner's Financial Arrangements** **§ 2.2.2** Should at any time Owner fails to make payments to the Contractor as the Contract Documents require, the Contractor shall be able to request that Owner furnish reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

*(Paragraphs deleted)*

**§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** 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, with the Contractor's cooperation where requested, shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.3.2** 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.

**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 2.3.4** The Owner shall furnish customary 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 within reason on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Except for customary surveys furnished by the Owner, the Contractor shall perform all necessary surveys for the Work, including, but not limited to, surveys for building foundations and pads, water, sewer, drainage, site work, and certified as-built of the Work. The Contractor may assume that the locations of any underground or hidden utilities, plumbing, or electrical runs indicated in the surveys or Contract Documents are shown in the approximate locations, but the Contractor is responsible for making all utility location checks and to take borings or undertake other industry standard investigatory measures to verify the exact locations of such utilities.

**§ 2.3.5** 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.

**§ 2.3.6** Unless otherwise expressly 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.

**§ 2.4 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 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. The Owner's exercise of any rights under this paragraph shall not entitle the Contractor to any increase in the Guaranteed Maximum Price, or the Contract Time. The rights of the Owner under this Section 2.4 are cumulative and not in limitation of any other rights of the Owner contained in the Contract Documents, at law or in equity.

## § 2.5 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 notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for 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 current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If providing the above referenced ten (10) days' prior notice to the Contractor is not reasonable because of an emergency or exigent circumstances, the Owner shall provide only that prior notice which is reasonable under the circumstances. The rights of the Owner under this Section 2.5 are cumulative and not in limitation of any other rights of the Owner contained in the Contract Documents, at law or in equity. In no event shall the Owner have any control over, charge of, or any responsibility for, construction means, methods, techniques, sequences, or procedures or for safety programs or precautions in connection with the Work, notwithstanding any rights or remedies granted to Owner in the Contract Documents. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## 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. The Contractor shall be and operate as an independent contractor under the Contract, and is not an agent, employee, or partner of the Owner.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its 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, activities of the Owner, 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, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall 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 and the Owner 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. 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.

§ 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 and the Owner in writing any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. The Contractor shall be entitled to an equitable adjustment to the Contract Sum and Project Schedule, as the case may be, to the extent that changes in laws, or interpretations by public authorities, result in the Contractor incurring additional costs or time.

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§ 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 submit 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, subject to Section 15.1.7, 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, 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.

### § 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 shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, (including, without limitation, (x) all safety precautions and programs, and (y) all shoring, bracing, and temporary supports for earth and existing improvements), and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor believes that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall : (a) give timely written notice to the Owner and Architect of the specific means, methods, techniques, sequences, or procedures referred to in the Contract Documents that the Contractor believes are not safe or suitable, and shall not proceed with that portion of the Work until the Owner, the Architect, and the Contractor have agreed upon specific means, methods, techniques, sequences, or procedures that the Contractor agrees are safe and suitable for the Work; and (b) participate in discussions with the Owner and the Architect regarding the specific means, methods, techniques, sequences, or procedures referred to in the Contract Documents that the Contractor believes are not safe or suitable until the Owner, the Architect, and the Contractor have agreed upon specific means, methods, techniques, sequences, or procedures that the Contractor agrees are safe and suitable for the Work. The Contractor shall remain solely responsible for and have control over the means, methods, techniques, sequences, or procedures that are employed by the Contractor for the Work, notwithstanding that such construction means, methods, techniques, sequences, or procedures are (i) referred to, indicated, or implied by the Contract Documents, or (ii) agreed to by the Owner and/or the Architect. The Contractor represents and covenants that the construction means, methods, techniques, sequences, and procedures necessary to perform the Work will be consistent with and conform to: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) applicable legal requirements.

§ 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 Without assuming any design responsibility, Contractor shall be responsible for coordinating the Shop Drawings and other Contract Documents among Subcontractors and Sub-subcontractors. In addition, Contractor shall coordinate Subcontractors and Sub-subcontractors working concurrently at the Project site. Contractor shall be responsible for confirming that the dimensions found on the shop drawings in their most current form, in the materials, and for other products supplied by the Owner are compatible with the Work to be completed.

### § 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.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the

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consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. In all cases in which a manufacturer's name, trade name, or other propriety designation is used in the Contract Documents in connection with a material, equipment, or product to be furnished thereunder, regardless of whether or not the designation includes the phrase "or equal" or words of similar meaning, the Contractor shall furnish the material, equipment, or product of the named manufacturer(s) without substitution unless a written request for substitution is made in accordance with this Section 3.4.2 and the substitution is approved in writing by the Owner. Where two or more products or materials are specified as options for the Contractor to select, the choice of these shall be made by the Owner. The Contractor shall provide notice of its preferred option to the Owner sufficiently in advance of when the product or material needs to be ordered so as not to delay the progress of the Work and to allow the Owner sufficient time to make its decision.

**§ 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 Subcontractors who are not properly licensed or skilled to perform the work required of them, and shall not permit the employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **§ 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. In addition, where the Contract Documents do not specify particular materials or equipment, and the Contractor is permitted to exercise any discretion in the materials or equipment purchased, the Contractor warrants and represents that the materials and equipment purchased will be fully suitable for their intended purpose. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and all applicable laws 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 or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

**§ 3.5.3** Contractor shall provide the Owner with the full benefit of all vendor warranties applicable to all equipment and materials furnished in connection with the Work. The Contractor shall collect all written warranties and equipment manuals which are available with reasonable diligence and deliver them to the Owner prior to final payment from the Owner to the Contractor. The warranties to be collected and delivered to the Owner under this Section shall include, without limitation, all warranties and guarantees of Subcontractors and Sub-subcontractors with respect to any portion of the Work. The Contractor shall ensure that all such warranties and guarantees are obtained so that they extend for the benefit of the Owner, and are available to be asserted by the Owner.

**§ 3.5.4** Contractor shall provide the Owner with an operating and maintenance manual for the Project within thirty (30) days after Substantial Completion. The operating and maintenance manual will include schematic as-built drawings for the site structures, main distribution lines for all utilities and controls, equipment locations, shut off locations for such items, and a list of all Subcontractors and Sub-subcontractors providing any materials, equipment, and/or services in connection with the Project, together with each such person's address, telephone number, and contact person.

**§ 3.5.5** The warranty provided in this Section 3.5 shall (a) apply to both patent and latent defects, (b) not be limited to the durations set forth in Section 12.2.2, and (c) be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise provided by law.

### **§ 3.6 Taxes**

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. The Contractor shall indemnify, defend, and hold harmless the Indemnitees from any claim or liability for any such taxes and taxes relating to the employees of the Contractor, any Subcontractor, or any Sub-subcontractor,

including taxes and contributions required under the Federal Social Security Act and the unemployment compensation law or any similar law of any state.

### **§ 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 agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required provided that any requirement for such permits, fees, licenses, and inspections that first becomes binding after execution of the Agreement and is paid for by Contractor. The Contractor shall apply and arrange for required licenses, permits, inspections, and/or approvals sufficiently in advance of the time required to allow the Contractor and/or the Architect to respond to any municipal comments, conditions, or requests (including, without limitation, changes to the Work) without delaying the progress of the Work.

**§ 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** It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the 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 notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines 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 that an equitable adjustment be made 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 submit a Claim as provided in Article 15.

**§ 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. 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 shall be adjusted accordingly by Change Order. The amount of the Change Order 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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**§ 3.8.3** Materials and equipment under an allowance and requiring Owner selection shall be selected by the Owner with reasonable promptness.

**§ 3.8.4** If the Contractor determines that the cost for any allowance item is likely to exceed the corresponding allowance cost for such allowance item listed in the Contract Documents which would entitle the Contractor to an increase in the Contract Sum or Guaranteed Maximum Price, as applicable, under Section 3.8.2.3 above, the Contractor shall promptly notify the Owner in writing. Upon receipt of any such notice from the Contractor, the Owner may, at its sole option and discretion, either: (a) issue a Construction Change Directive or execute a Change Order which increases the Contract Sum or Guaranteed Maximum Price, as applicable, by the additional amount necessary to furnish or construct such allowance item; or (b) direct the redesign and/or reselection of such allowance item to reduce the anticipated cost of furnishing or constructing such item (in which event the Contractor shall, and shall cause all direct and lower tier subcontractors to, cooperate in such redesign and/or reselection by evaluating the cost and construction-related issues of proposed alternatives and otherwise). Once the scope of any allowance item has been sufficiently identified to allow the Contractor to procure such item, and the Contractor has awarded subcontract(s) therefor in amounts approved by the Owner, the adjustment (if any) to the Contract Sum or Guaranteed Maximum Price, as applicable, on account of such allowance item shall be established based on the amount(s) of the awarded subcontract(s) and shall no longer be subject to further adjustment in accordance with this Section 3.8 (provided that adjustments to the Contract Sum or Guaranteed Maximum Price, as applicable, attributable to any allowance items that are based on unit prices for assumed quantities shall be made at such time or times as the actual quantities of such items are established). All allowance Work shall be procured on a stipulated sum basis unless otherwise approved by the Owner.

### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent 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 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 notify the Owner and Architect in writing of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed 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.

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The initial approved Construction Schedule is attached to the Agreement. At the request of the Owner, the Contractor shall reformat the Construction Schedule to the extent necessary so that the Construction Schedule is in a detailed, precedence-style critical path method (CPM) format using a time scaled logic diagram (Gantt Chart) satisfactory to the Owner which: (1) provides a graphic representation of the interrelationship of all material activities and events that will occur during performance of the Work; (2) identifies each phase of construction and occupancy; (3) sets forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"); (4) clearly establishes and shows the "critical path" through the job; and (5) includes a narrative of planned manpower and crew sizes at different phases of the Work. The reformatted Construction Schedule shall be revised and re-submitted as necessary to obtain Owner's approval thereof.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved 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.

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

§ 3.10.4 The Contractor shall monitor the progress of the Work for conformation with the requirements of the Construction Schedule and shall promptly (but in any event within five (5) business days following the occurrence giving rise to any delays or potential delays) advise the Owner of any delays or potential delays. If performance of any portion of the Work on the critical path as of any date has not progressed or reached the level of completion required by the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents), the Contractor shall propose in written form an affirmative plan and recovery schedule (the "Corrective Plan") to correct the delay, including overtime and/or additional labor, if necessary, which Corrective Plan shall indicate the date by which the progress of the Work will comply with the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents), and shall be subject to the approval of the Owner. The Contractor shall not be entitled to an increase in the Contract Sum or Guaranteed Maximum Price, as applicable, in connection with the implementation of any Corrective Plan to accelerate the progress of the Work to the level of completion required by the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents). In no event shall any progress report or Corrective Plan constitute an adjustment in the Construction Schedule, Contract Time, or any Milestone Date unless any such adjustment is agreed to in writing by the Owner and authorized pursuant to a Change Order.

§ 3.10.5 In the event (i) that the performance of any portion of the Work at any time has fallen behind the level of completion required by the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents), and (ii) the Contractor fails to submit a Corrective Plan that is approved by the Owner or the progress of the Work is not brought back into compliance with the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents) on the date proposed by an approved Corrective Plan, then the Owner shall have the right to order the Contractor to take corrective measures to expedite the progress of the Work, including, without limitation, (1) working and/or supplying additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, (3) re-sequencing of schedule items, and (4) other similar measures (hereinafter referred to collectively as "Schedule Recovery Measures"). Such Schedule Recovery Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents). The Owner's right to require Schedule Recovery Measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents). The Contractor shall not be entitled to an increase in the Contract Sum or Guaranteed Maximum Price, as applicable, in connection with Schedule Recovery Measures required by the Owner under or pursuant to this Section due to the failure of the Work to achieve the level of completion required by the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents). The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as reasonably necessary to ensure that the Contractor's performance of the Work complies with the progress of the Work set forth in the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents). Notwithstanding the foregoing, the Contractor shall not be required to take any corrective actions to expedite the progress of the Work, and the term "Schedule Recovery Measures" expressly excludes any actions: (a) not permitted by applicable laws; (b) impossible for the Contractor to provide or perform (it being acknowledged and agreed that the cost of an action shall not excuse the Contractor from taking such action); or (c) requiring means, methods, techniques, sequences, or procedures that cannot be safely performed. Nothing contained in any other provision of the Contract Documents shall limit the Contractor's obligations to perform, or the damages that may be recoverable against the Contractor for failing to perform, Schedule Recovery Measures in accordance with this Section 3.10.5.

### § 3.11 Documents and Samples at the Site

§ 3.11.1 The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked by the Contractor currently to indicate field changes and selections made during construction (the "Record Documents"), and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Record Documents shall consist of record information including: (i)

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deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on the Drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; (v) the actual installed position of utilities and below ground components accurately located with respect to their elevation and alignment along their full length, showing bends and/or offsets (such as dimensioned expansion loops or changes to go around, under or over other utilities), valves, and thrust blocks, and tied back to (dimensioned from) existing permanent structures (the elevations, alignment, and tie backs shall be established in the field at the time of installation before backfilling and the field records (or copies thereof) shall be maintained by the Contractor on site as part of the Record Documents for review and inspection by Owner and Architect; this information must be suitable to accurately locate all the utilities and below grade components on the Owner's site survey plan); and (vi) such other information as the Owner may reasonably request. Upon completion of the Work, the Contractor shall deliver to the Owner and the Architect the marked Record Documents and electronic copies of the Record Documents in a format acceptable to the Owner. Separate marked and electronic files with the Record Documents shall be prepared and delivered for each of the architectural, mechanical, electrical, plumbing, and fire protection/sprinkler portions of the Work. The Contractor shall also deliver to the Architect and Owner all operations manuals for equipment.

**§ 3.11.2** The Contractor shall preserve and maintain all documents and records related to the Project for a period of at least six (6) years following the receipt of final payment from the Owner.

**§ 3.11.3** The Contractor shall prepare complete sets of manufacturer's catalogs, instructions, and other similar data, including the necessary graphic cuts, diagrams, valve charts, and the like, covering all mechanical and manually operated devices furnished and/or installed in any permanent improvement as part of the Work, and all Subcontractor and manufacturer warranties (the "Operating Manuals"). The Operating Manuals are intended to serve to instruct and assist the maintenance staff in the care, operation, maintenance, and repair of all such devices. The Operating Manuals shall be in tangible binder form and in digitized, searchable electronic format acceptable to the Owner. Draft copies of the Operating Manuals shall be submitted to the Owner and the Architect for review and comment at least thirty (30) days prior to Substantial Completion of the Work. The Architect shall review the draft Operating Manuals and shall submit to the Contractor any comments on such draft Operating Manuals the Architect may have. Upon receiving any comments from the Architect or the Owner, the Contractor shall revise and re-submit the Operating Manuals as necessary to obtain the Architect's and the Owner's approval thereof. The Architect shall review any revised Operating Manuals prepared by the Contractor and, when the Architect considers the Operating Manuals to be satisfactory, the Architect shall recommend acceptance of the Operating Manuals by the Owner.

### **§ 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 how 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 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.

§ 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 the requirements of the Contract Documents by the Architect's written approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified 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 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 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.

§ 3.12.10.1 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 be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately 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, completeness and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and 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.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect. When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Owner shall be entitled to rely upon such certifications, and neither the Owner nor the Architect shall be expected to make any independent examination with respect thereto.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents, and shall not unreasonably encumber the site with materials or equipment. The Contractor shall conduct all activities so as not to cause damage, avoidable disturbance, or disruption to surrounding property or to those that own, have an interest in, visit, or utilize such surrounding property. The Owner shall have the right to refuse admittance to the site to, and/or to direct the

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Contractor to re-assign (or to cause any direct or lower tier subcontractor or supplier to re-assign), any agent or employee of the Contractor or any direct or lower tier subcontractor or supplier whose presence the Owner with reasonable cause deems hostile to the Owner's interest. Notwithstanding the foregoing, it is understood and agreed that the Contractor shall be responsible for full operational control and security of the site in the customary and normal performance of its duties as "Contractor" during the construction period.

### **§ 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, or patching shall be restored to the condition existing prior to the cutting, fitting, or 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 construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. 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. Upon completion of the Work, Contractor shall clean the interior and exterior of all buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Contractor shall clean and polish all glass, plumbing fixtures, finish hardware, and similar finish surfaces and equipment, and shall remove all temporary fencing, barricades, planking, construction toilets, and similar temporary facilities. All damaged, broken, or scratched material (including, without limitation, glass, plastic, or finished architectural metal surfaces) shall be replaced by the Contractor at the Contractor's expense.

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

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner, Architect, public authorities, and each of their respective representatives, consultants, agents, and designees with access to the Work in preparation and progress wherever located, and shall facilitate inspection of the Work by any of the foregoing whenever requested or required. Exercise of such rights shall not release the Contractor from any of its obligations under the Contract Documents.

### **§ 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 on account thereof, but shall not be responsible for 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, any lender, each of their respective board members, affiliates, subsidiaries, successors and assigns, the members, managers, partners, officers, directors, shareholders, representatives, agents, consultants, and employees of any of them, and anyone else acting for or on behalf of any of them (each, an "Indemnitee," and collectively, "Indemnitees,") from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from: (1) 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 (subject to Section 11.3 below), or to other damages and economic losses not waived in the Contract,

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but only if caused in whole or in part by the acts or omissions of the Contractor, a Subcontractor, a Sub-subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable; or (2) fines, penalties, and/or liability imposed on the Project or one or more of the Indemnitees resulting from the failure of Contractor to comply with any applicable laws regarding the performance of construction work activities, , or regarding any employment related acts or practices engaged in by the Contractor. 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. The Contractor shall further hold, keep harmless, indemnify, and defend the Owner from and against every liability, claim, demand, cost, loss, damage or expense in law or equity that may at any time arise or accrue or be made by reason of the Contractor's failure or alleged failure to timely pay any of its employees, agents, Subcontractors, or Sub-subcontractors. Notwithstanding the foregoing, the Contractor shall not be obligated under this Section 3.18 to indemnify an Indemnitee against liability for damages arising out of out of bodily injury to persons, death, or damage to property to the extent caused by or resulting from the negligence of such Indemnitee or such Indemnitee's independent contractors, agents, employees, or indemnitees.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on 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.

### **§ 3.19 SUBSTITUTIONS**

**§ 3.19.1** Any proposed substitutions initiated by the Contractor involving any materials or equipment specified in the Contract Documents, whether with or without design changes, shall be considered only if the Owner receives the advantage of either a decrease in the Guaranteed Maximum Price with no decrease in quality, or a reduction in the Contract Time, or both.

**§ 3.19.2** All requests for substitutions shall be made in writing and sufficiently in advance of Work performance needs to permit a reasonable time for evaluation and written response by the Owner without jeopardizing the Contract Time.

**§ 3.19.3** The acceptance of substitutions shall be at the Owner's sole and absolute discretion.

**§ 3.19.4** The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect, and in accordance with a Modification. By making a request for substitution, the Contractor:

- .1 represents that the Contractor has investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor shall provide the same warranty for the substitution that the Contractor would for that specified;
- .3 represents that the substitution complies with applicable requirements of the authorities having jurisdiction over the Project;
- .4 represents that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent;
- .5 represents that it is providing complete and accurate information regarding the impact of the substitution on the Contract Time; and
- .6 shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

### **§ 3.20 PROTECTION FROM WATER DAMAGE**

In performing the Work, the Contractor shall exercise diligent efforts to protect the Project structures and all materials, supplies, systems, and equipment which are delivered to the Project site from exposure to, and damage from, water. Without limiting the generality of the foregoing, the Contractor shall: (a) install temporary barriers adequate to prevent water entry to the Project structures from openings in the roof, exterior walls, or other applicable Project elements to the extent related to the Work; (b) cause all materials, supplies, systems, and equipment which are delivered to the Project site to be stored in a safe and secure location, packaged in a watertight manner, and stored in a manner which protects such items from inclement weather, the elements (including, without limitation, rain, snow, and water damage), and other damage until such items are incorporated into the Work; and (c) ensure that all components and exterior elements included within the Work are constructed and installed in accordance with the Contract Documents so as not to allow water leaks or penetration.

## ARTICLE 4 ARCHITECT

### § 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 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, and Architect. Consent shall not be unreasonably withheld.

### § 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 be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 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 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. However, neither the Architect nor the Owner will be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Neither the Architect nor the Owner will 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.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner in writing (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor and approved by the Owner, and (3) defects and deficiencies observed in the Work. Neither the Architect nor the Owner will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Architect nor the Owner will have control over or charge of, and will 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

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 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.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the 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, 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. The Architect's action will be taken in accordance with the 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

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permit adequate review. 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 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 order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; 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 Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations or responses to submittals required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations or responses until ten (10) business days after written request is made for them, and not then unless the Contractor shows that the Architect's delay has materially interfered with the progress of the Work. If the Contractor believes that the Architect is not providing timely responses to the Contractor's requests for interpretations or submittals, the Contractor shall promptly notify the Owner in writing so that the Owner can investigate and follow-up with the Architect.

§ 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.

§ 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 requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## 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 and includes vendors and materialmen providing materials, equipment, or other goods for the Project. 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 the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor or lower tier subcontractor 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 and includes vendors and materialmen providing materials, equipment, or other goods for the Project. 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. The term "Subcontractor of any tier" refers to both a "Subcontractor," a "Sub-subcontractor," and any lower tier subcontractor.

## § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice 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 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 has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner 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 for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

## § 5.3 Subcontractual Relations

By appropriate written agreement complying with the requirements of this Section 5.3, 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 that the Contractor, by these 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. 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, 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.

## § 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; 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 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.

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§ 5.4.3 Upon 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.

## 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 term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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 participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its 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.

§ 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 or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### § 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 notify the Architect and Owner in writing of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect and Owner in writing of apparent discrepancies or defects prior to proceeding with the Work 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. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 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 that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5. If any such Separate Contractor sues or initiates a mediation or arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at the Contractor's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or mediation or arbitration costs which the Owner has incurred.

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§ 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.

§ 6.2.6 The Owner shall take reasonable steps to require its separate contractors to name the Owner and Contractor as Additional Insureds on the separate contractors' general liability insurance policies and file certificates of insurance with Owner and Contractor showing such compliance prior to commencing Work at the Project site.

### § 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 the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, 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 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.

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

§ 7.1.4 Notwithstanding anything to the contrary in the Contract Documents, the Owner shall have no obligation to pay for changed Work or alleged changed Work unless such changed Work has been authorized in advance in writing by the Owner; it being understood that the authority of the Architect to authorize changes to the Work shall be limited to minor changes under Section 7.4 hereof.

### § 7.2 Change Orders

§ 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.

§ 7.2.2 A Change Order once executed is final. Each Change Order shall constitute a final settlement between the Owner and the Contractor with respect to all matters relating to the change in the Work which is the subject of such Change Order, including, but not limited to: any and all direct or indirect costs associated with such change; the cumulative effect of such change and all previous changes in the Work, the Contract Sum, or the Contract Time, including any and all costs and schedule impacts resulting from or associated with loss or labor productivity; and any and all adjustments to the Contract Sum or the Contract Time.

§ 7.2.3 The Contractor shall not submit any requested Change Order or other request for an increase in the GMP or an extension of the Contract Time due to any item that can be reasonably inferred from the Contract Documents.

§ 7.2.4 Any additive adjustment to the Contract Sum shall include such markups for overhead and profit as follows:

- a) If the Change is to Work self-performed by the Contractor that was awarded based on competitive bidding, Contractor shall receive ten percent (10%) overhead and five percent (5%) Fee;
- b) If the Change is to Work self-performed by the Contractor that was not awarded by competitive bidding, Contractor shall receive as its fee the Contractor's Fee as set forth in the Agreement. This Fee shall also apply to changes in the Work performed by a Subcontractor under Sections 7.2.2(c) and (d), below;
- c) Work performed by a Subcontractor shall include ten percent (10%) overhead and five percent (5%) Fee; and

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- d) Work performed by a Sub-subcontractor shall include ten percent (10%) overhead and five percent (5%) Fee, plus a five percent (5%) Fee to the Subcontractor

### § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect 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. Within ten (10) calendar days of receipt of a Construction Change Directive, the Contractor shall provide to the Owner and the Architect a proposal that sets forth the Contractor's estimates of the cost and/or schedule impacts related to the Construction Change Directive. Within twenty (20) days of receipt of a Construction Change Directive, the Contractor shall provide to the Owner and Architect a final detailed breakdown of the cost and/or schedule impacts related to the Construction Change Directive.

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

§ 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 provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures 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, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, social security, old age, and unemployment insurance, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 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;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the 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.

§ 7.3.7 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.

§ 7.3.8 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 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 request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect 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, 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.

#### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### 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 certified by the Architect 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### § 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 (1) wrongful or negligent acts or omissions of the Owner, the Architect, of an employee of either, anyone for whom the Owner is responsible, or of a Separate Contractor; (2) by changes ordered in the Work, or by concealed or unknown physical conditions encountered at the site (subject to Section 3.7.4 above); (3) by labor disputes not directed at the Contractor or a direct or lower tier subcontractor or anyone for whom the Contractor is responsible; (4) fire, unusual delay in deliveries, unavoidable casualties, abnormal adverse weather (subject to Section 8.3.5 below), or (5) by other causes beyond the Contractor's control that the Owner determines may justify delay, then the Construction Schedule and/or Contract Time shall be extended by Construction Change Directive or Change Order for such reasonable time as

agreed to by the Contractor and the Owner (or, if not so agreed to, as resolved by dispute resolution pursuant to Article 15 of these General Conditions of the Contract); however, the Contractor shall be required to use diligent efforts to mitigate both the necessity of the delay and the period of the delay. The Contractor acknowledges and agrees that: (a) the Contractor shall not be entitled to any adjustments of the Construction Schedule and/or Contract Time for any wrongful or negligent acts or omissions of the Owner, the Architect, a Separate Contractor, or an employee of any of them, unless the Contractor shall have provided the Owner with written notice describing with particularity such wrongful or negligent acts or omissions and such wrongful or negligent acts or omissions are not cured within ten (10) business days following receipt by the Owner of such notice; (b) no adjustments to the Construction Schedule and/or Contract Time shall be made unless the events described above have the effect of delaying completion of components of Work on the critical path indicated in the Construction Schedule; and (c) adjustments to the Construction Schedule and/or Contract Time will be permitted in connection with any of the events described above only to the extent that the delays resulting therefrom (i) are not caused and could not reasonably have been mitigated by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, (iii) have an impact of at least one (1) day, and (iv) have no concurrent or contributing cause for which the Contractor would not be entitled to an extension of the Contract Time. Any extension in the Construction Schedule and/or Contract Time shall be net of any contingency or "float" time included in the Construction Schedule.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15 and Section 8.3.3.

**§ 8.3.3** The Contractor shall give written notice to the Architect and the Owner within fourteen (14) days after the time that the Contractor knows or should know of any cause which will result (or has resulted) in delay for which the Contractor claims or intends to claim an extension of the Contract Time (including those causes which the Owner or the Architect is responsible for or has knowledge of). Such notice shall not be effective unless in writing given to both the Owner and the Architect. Any such written notice shall (i) explicitly state that an extension is claimed; (ii) state in detail the circumstances which form the basis of the delay; and (iii) describe as fully as practicable at the time the date of commencement and duration or expected duration of the delay and its effect on the various portions of the Work. The Contractor shall provide such supporting documentation as the Owner or Architect may require, including, where appropriate, a revised schedule for construction indicating all of the activities affected by the circumstances which form the basis for the claim. The submission of such written notice within the time period provided above shall be a condition precedent to any extension of the Construction Schedule and/or Contract Time; otherwise the claim shall be waived.

**§ 8.3.4** No claim for delay shall be allowed on account of failure of the Architect to furnish Drawings, Specifications, or instructions or to return Shop Drawings or Samples until a reasonable period of time (but in any event not less than ten (10) business days or such longer period as may be agreed to among the Architect, the Contractor, and the Owner) after receipt by the Architect of written request for such instructions, Drawings, Specifications, Shop Drawings, or Samples, and not then unless the Contractor shows that the Architect's delay has materially interfered with the progress of the Work.

**§ 8.3.5** Notwithstanding anything to the contrary in any of the Contract Documents, the Contractor acknowledges and agrees that no extension of time shall be granted on account of weather conditions except as provided for in this paragraph. A Claim by the Contractor for an increase in the Contract Time on account of weather shall only be granted if all the following conditions are met: (1) the weather during any calendar month (or pro rata portions of partial months at the beginning and end of the Contract Time) is "abnormal," as defined below; (2) the Contractor demonstrates that such abnormal weather had the effect of delaying completion of components of Work on the critical path indicated in the Construction Schedule; and (3) such Claim is made by written notice. "Abnormal weather" shall, for purposes of this paragraph, be limited to circumstances in which adverse weather conditions significantly exceed those which have historically been encountered, or may reasonably be expected to be encountered, at the Project site, based on the 10-year NOAA average for the area.

**§ 8.3.6** If any of events described in this Section 8.3 of the General Conditions of the Contract or elsewhere in the Contract Documents entitle the Contractor to an extension of the Construction Schedule and/or Contract Time, the sole remedy of the Contractor shall be such extension of the Construction Schedule and/or Contract Time and the Contractor shall not be entitled to any adjustment of the Contract Sum or Guaranteed Maximum Price, as applicable, except as otherwise provided in the following sentence. If and to the extent that the Contract Time is extended on account of Compensable Delay Occurrences (as hereinafter defined) only, (a) the Contract Sum or Guaranteed Maximum Price, as applicable, shall be increased by the Contractor's reasonable and verified additional costs of

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performing the Work to the extent directly and solely attributable to extensions of the Contract Time on account of Compensable Delay Occurrences, and (b) the Maximum General Conditions Reimbursement Amount shall be increased by the Contractor's reasonable and verified additional costs for General Conditions Items to the extent directly and solely attributable to extensions of the Contract Time on account of Compensable Delay Occurrences, all without any markup or other increase in fee. As used herein, the term "Compensable Delay Occurrences" means, and is limited to, permitted extensions of the Contract Time to the extent attributable to: (i) wrongful or negligent acts or omissions of the Owner or Architect; (ii) changes in the Work directed by the Owner; (iii) concealed or otherwise unknown physical conditions that Contractor could not have discovered in exercising the Standard of Care required of Contractor by the Contract Documents; and (iv) any event beyond the Contractor's control which effects could not be reasonably mitigated by the Contractor.

The Contractor's remedies under this Section 8.3.6 are the Contractor's sole remedies for any delay or resulting loss (including, without limitation (a) delay in the commencement, prosecution, or completion of the Work, (b) hindrance or obstruction in the performance of the Work, (c) loss of productivity, or (d) other similar delays and losses), whether or not foreseeable. Without limiting the generality of the foregoing, in no event shall the Contractor be entitled to any other compensation or recovery of damages with respect to any delay or resulting loss, including consequential damages, lost opportunity costs, impact damages, or similar remuneration.

**§ 8.3.7** The Owner and Contractor agree that it is the intent of the Contract Documents that the Contractor shall have responsibility to achieve Substantial Completion of the Work within the Contract Time with an adequate work force, irrespective of any labor dispute (other than those of general applicability not directed at the Project, the Contractor, or anyone for whom the Contractor is responsible), including picketing at or near the Project site, whether or not the Contractor is the primary employer involved in the labor dispute or a neutral employer, and whether or not the Contractor has a collective bargaining relationship with the union(s) involved in the labor dispute. Notwithstanding anything to the contrary in any of the Contract Documents, the Contractor acknowledges and agrees that no extension of Contract Time or increase in the Contract Sum or GMP, as applicable, shall be granted on account of a labor dispute (other than those of general applicability not directed at the Project, the Contractor, or anyone for whom the Contractor is responsible).

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

**§ 9.1.1** 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.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### **§ 9.2 Schedule of Values**

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

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, 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, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if

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provided in the Contract Documents. Each Application for Payment shall be deemed to include a representation by the Contractor that, except as expressly disclosed to the Owner in writing in such Application for Payment: (a) the Contractor has paid all amounts owed to its Subcontractors and suppliers; (b) the Contractor has no knowledge that any party has filed or threatened to file a lien against the Project site, Owner or surety; and (c) the Contractor has no knowledge of any basis on which it may assert a claim for an extension of the Contract Time or an increase in the Contract Sum or Guaranteed Maximum Price, as applicable.

§ 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.

§ 9.3.1.2 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 supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 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, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. 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, and shall be conditioned upon the Contractor's compliance with the requirements of Section 9.3.2.1.

§ 9.3.2.1 **STORAGE OF MATERIALS OFF-SITE.** The Contractor shall obtain prior written approval from the Owner to store materials to be incorporated in the Work, for which progress payments will be requested, at off-site locations. Any request for the Owner's approval shall also be submitted simultaneously to Architect. Any and all charges for storage, including insurance and all costs associated with Contractor's visits to such location, shall be included within the Contract Sum or Guaranteed Maximum Price, as applicable. Before approval, the Owner may require, without limitation: (a) delivery of a bill of sale and/or other documentation satisfactory to the Owner transferring title to such materials to the Owner free and clear of any liens, encumbrances, or security interests; (b) evidence that the location is properly secure; (c) proper proof of insurance and proof of satisfactory contractual arrangements for transportation to the site; (d) a certificate from the Contractor stating (i) the name of the Contractor and/or Subcontractor leasing or owning the storage area, (ii) the location of such storage space, including the storage area (*i.e.*, the entire premises or certain areas of a warehouse giving the number of floor or portions thereof), and a certification that the Contractor has visited such location, verified the storage of such material therein or thereon, and payment of all current storage charges, (iii) the date on which the material is first stored, and (iv) a description, including quantities and value, of the materials stored; (e) commitment from the Contractor that the stored materials will be incorporated into completed construction within sixty (60) days from the submission of the Contractor's Application for Payment; and (f) compliance with any additional requirements of the Owner's lender. The Contractor shall furnish to the Owner, not less often than once per month, a current inventory of all materials being stored at any off-site location. The Contractor and all applicable Subcontractors shall mark each sealed carton or other item with the name of the Project and the Owner, and all materials stored off-site shall be segregated to the extent required by the Owner.

§ 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. 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

#### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in

Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 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 in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. 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. However, the issuance of a Certificate for Payment will not be a representation that the Architect 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 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.

### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Architect may 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 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 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 suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum or Guaranteed Maximum Price, as applicable;
- .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 repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 amounts previously paid to the Contractor in excess of amounts properly due to the Contractor;
- .9 failure of the Contractor to comply with any of the Contractor's indemnification obligations as set forth in the Contract Documents;
- .10 failure of the Contractor to maintain the Project site in a clean and safe condition;
- .11 failure of the Contractor to meet any other monetary obligation imposed upon it pursuant to the Contract Documents;
- .12 failure of the Contractor to maintain Record Documents; or
- .13 the expiration, withdrawal or threatened withdrawal prior to completion of any licenses, permits or approvals reasonably required to perform the Work due to the breach, fault or neglect of the Contractor, a Subcontractor, a Sub-subcontractor, or anyone else for whom the Contractor is responsible.

If the Owner determines that any of the reasons for withholding a Certificate for Payment or nullifying any previously issued Certificate for Payment described in this Section 9.5.1 exist, the Owner may (without action by the Architect) withhold payment to the extent as may be necessary in the Owner's opinion to protect itself from loss for which the Contractor is responsible; provided, however, that the Owner furnishes notice to the Contractor of the reason(s) for such withholding

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, or the Owner otherwise has reason to doubt that a Subcontractor or Sub-subcontractor will be properly paid, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. In addition, Owner may, at its sole option, make payments directly to such Subcontractor or Sub-subcontractor if the Contractor is out of business or otherwise refuses or is reasonably considered unavailable to endorse or process a joint check. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment. All such payments made by the Owner will be credited against the Contract Sum. No such payment by the Owner shall create any express or implied duty on the part of the Owner to any Subcontractor or Sub-subcontractor.

## § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, and the Owner has approved such 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 may withhold payment for any of the reasons listed in Section 9.5.1.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment 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 to make payments to Sub-subcontractors in a similar manner.

§ 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 suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers 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 or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to 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, final 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 or provided by 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.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend, hold harmless and indemnify the Owner and the other Indemnified Parties, to the fullest extent allowed by law, from all loss, costs, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment asserted by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## § 9.7 Failure of Payment

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 (as approved or modified by the Owner, and subject to the Owner's rights under

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Section 9.5.1) or finally awarded by binding dispute resolution pursuant to Article 15 of these General Conditions of the Contract (following expiration of any available appeal periods), then the Contractor may, upon seven additional days' written notice to the Owner and Architect, (during which the Owner fails to cure the default by paying such amounts to the Contractor), stop the Work until payment of the amount owing has been received; provided that Contractor shall have no right to stop the Work if Contractor is paid for all undisputed Work; and if so paid, Contractor shall proceed with the performance of its obligations under the Contract Documents with reservation of all rights and remedies it may have at law or in equity with respect to the disputed Work. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, which shall be determined in accordance with Article 7.

## **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion of the Work shall be achieved when (a) the Work is sufficiently complete in accordance with the Contract Documents so that the Owner and all intended users can commence beneficial use and occupancy of the Project as intended, (b) all Project systems included in the Work are operational as designed and specified, (c) all designated or required governmental inspections have been successfully completed (including, without limitation, all trade inspections, final Fire Marshall inspection, final building inspection, and Health Department inspection (if applicable)), and certificates of occupancy have been obtained, in each case to the extent required to occupy and use the Project for its intended use, and (d) all remaining Work is reasonably estimated to be completed within twenty (20) consecutive calendar days (or as otherwise agreed to by the Owner) following the date of Substantial Completion of the Work. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy the Project on the date of Substantial Completion and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's use and occupancy of the Project as intended.

**§ 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 a comprehensive list of items to be completed or corrected together with the estimated value of completing or correcting such item (as approved or modified by the Architect and accepted by the Owner, the "punch list"). The Architect shall have the right to modify and supplement the list of items on the punch list and to modify or, for items added by the Architect, establish, the estimated value of completing or correcting such items. The Contractor shall proceed promptly to complete and/or correct all items on the punch list. The failure to include any items on the punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's punch list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's 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. In this regard, the Owner may deduct or withhold 150% of the reasonable estimated value of Work that is incomplete or not in accordance with the requirements of the Contract Documents until such Work has been corrected or completed. The Contractor shall correct or complete all the work on each approved punch list within thirty (30) days after receipt of such punch list, on a "time is of the essence" basis and prioritized to meet the needs of the Owner. In the event that the Contractor fails to commence performance of and thereafter diligently pursue completion of such items within such period, and after three (3) days' written notice, the Owner shall have the option of correcting and/or completing any outstanding punch list items and deducting the cost thereof from the outstanding balance of the Contract Sum.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. 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 the Certificate. Upon such acceptance, and consent of surety if any,

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the Owner shall make payment of retainage applying to the Work or designated portion thereof. 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 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 punch 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.

**§ 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 notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect 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 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 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 (1) (1) a sworn affidavit from the Contractor and each Subcontractor indicating that all Subcontractors, Sub-subcontractors, and suppliers have been paid in full for all Work performed and labor, material, and equipment furnished for the Work and further documentation as may be requested by the Owner, including full unconditional lien waivers, evidencing that all 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 thirty (30) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no 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, (5) assignment documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties and guarantees remaining and pertaining to the Work not previously provided to the Owner, (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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 (7) all occupancy certificates obtained from any governmental authority and all other required approvals and acceptances by city, county, and state authorities having jurisdiction and not previously provided to the Owner; (8) an affidavit that Contractor has paid all federal, state, and local taxes arising out of the Work in a form satisfactory to the Owner; and (9) the operating and maintenance manual and a reproducible set of Drawing and Specifications marked up to show as-built conditions, warranties, and other close-out submittals required by the Contract Documents. 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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 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, corrected, 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 the 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;
- .3 terms of special warranties required by the Contract Documents; or
- .4 matters expressly excluded by the Owner or the Architect as unsettled as of the date of making final payment;
- .5 any matter which was not known or reasonably discoverable to the Owner at the time of making final payment;
- .6 any error in the Contractor's accounting for the Project or overpayment by the Owner which the Owner did not actually discover during its audit or review of such accounting before making final payment; or
- .7 the Contractor's insurance and indemnification obligations under the Contract Documents.

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract required by applicable laws, the Contract Documents, and Owner in connection with the performance of the Contract. Neither the Owner nor the Architect shall be liable to the Contractor, the Subcontractors, the lower tier subcontractors, their employees, or anyone else with respect to the conditions of the premises where Work under the Contract is performed.

### § 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, a Subcontractor, or a Sub-subcontractor; 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.

§ 10.2.3 The Contractor shall implement, 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 the owners and users of adjacent sites and utilities of the safeguards.

§ 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

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supervision of properly qualified personnel. Provided, however, that the foregoing shall in no way authorize the use of hazardous materials prohibited in Section 10.3 of these General Conditions.

**§ 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, subject to the waiver of subrogation in Section 11.3.7)) 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is 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 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 the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after discovery; provided, however, that any delay by the Owner in delivering notice of any such claim shall not relieve the Contractor (or any insurer, Subcontractor, Sub-subcontractor, surety, or other responsible party) from liability or responsibility for such claim. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.2.9** During the progress of the Work and at all times prior to the date of Substantial Completion or occupancy of the Work by the Owner, whichever is earlier, the Contractor shall provide temporary heat, ventilation, and enclosure adequate to permit the Work to proceed in a timely fashion, and to prevent damage to completed Work or Work in progress, or to materials stored at the premises. The permanent heating and ventilation systems may be used for these purposes when available unless otherwise provided for in the Contract Documents; provided, however, that: (a) the prior written approval of the Owner is obtained; (b) if the Contractor so uses the permanent heating and ventilation systems, such systems shall be (i) used, serviced, and maintained in accordance with any applicable Specifications or plan approved by the Owner and otherwise pursuant to requirements imposed by the Owner, (ii) cleaned, and all filters and any other parts and equipment that normally require periodic maintenance and replacement shall be replaced, so that the systems are left in "like new" condition at Substantial Completion of the Work, and (iii) used at the sole cost, risk, and responsibility of the Contractor; and (c) no such use by the Contractor shall cause any warranty or correction periods to commence prior to Substantial Completion of the Work. The Contractor must obtain the Owner's prior written approval for the source and type of fuel intended to be used for temporary heat.

**§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. The Contractor shall not use, introduce, or store any hazardous materials on the Project site, except that: (1) the Contractor may use and store fuel and other petroleum-based products necessary for the use and operation of the Contractor's trucks and equipment, (2) the Contractor may use hazardous materials required by the Contract Documents, and (3) the Contractor may use hazardous materials with the Owner's prior written approval, provided that in each of the foregoing circumstances, such use and storage is in accordance with all applicable laws, ordinances, rules, regulations, and other legal requirements. 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 notify the Owner and Architect of the condition in writing in no event more than five (5) days of first notice.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall 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 shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site. The Contractor shall be solely responsible under this Section 10.3 for all hazardous materials or substances brought to the site by or on behalf of the Contractor or any Subcontractor or Sub-subcontractor.

§ 10.3.5 The Contractor shall defend, indemnify, hold harmless and reimburse the Owner and any of the other Indemnitees for the cost and expense the Owner or other Indemnitee incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site, 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.

§ 10.3.6 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 provided, however, such indemnity obligation shall not apply with respect to any cost or expense attributable to remediation activities, if any, that are included in the Contractor's scope of Work.

#### § 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.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents, 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. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, rated by A.M. Best & Co. with a minimum Financial Strength Rating of (or equivalent to) "A-" and a minimum Financial Size Category of (or equivalent to) "IX", and to which the Owner has no reasonable objection. The Owner, Architect, and Architect's

consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

- .1 Claims under workers' compensation, disability benefit, and other similar employee benefit acts that are applicable to the Work to be performed with coverage in the amounts required by law;
- .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.

The insurance required by this Section 11.1.1 shall include, without limitation, the following coverages with the indicated minimum coverage limits:

(a) Workers' Compensation Insurance compliant with the jurisdiction in which the accident occurs, the jurisdiction in which any employee resides and any other states which may claim jurisdiction, and Employer's Liability Insurance with minimum limits of \$1,000,000 each accident for Bodily Injury by accident, \$1,000,000 each employee for Bodily Injury by disease, and \$1,000,000 policy limit for Bodily Injury by disease. Such insurance shall be endorsed to include Other States Coverage and to include a Waiver of Our Right to Recover from Others Endorsement in favor of the Owner.

(b) Commercial General Liability Insurance, including coverage for Premises-Operations (including X-C-U), Independent Contractors' Protective, Products-Completed Operations, Blanket Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards), and including Cross Liability and Severability of Interests. Any limiting or exclusionary endorsements must be disclosed and approved by Owner in writing. The Commercial General Liability Insurance shall have the following minimum limits:

- |       |             |  |
|-------|-------------|--|
| (i)   | \$1,000,000 | Each Occurrence;                         |
| (ii)  | \$100,000   | Damage to Rented Premises;               |
| (iii) | \$10,000    | Medical Expense (Any One Person);        |
| (iv)  | \$2,000,000 | General Aggregate;                       |
| (v)   | \$1,000,000 | Personal and Advertising Injury; and     |
| (iv)  | \$2,000,000 | Products-Completed Operations Aggregate. |

Such policy shall be endorsed to have the General Aggregate on a per project basis. Products and Completed Operations insurance shall be maintained for a minimum period equal to the greater of (i) the period under which a claim can be asserted under the applicable statutes of limitations and/or repose or (ii) five (5) years after completion of the Project. The Contractual Liability Insurance shall include coverage sufficient to meet the obligations in Section 3.18 of these General Conditions of the Contract.

(c) Automobile Liability Insurance (covering all owned, non-owned and hired vehicles) for bodily injury and property damage with a minimum limit of \$1,000,000 combined single limit per accident.

(d) Umbrella Liability Insurance (excess of primary commercial general liability, automobile liability, and employer's liability insurance) with minimum limits of \$25,000,000 each occurrence and \$25,000,000 annual aggregate. Such limits shall apply on a per project basis. The Umbrella Liability Insurance shall be "follow form" coverage that is at least as broad as the primary Commercial General Liability and Automobile Liability Insurance, without additional exclusions or qualifications.

(e) Contractor's Pollution Liability Insurance covering liability of the Contractor arising out of any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense, that arise from the operations under Contract (whether by the Contractor or a Subcontractor or Sub-subcontractor). Coverage under this policy shall have a limit of liability of not less than \$1,000,000 each occurrence, with no exclusion or sublimit for mold and no sunset clause. Coverages under this policy shall also include, without limitation, emergency response costs, transportation coverage, and non-owned disposal site (NODS) coverage. Coverage under this policy, unless written on an occurrence basis, shall have an eight (8) year completed operations extended reporting period. The policy may contain a deductible of a maximum of \$50,000, but in such case the deductible is the sole responsibility of the Contractor, and no portion of such deductible is the responsibility of the Owner.

(f) Contractor's Professional Liability Insurance covering the liability of the Contractor for any and all errors or omissions committed in the performance of the work. The coverage shall be maintained during the entire term of the operations, and for at least eight (8) years following completion of the Project. The policy shall have limits of liability of not less than \$1,000,000 per claim and in the annual aggregate with limits reinstated annually. The policy may contain a deductible of a maximum of \$100,000, but in such case the deductible is the sole responsibility of the Contractor, and no portion of such deductible is the responsibility of the Owner.

(g) All Risk Property Insurance covering physical loss or damage to all property of the Contractor used in the performance of the Work. The policy shall have limits of liability adequate to cover all property of the Contractor (including personal property of others in Contractor's care, custody, or control) and shall include a waiver of subrogation against the Owner and the other Indemnitees.

(h) Employment practices liability insurance (including third-party coverage) with minimum limits of \$1,000,000.

The Contractor shall require all Subcontractors and Sub-subcontractors to comply with the identical insurance requirements as required of Contractor under clauses (a), (b), (c), (d) and (g) above and meeting the corresponding requirements of this Section 11.1.1 and Sections 11.1.2 through 11.1.5 below; provided, however, that (i) the minimum limits of the Employer's Liability Insurance to be maintained by Subcontractors and Sub-subcontractors shall be not less than \$500,000 each accident for Bodily Injury by accident, \$500,000 each employee for Bodily Injury by disease, and \$500,000 policy limit for Bodily Injury by disease, (ii) the minimum limits of the Commercial General Liability Insurance to be maintained by Subcontractors and Sub-subcontractors shall be not less than \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate, \$2,000,000 Personal and Advertising Injury and \$2,000,000 Products-Completed Operations Aggregate unless otherwise approved by Owner in writing, (iii) the Contractor shall also cause Subcontractors and Sub-subcontractors providing design, engineering, or other professional services to carry Professional Liability Insurance with limits of liability of not less than \$1,000,000 per claim and in the annual aggregate with limits reinstated annually for at least eight (8) years following completion of the Project; and (v) the Contractor shall cause Subcontractors and Sub-subcontractors transporting or disposing of hazardous materials or waste, as well as any disposal site operator, to carry pollution legal liability insurance naming the Owner as an additional insured (complying with the terms of clause (e) above, this Section 11.1.1, and Sections 11.1.2 through 11.1.5 below).

**§ 11.1.2** All insurance except for Professional Liability Insurance and Employer's Liability Insurance shall be written on an occurrence basis. The insurance carried by the Contractor and each Subcontractor and Sub-subcontractor shall be endorsed to provide that the coverage of such policy is primary and any coverage under any policy or policies of insurance held by the Owner or any other Indemnitee or additional insured is secondary. Each policy of insurance carried by the Contractor pursuant to Section 11.1.1 shall be endorsed to provide a separate general aggregate limit for the Work performed under this Contract, and will, by its terms, specifically cover the entire term of this Contract. The insurance carried by the Contractor and each Subcontractor and Sub-subcontractor shall not include any limitation or exclusion (i) for claims or suits by one insured against another insured, or (ii) for liabilities arising from blasting, subsidence, earth or land movement, or for any other type of services or work performed by such insureds. Coverages shall be maintained without interruption from the date of commencement of the Work until the date of final payment and, if later, termination of any coverage required to be maintained after final payment, and, with respect to products and completed operations coverage, for a minimum period equal to eight (8) years after completion of the Project.

**§ 11.1.3** Certificates of insurance (and, if requested by the Owner, certified copies of the insurance policies) 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. The Owner may withhold any payments due Contractor at any time that Owner has not received current certificates of insurance (and, if requested by the Owner, certified copies of the insurance policies) complying with the requirements of this paragraph. 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, amended or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. These certificates (and, if requested by the Owner, insurance policies) shall set forth evidence of all coverage required by this Section 11.1 and shall be issued to the Owner and any other parties requested by the Owner from time to time. The form of certificate shall be the ACORD 25 form, modified as necessary to comply with the requirements herein. An additional certificate and certified copies of the insurance policies evidencing continuation of such 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. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending limits of coverage.

The Contractor shall (a) cause all Subcontractors and Sub-subcontractors to deliver and shall collect certificates of insurance naming the Owner as a certificate holder and all parties required to be named as additional insureds on the insurance policies pursuant to Section 11.1.4 as additional insureds (using the CG 20 10 10 01 and CG 20 37 10 01 forms or their equivalents ) or any form incorporating the terms of or adopting the language of that additional insured form) on a primary non-contributory basis (providing coverage for each additional insured for completed operations and ongoing operations), with coverage equal to the full policy limits (even if greater than the minimum limits required by the Contract Documents), and (b) deliver such certificates to the Owner's representative.

**§ 11.1.4** The Contractor shall cause the insurance policies required by the Contract Documents (other than Worker's Compensation and Professional Liability) to name the Owner, Architect, any lender, each of their respective affiliates, board members, subsidiaries, successors and assigns, the members, managers, partners, officers, directors, shareholders, representatives, agents, consultants, and employees of any of them, anyone else acting for or on behalf of any of them, and such other persons or entities having a role or a beneficial interest in the Project as may be designated by the Owner from time to time in writing, as additional insureds (using the CG 20 10 10 01 and CG 20 37 10 01 forms or their equivalents) on a primary non-contributory basis (providing coverage for each additional insured for ongoing and completed operations equal to the full policy limits). Coverage afforded the additional insureds under all insurance carried by the Contractor and each Subcontractor and Sub-subcontractor shall be at least as broad as the coverage afforded the named insured(s), and such policies shall not include exclusionary language or limitations applicable only to the additional insureds. In the event that the Contractor has in force any insurance with coverages broader and/or limits higher than the minimum coverage amounts specified hereunder, (a) such broader coverages and higher limits shall insure and be available to the Owner and all other additional insureds and (b) this Contract shall be deemed to require such broader coverages and higher limits. No deductible or self-insured retention amount in any insurance required by the Contractor hereunder shall (i) apply to the Owner or any other additional insured, or (ii) exceed \$50,000, except that professional liability insurance may have a deductible as specified in Section 11.1.1(f). If, despite the preceding sentence, any deductible or self-insured retention amount in any such insurance does apply to the Owner or any other additional insured, the Contractor shall be required to fund the cost of such deductible or self-insured retention.

**§ 11.1.5** Notwithstanding anything to the contrary in the Contract Documents, the Contractor and each Subcontractor and Sub-subcontractor hereby waive all rights of recovery (including rights of subrogation) against the Owner and each of the other additional insureds for any claim, injury, loss, or damage arising from any occurrence that (a) is covered by any insurance maintained by the Contractor or such Subcontractor or Sub-subcontractor, or (b) would have been covered by any insurance required to be maintained by the Contractor or such Subcontractor or Sub-subcontractor under the Contract Documents. All of the Contractor's insurance policies and the policies of each Subcontractor and Sub-subcontractor shall include a waiver of subrogation clause or endorsement denying to the insurer rights of subrogation against the Owner and each of the other additional insureds. The provisions of this paragraph shall be deemed incorporated into each subcontract to the extent necessary to achieve the result intended.

**§ 11.1.6** Failure of the Contractor to secure insurance coverages or failure to comply fully with any of the insurance provisions of the Contract Documents shall in no way relieve the Contractor of its obligations under the Contract

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Documents. Nothing in this Article 11 shall modify or limit Contractor's indemnification obligations under Section 3.18 and other provisions of the Contract Documents.

§ 11.1.7 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.8 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.

§ 11.1.9 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 If the property insurance requires deductibles, the Owner shall pay costs on paid claims not covered because of such deductibles, except to the extent that (a) the Contractor, any direct or lower tier subcontractor, or any other party for whom the Contractor is responsible caused the loss, or (b) amounts are recoverable from insurance carried by the Contractor, any direct or lower tier subcontractor, or any other party for whom the Contractor is responsible; and to the extent either of these exceptions apply, the Contractor shall pay the deductible with its own funds (*i.e.*, outside of the Contract Sum or Guaranteed Maximum Price, as applicable).

§ 11.2.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit, subject (in each case) to all of the terms, conditions, qualifications, exclusions, deductibles, sub-deductibles, sublimits, and other provisions of the policy. The Contractor shall be responsible for risk of loss to (and shall, either directly or through Subcontractors, insure for the full replacement value thereof) portions of the Work stored off the site and portions of the Work in transit, to the extent excluded from the Owner's builder's risk property insurance.

§ 11.2.5 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.

**§ 11.2.6** 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.

**§ 11.2.7 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** Except as otherwise provided herein, 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. Nothing herein shall prevent the Owner from recovering deductibles in accordance with Section 11.2.

*(Paragraph deleted)*

### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

### **§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner in good faith 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 11.5.2. Notwithstanding anything to the contrary, neither the Contractor nor any direct or lower tier subcontractor shall be named as loss payee under any policy of insurance purchased by the Owner with respect to the Project, and no draft or other instrument in payment of any loss shall name the Contractor or any direct or lower tier subcontractor as a joint payee. 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.

**§ 11.5.2** The Owner shall have power to adjust and settle a loss with insurers without the consent or involvement of the Contractor.

### **§ 11.6 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.6.1** The Owner shall have the right to require the Contractor to 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.

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§ 11.6.2 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.

## **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 Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time. Final Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. 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 In addition to the Contractor's obligations under Section 3.5, if, within one year after 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 any 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 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 2.5.

§ 12.2.2.2 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.

§ 12.2.2.3 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.

§ 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.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 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. Nothing in this Section shall preclude the Owner from pursuing any legal or equitable remedies allowed in the jurisdiction of the Project.

### § 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 in writing 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, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 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. 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 attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. The Contractor shall not assign the whole or any portion of its interest in the Contract Documents or any payments due or to become due under the Contract Documents without the prior written consent of Owner, which will be subject to Owner's absolute discretion. No assignment by Contractor whether voluntary or involuntary shall be valid or effective without Owner's written consent. If the Contractor makes or suffers any such assignment, such shall be a breach of the Contract Documents by Contractor. A change in a majority of the ownership of the Contractor shall be deemed an assignment of Contractor's interest in the Contract Documents for purposes of this Section.

§ 13.2.2 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 assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 Unless otherwise provided in the Contract, 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.

§ 13.3.2 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 thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 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 selected or approved in writing by 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 tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded (except as provided in Section 13.4.3 or elsewhere in the Contract Documents). The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 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 13.4.1, 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 written notice to the Architect and Owner of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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.

§ 13.4.4 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. The Contractor shall obtain and deliver promptly to the Architect the final certificate of occupancy for the Project, certificates of final inspection of any part of the Work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, air compressors, etc., which may be required by law to permit full use and occupancy of the premises by the Owner.

§ 13.4.5 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.

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

#### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties 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.

#### § 13.6 Survival

The provisions of this Contract which by their nature survive termination of this Contract or final completion including, without limitation, all warranties, indemnities, payment obligations, and dispute resolution provisions shall remain in full force and effect after final completion or any termination of this Contract.

#### § 13.7 No Joint Venture Or Partnership

Nothing in this Contract shall be interpreted as creating any joint venture, partnership, joint tenancy, agency, or other similar legal relationship between the Owner and the Contractor, or as creating any contractual obligation, whether direct, indirect, or third-party beneficiary, on the part of the Owner to any Subcontractor or Sub-subcontractor.

While the Contractor is required to perform the Work in strict accordance with the Contract Documents, Contractor shall at all times be an independent contractor and solely responsible for and have control over all construction means, methods, techniques, sequences and procedures for constructing, coordinating and scheduling all portions of the Work to achieve the requirements of the Contract Documents. Nothing in the Contract Documents shall be deemed to imply or represent that Contractor, its Subcontractors, or Sub-subcontractors are agents, representatives, partners, or employees of the Owner or that Owner is otherwise liable for any of their acts, omissions, liabilities, or other such obligations.

#### § 13.8 Advertisement And Publication; Signs

Neither the Contractor nor any Subcontractor shall (a) cause or allow the name of the Owner to be used in any advertising or promotional literature, or in any articles in any publication, without prior written approval by the Owner, or (b) place or maintain, or allow to be placed or maintained, any advertising matter, sign, bill, poster, or similar item on or about the Project site, except as required by law or approved by the Owner in writing. The Contractor or Subcontractor will contact the Owner's Representative to request such approvals.

## 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 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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 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 of undisputed amounts on a Certificate for Payment within the time stated in the Contract Documents.
- .4 .

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, 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.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect and a reasonable opportunity to cure, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination, in addition to labor, equipment, and material costs which are directly and actually incurred by reason of such termination, and cannot be reasonably avoided by the Contractor. The foregoing amounts shall constitute the Contractor's sole and exclusive recovery with respect to termination. In no event shall the Contractor recover other amounts, such as overhead or profit on unexecuted Work or damages concerning any other project.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a 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, 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' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may, without prejudice to any right or remedy of the Owner, terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to timely supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .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,
- .5 files a petition under any federal or state law concerning bankruptcy, reorganization, insolvency, or relief from creditors, or if such a petition is filed against the Contractor without its consent, it is not dismissed within sixty (60) days; or
- .6 is generally not paying its debts as they become due; or if the Contractor becomes insolvent; or if the Contractor consents to the appointment of a receiver, trustee, liquidator, custodian, or the like of the Contractor or of all or any substantial portion of its assets; or if a receiver, trustee, liquidator, custodian or the like is appointed with respect to the Contractor or takes possession of all or any substantial portion of its assets and such appointment or possession is not terminated within sixty (60) days; or if the Contractor makes an assignment for the benefit of creditors.

§ 14.2.2 When any of the reasons described in Section 14.2.1 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' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, appliances, tools, and construction equipment and machinery thereon owned by the Contractor, and all materials intended for the Work, wherever stored;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

§ 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.

§ 14.2.4 The Owner shall be entitled to collect from the Contractor all damages to which the Owner is entitled by law on account of the Contractor's default. 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 (collectively, "Completion Costs and Damages"), such excess shall be paid to the Contractor to the extent necessary to reimburse the Contractor for Work properly executed by the Contractor in accordance with the Contract Documents prior to termination. If the Completion Costs and Damages exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner upon demand. The Owner shall be entitled to hold all amounts due the Contractor at the date of termination until all of the Owner's damages have been established, and to apply such amounts to such Completion Costs and Damages. The respective obligations of the Owner and the Contractor under this Section.

§ 14.2.5 The parties acknowledge and Contractor warrants that it is financially solvent and possessed of sufficient working capital to complete the Work and perform all obligations hereunder. The parties further acknowledge that Contractor's breach of this warranty could impair or frustrate the Contractor's performance of the Contract. Accordingly, the parties agree that in the event Owner has reasonable concern that Contractor is not financially solvent or may not have sufficient working capital to complete the Work, Owner may request evidence from Contractor, in form and substance satisfactory to Owner, that Contractor remains financially solvent and possesses sufficient working capital to complete the Work and perform its obligations under the Contract. Contractor shall provide such evidence to Owner within ten (10) days of Owner's request of the same. In the event Contractor fails to provide such evidence satisfactory to the Owner within ten days, such failure shall be considered a Contractor default of the Contract, and Owner shall have the right to terminate the Contract in accordance with this Section 14.2.

#### § 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 If the suspension, delay, or interruption exceeds forty-five (45) consecutive days, the Contract Sum shall be adjusted for increases in the cost caused by suspension, delay, or interruption under Section 14.3.1. The Contract Time shall be adjusted for increases in time caused by any suspension, delay, or interruption as described in Section 15.1.5. Adjustment of the Contract Sum shall include profit. 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, for the Owner's convenience and without cause, terminate the Contractor's services for any portion of Work or any Subcontractor or all remaining Work by giving written notice to the Contractor specifying the portion of the Work or Subcontractor to be terminated and the effective date of termination. The Contractor shall continue to prosecute any portion(s) of the Work not terminated.

§ 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, provided that the Owner, in its sole and absolute discretion, may require the Contractor to complete any Work necessary to facilitate transfer of Contractor's responsibilities to another contractor;

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- .2 place no further orders and enter into no further subcontracts for materials, labor, services, or facilities except as necessary to complete continued portions of the Contract;
- .3 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .4 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive, as its sole and exclusive remedy for termination, payment for Work properly executed under the Contract Documents comprised of the Cost of the Work and the Contractor's Fee for such properly executed Work in place through the date of termination.

**§ 14.4.4** The Contractor shall not be entitled to consequential or incidental damages, including, but not limited to, damages for loss of anticipated profits on Work not performed, on account of any termination described in Section 14.4.1. Upon a determination by a court of competent jurisdiction that termination of Contractor's services pursuant to Section 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4.1 and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments for termination for convenience as set forth in this Section 14.4.

## **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, adjustment, or interpretation of Contract terms, payment of money, a change in the Contract Time, 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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the 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 15.1.2.

#### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by either the Owner or Contractor, containing a clear statement of the basis of the Claim and the relief sought by the claimant, to the other party and, in the case of Claims by the Contractor only, shall 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 Contractor under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, or such shorter period of time as may be provided for elsewhere in the Contract Documents; provided, however, that the Contractor shall use its best efforts to furnish the Architect and the Owner, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized, and shall cooperate with the Architect and the Owner in an effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition which is the cause of such a Claim. **THE CONTRACTOR EXPRESSLY AGREES THAT FAILURE OF THE CONTRACTOR TO INITIATE A CLAIM WITHIN THE TIME LIMITS SPECIFIED IN THIS SECTION 15.1.3 SHALL RESULT IN SUCH CLAIM BEING WAIVED.** Inclusion of a proposed change in a proposed change order log or other similar listing, or discussion of the basis of the Claim and the relief sought by the claimant and/or including the basis of the Claim and the relief sought by the claimant in any meeting minutes or records shall not, without a specific notice, be sufficient to provide notice of a Claim as required herein. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. The Owner shall endeavor to give notice of a Claim against the Contractor within twenty-one (21) days after the Owner first has knowledge of the Claim, but the Owner's failure to do so shall not be a waiver of any rights and

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remedies which may be available to the Owner and shall not excuse the Contractor's obligations under the Contract Documents.

*(Paragraph deleted)*

#### **§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** 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 (unless ordered by the Owner to suspend all or a portion of service hereunder) without any interruption or delay and the Owner shall continue to make payments which are not in dispute in accordance with the Contract Documents.

*(Paragraph deleted)*

#### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

The Contractor shall have a duty to attempt to mitigate reasonably the effects of any known condition or event which gives rise to or is likely to give rise to any increase in the GMP. Notwithstanding any other provision of the Contract, the Contractor shall not be entitled to any increase in the GMP for any event or condition to the extent caused by the Contractor's or a Subcontractor's, or Sub-subcontractor's negligence or failure to perform its contractual obligations pertaining to the Work. Further, in no event shall an increase in material or labor prices serve as the basis for an increase in the GMP.

#### **§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor shall have the burden of demonstrating the effect of the claimed delay on the Contract Time, and shall furnish such documentation relating thereto as may be reasonably required by the Owner. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work, which estimate shall be seasonably updated by the Contractor. No Claim for any increase in the Contract Time shall be valid unless so made. In the case of a continuing delay, only one Claim is necessary. In no event shall the Contractor be entitled to an increase in the Contract Time for any delay that does not affect the critical path of the Project. The Contractor shall have the duty to use reasonable efforts to mitigate the effects of any event or condition which may give rise to an increase in the Contract Time.

**§ 15.1.6.2** 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 for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

**§ 15.1.6.3** Any Claim for an increase in the Contract Time is further subject to the conditions and limitations in Section 8.3.

#### **§ 15.1.7 Waiver of 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, for losses arising from inefficiency, lost productivity, lost opportunities, and for loss of profit, except profit on Work properly performed.

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 15.1.7 shall be deemed to (i) preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, (ii) limit the Contractor's indemnity obligations under the Contract Documents to the Owner and the other Indemnitees regarding claims by third-parties, regardless of whether such claims include consequential damages, or (iii) limit the

Contractor's liability for damages (whether consequential or otherwise) that would be covered by available insurance in the absence of this Section.

## § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, 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. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a 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 the 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 receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, 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.

§ 15.2.9 Claims arising out of or relating to the interpretation, construction, or performance of the Contract Documents, or breach thereof, shall be resolved in accordance with this Section 15.2. Unless ordered by the Owner to suspend all or any portion of the Work, the Contractor shall proceed with the performance of the Work without any

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interruption or delay during the pendency of any of the dispute resolution procedures herein and shall comply with any orders which the Owner may issue regarding the acceleration of all or any portion of the Work in accordance with the terms of the Contract. During the pendency of any of the dispute resolution procedures, the Owner shall continue to make all payments which are not in dispute in accordance with the provisions of the Contract Documents.

### **§ 15.3 Mediation**

**§ 15.3.1** The Owner and the Contractor shall endeavor to resolve any claim, dispute or other matter in question arising out of or relating to the Project, the Work or the Contract Documents (a "dispute") by negotiations between duly authorized representatives of the parties. If such duly authorized representatives are unable to resolve any dispute within thirty (30) days after written notice of such dispute is given by either party to the other, the matter shall be subject to arbitration by either party as set forth below; provided, however, that at the written request of either the Contractor or the Owner (either prior to or after the filing of a demand for arbitration), the Owner and the Contractor shall submit the dispute to mediation with a mediator selected by the mutual agreement. If the Owner and the Contractor cannot reach an agreement on the selection of a mediator, either party may file a formal request for mediation with the AAA and a mediator will be selected in accordance with the current mediation rules of the AAA. The procedures for the mediation (including the requirements for any exchange of information between the parties) shall be established by the mediator. Each party shall bear its own attorneys' fees and costs of the mediation and the parties shall share in the fees and expenses of the mediator. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (with each party bearing its own attorneys' fees and costs). All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any mediation company employees, are confidential, privileged and inadmissible for any purpose (including, without limitation, impeachment) in any litigation, arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable solely as a result of its use in the mediation. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Notwithstanding the foregoing, (1) nothing herein shall be deemed to deprive a party of its rights to seek injunctive relief when irreparable harm is threatened and (2) if any dispute shall arise or remain unresolved prior to the expiration of the period for negotiation (and the period for mediation if requested by the Owner) at a time when the applicable statute of limitations or repose would expire, arbitration may be instituted to satisfy the applicable statute of limitations or repose, but the parties agree that such arbitration shall be stayed until sixty days following the expiration of the period for negotiation (and the period for mediation if requested by the Owner or Contractor). The provisions of this Section 15.2 requiring negotiation (and mediation if requested by the Owner or Contractor) prior to commencing arbitration, may be enforced by the arbitrator or AAA (and any party seeking to enforce such provisions shall be entitled to an order for specific performance therefor), and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.

**§ 15.3.2** 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 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 binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which 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.

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

**§ 15.3.4** 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.

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## § 15.4 Arbitration

§ 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. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. 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 The Owner, 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).

The Owner 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. The Contractor consents to being joined by the Owner in any other arbitration proceeding involving the Project to which the Owner is a party, including, without limitation, any arbitration proceeding between the Owner and the Architect, in the event that such proceeding involves or is likely to involve an issue regarding the Work or the Project. 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.

*(Paragraph deleted)*

§ 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 those of the Owner and Contractor under this Agreement.

# Additions and Deletions Report for AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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## PAGE 1

### PCCI Comments

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Central Nine Career Center- Additions and Renovations  
1999 US 31 South  
Greenwood, IN 46143

...

Central Nine Career Center  
1999 US 31 South  
Greenwood, IN 46143

...

Lancer + Beebe, LLC  
220 N College Ave  
Indianapolis, IN 46202

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The term "Work" means the construction and services required by the Contract Documents, or reasonably inferable from 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. The Work shall include all work described in the Drawings and Specifications.

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§ 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~~ or reasonably inferable from them as being necessary to produce the ~~indicated~~ intended results.

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§ 1.2.4 In the event of conflicts or discrepancies among the Contract Documents, the Contract Documents shall be interpreted on the basis of the following priorities:

First	<u>Modifications and Addenda to the Agreement, with those of later date having precedence over those of earlier date;</u>
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Second	<u>Agreement;</u>
Third	<u>General Conditions of the Contract;</u>
Fourth	<u>Addenda to Drawings and Specifications, with those of later date having precedence over those of earlier date;</u>
Fifth	<u>Drawings and Specifications.</u>

Larger scale drawings shall take precedence over smaller scale drawings. All dimensions shall be determined by figures rather than scaled dimensions. The Contractor acknowledges and agrees that (a) the Contractor has had an opportunity during the preconstruction, bidding, or negotiation stage to request figures for any scaled dimensions shown in the Contract Documents to the extent the Contractor deems necessary to establish the Contract Sum and (b) prior to ordering any materials or equipment or performing any Work shown in the Contract Documents only by scaled dimensions, the Contractor shall either (i) submit a request for information to the Architect to provide such figures, or (ii) submit a Shop Drawing proposing such figures for the Architect's review and action. Should the Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quantity of the Work unless otherwise directed by written Addendum. Notwithstanding the order of priority of documents set forth in this Section: (1) any matters contained in the Specifications which have been omitted from the Drawings or vice versa shall be construed as though contained in both; and (2) in the event of any duplication, conflict, or discrepancy between Drawings and Specifications, Drawings shall control as to any conflict regarding location or quantity, and Specifications shall control as to any conflict regarding quality of performance. Work not particularly detailed or specified shall be performed in the same manner as similar portions of the Work that are detailed or specified.

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-Architects or (4) as defined in the Agreement.

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~~§ 1.5.1~~ § 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and 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 the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.~~ § 1.5.1 The Drawings, Specifications, and other Instruments of Service, and other design documents (collectively, "Design Documents"), including those in electronic form, whether prepared by the Architect or other parties, are the property of the Owner, the Architect, or other parties, who will retain all common law, statutory, or other reserved rights (including copyrights). As set forth more fully in Section 3.11, the Contractor shall maintain at the site for the Owner a record copy of such documents which shall be marked currently to record changes and selections made during construction, and which shall be delivered to the Architect and the Owner upon completion of the Work as provided in Sections 3.11 and 9.10.2. The Contractor may elect, at the Contractor's own expense, to prepare and retain the Contractor's own record set. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Design Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the copyright or other reserved rights held by the Owner, Architect, or other parties.

...

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.all notices, demands, requests, or approvals to be given under this Contract shall be given in writing and conclusively shall be deemed served: (a) when delivered by courier, overnight delivery service, or certified, registered, or regular mail to the recipient or the regular business office of the recipient; (b) when successfully delivered to the recipient's designated

facsimile number, as shown by a fax confirmation; or (c) when successfully delivered to the recipient's designated electronic mail address, provided that for notice by e-mail to be effective, at least one other responsible individual besides the recipient on behalf of the Owner or the Contractor, as the case may be, must be copied, and if the recipient provides notice (through an auto-reply or other means) that he or she is not checking e-mail for a certain period due to a vacation or other circumstances, the notice is not effective until the recipient actually opens and views the e-mail. Notwithstanding the foregoing, notices of nonpayment, notices of breach of the Contract, and notices of default under the Contract Documents must be transmitted by overnight delivery with proof of delivery to the recipient or the regular business office of the recipient.

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**§ 2.2 Evidence of the Owner's Financial Arrangements**~~[Intentionally Deleted]~~ **Evidence of the Owner's Financial Arrangements**  
**§ 2.2.2** Should at any time Owner fails to make payments to the Contractor as the Contract Documents require, the Contractor shall be able to request that Owner furnish reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

**§ 2.3.1** 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, with the Contractor's cooperation where requested, shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

...

**§ 2.3.4** The Owner shall furnish customary 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 within reason on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Except for customary surveys furnished by the Owner, the Contractor shall perform all necessary surveys for the Work, including, but not limited to, surveys for building foundations and pads, water, sewer, drainage, site work, and certified as-built of the Work. The Contractor may assume that the locations of any

underground or hidden utilities, plumbing, or electrical runs indicated in the surveys or Contract Documents are shown in the approximate locations, but the Contactor is responsible for making all utility location checks and to take borings or undertake other industry standard investigatory measures to verify the exact locations of such utilities.

...

**§ 2.3.6** Unless otherwise expressly 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.

...

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. The Owner's exercise of any rights under this paragraph shall not entitle the Contractor to any increase in the Guaranteed Maximum Price, or the Contract Time. The rights of the Owner under this Section 2.4 are cumulative and not in limitation of any other rights of the Owner contained in the Contract Documents, at law or in equity.

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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 notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for 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 current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If providing the above referenced ten (10) days' prior notice to the Contractor is not reasonable because of an emergency or exigent circumstances, the Owner shall provide only that prior notice which is reasonable under the circumstances. The rights of the Owner under this Section 2.5 are cumulative and not in limitation of any other rights of the Owner contained in the Contract Documents, at law or in equity. In no event shall the Owner have any control over, charge of, or any responsibility for, construction means, methods, techniques, sequences, or procedures or for safety programs or precautions in connection with the Work, notwithstanding any rights or remedies granted to Owner in the Contract Documents. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

...

**§ 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. The Contractor shall be and operate as an independent contractor under the Contract, and is not an agent, employee, or partner of the Owner.

...

**§ 3.1.3** The Contractor shall not be relieved of its 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, activities of the Owner, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

...

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall 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 and the Owner 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. 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.

§ 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 and the Owner in writing any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. The Contractor shall be entitled to an equitable adjustment to the Contract Sum and Project Schedule, as the case may be, to the extent that changes in laws, or interpretations by public authorities, result in the Contractor incurring additional costs or time.

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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 shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, (including, without limitation, (x) all safety precautions and programs, and (y) all shoring, bracing, and temporary supports for earth and existing improvements), and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor ~~determines~~ believes that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall ~~propose alternative means, methods, techniques, sequences, or procedures.~~ The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.-: (a) give timely written notice to the Owner and Architect of the specific means, methods, techniques, sequences, or procedures referred to in the Contract Documents that the Contractor believes are not safe or suitable, and shall not proceed with that portion of the Work until the Owner, the Architect, and the Contractor have agreed upon specific means, methods, techniques, sequences, or procedures that the Contractor agrees are safe and suitable for the Work; and (b) participate in discussions with the Owner and the Architect regarding the specific means, methods, techniques, sequences, or procedures referred to in the Contract Documents that the Contractor believes are not safe or suitable until the Owner, the Architect, and the Contractor have agreed upon specific means, methods, techniques, sequences, or procedures that the Contractor agrees are safe and suitable for the Work. The Contractor shall remain solely responsible for and have control over the means, methods, techniques, sequences, or procedures that are employed by the Contractor for the Work, notwithstanding that such construction means, methods, techniques, sequences, or procedures are (i) referred to, indicated, or implied by the Contract Documents, or (ii) agreed to by the Owner and/or the Architect. The Contractor represents and covenants that the construction means, methods, techniques, sequences, and procedures necessary to perform the Work will be consistent with and conform to: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) applicable legal requirements.

...

§ 3.3.4 Without assuming any design responsibility, Contractor shall be responsible for coordinating the Shop Drawings and other Contract Documents among Subcontractors and Sub-subcontractors. In addition, Contractor shall coordinate Subcontractors and Sub-subcontractors working concurrently at the Project site. Contractor shall be responsible for confirming that the dimensions found on the shop drawings in their most current form, in the materials, and for other products supplied by the Owner are compatible with the Work to be completed.

...

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. In all cases in which a manufacturer's name, trade name, or other propriety designation is used in the Contract Documents in connection with a material, equipment, or product to be furnished thereunder, regardless of whether or not the designation includes the phrase "or equal" or words of similar meaning, the Contractor shall furnish the material, equipment, or product of the named manufacturer(s) without substitution unless a written request for substitution is made in accordance with this Section 3.4.2 and the substitution is approved in writing by the Owner. Where two or more products or materials are specified as options for the Contractor to select, the choice of these shall be made by the Owner. The Contractor shall provide notice of its preferred option to the Owner sufficiently in advance of when the product or material needs to be ordered so as not to delay the progress of the Work and to allow the Owner sufficient time to make its decision.

**§ 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 Subcontractors who are not properly licensed or skilled to perform the work required of them, and shall not permit the employment of unfit persons or persons not properly skilled in tasks assigned to them.

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**§ 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. In addition, where the Contract Documents do not specify particular materials or equipment, and the Contractor is permitted to exercise any discretion in the materials or equipment purchased, the Contractor warrants and represents that the materials and equipment purchased will be fully suitable for their intended purpose. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and all applicable laws 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, Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

...

**§ 3.5.3** Contractor shall provide the Owner with the full benefit of all vendor warranties applicable to all equipment and materials furnished in connection with the Work. The Contractor shall collect all written warranties and equipment manuals which are available with reasonable diligence and deliver them to the Owner prior to final payment from the Owner to the Contractor. The warranties to be collected and delivered to the Owner under this Section shall include, without limitation, all warranties and guarantees of Subcontractors and Sub-subcontractors with respect to any portion of the Work. The Contractor shall ensure that all such warranties and guarantees are obtained so that they extend for the benefit of the Owner, and are available to be asserted by the Owner.

**§ 3.5.4** Contractor shall provide the Owner with an operating and maintenance manual for the Project within thirty (30) days after Substantial Completion. The operating and maintenance manual will include schematic as-built drawings for the site structures, main distribution lines for all utilities and controls, equipment locations, shut off locations for such items, and a list of all Subcontractors and Sub-subcontractors providing any materials, equipment, and/or services in connection with the Project, together with each such person's address, telephone number, and contact person.

**§ 3.5.5** The warranty provided in this Section 3.5 shall (a) apply to both patent and latent defects, (b) not be limited to the durations set forth in Section 12.2.2, and (c) be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise provided by law.

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. The Contractor shall indemnify, defend, and hold harmless the Indemnitees from any claim or liability

for any such taxes and taxes relating to the employees of the Contractor, any Subcontractor, or any Sub-subcontractor, including taxes and contributions required under the Federal Social Security Act and the unemployment compensation law or any similar law of any state.

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**§ 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 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, provided that any requirement for such permits, fees, licenses, and inspections that first becomes binding after execution of the Agreement and is paid for by Contractor. The Contractor shall apply and arrange for required licenses, permits, inspections, and/or approvals sufficiently in advance of the time required to allow the Contractor and/or the Architect to respond to any municipal comments, conditions, or requests (including, without limitation, changes to the Work) without delaying the progress of the Work.

...

**§ 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. It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

...

If the Contractor encounters conditions at the 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 notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines 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 that an equitable adjustment be made 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, ~~Contractor~~ Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

**§ 3.8.4** If the Contractor determines that the cost for any allowance item is likely to exceed the corresponding allowance cost for such allowance item listed in the Contract Documents which would entitle the Contractor to an increase in the Contract Sum or Guaranteed Maximum Price, as applicable, under Section 3.8.2.3 above, the Contractor shall promptly notify the Owner in writing. Upon receipt of any such notice from the Contractor, the Owner may, at its sole option and discretion, either: (a) issue a Construction Change Directive or execute a Change Order which increases the Contract Sum or Guaranteed Maximum Price, as applicable, by the additional amount necessary to furnish or construct such allowance item; or (b) direct the redesign and/or reselection of such allowance item to reduce the anticipated cost of furnishing or constructing such item (in which event the Contractor shall, and shall cause all direct and lower tier subcontractors to, cooperate in such redesign and/or reselection by evaluating the cost and construction-related issues of proposed alternatives and otherwise). Once the scope of any allowance item has been sufficiently identified to allow the Contractor to procure such item, and the Contractor has awarded subcontract(s) therefor in amounts approved by the Owner, the adjustment (if any) to the Contract Sum or Guaranteed Maximum Price, as applicable, on account of such allowance item shall be established based on the amount(s) of the awarded subcontract(s) and shall no longer be subject to further adjustment in accordance with this Section 3.8

(provided that adjustments to the Contract Sum or Guaranteed Maximum Price, as applicable, attributable to any allowance items that are based on unit prices for assumed quantities shall be made at such time or times as the actual quantities of such items are established). All allowance Work shall be procured on a stipulated sum basis unless otherwise approved by the Owner.

...

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect in writing of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

...

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. initial approved Construction Schedule is attached to the Agreement. At the request of the Owner, the Contractor shall reformat the Construction Schedule to the extent necessary so that the Construction Schedule is in a detailed, precedence-style critical path method (CPM) format using a time scaled logic diagram (Gantt Chart) satisfactory to the Owner which: (1) provides a graphic representation of the interrelationship of all material activities and events that will occur during performance of the Work; (2) identifies each phase of construction and occupancy; (3) sets forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"); (4) clearly establishes and shows the "critical path" through the job; and (5) includes a narrative of planned manpower and crew sizes at different phases of the Work. The reformatted Construction Schedule shall be revised and re-submitted as necessary to obtain Owner's approval thereof.

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

**§ 3.10.4** The Contractor shall monitor the progress of the Work for conformation with the requirements of the Construction Schedule and shall promptly (but in any event within five (5) business days following the occurrence giving rise to any delays or potential delays) advise the Owner of any delays or potential delays. If performance of any portion of the Work on the critical path as of any date has not progressed or reached the level of completion required by the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents), the Contractor shall propose in written form an affirmative plan and recovery schedule (the "Corrective Plan") to correct the delay, including overtime and/or additional labor, if necessary, which Corrective Plan shall indicate the date by which the progress of the Work will comply with the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents), and shall be subject to the approval of the Owner. The Contractor shall not be entitled to an increase in the Contract Sum or Guaranteed Maximum Price, as applicable, in connection with the implementation of any Corrective Plan to accelerate the progress of the Work to the level of completion required by the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents). In no event shall any progress report or Corrective Plan constitute an adjustment in the Construction Schedule, Contract Time, or any Milestone Date unless any such adjustment is agreed to in writing by the Owner and authorized pursuant to a Change Order.

**§ 3.10.5** In the event (i) that the performance of any portion of the Work at any time has fallen behind the level of completion required by the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents), and (ii) the Contractor fails to submit a Corrective Plan that is approved by the Owner or the progress of the Work is not brought back into compliance with the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents) on the date proposed by an approved

Corrective Plan, then the Owner shall have the right to order the Contractor to take corrective measures to expedite the progress of the Work, including, without limitation, (1) working and/or supplying additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, (3) re-sequencing of schedule items, and (4) other similar measures (hereinafter referred to collectively as "Schedule Recovery Measures"). Such Schedule Recovery Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents). The Owner's right to require Schedule Recovery Measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents). The Contractor shall not be entitled to an increase in the Contract Sum or Guaranteed Maximum Price, as applicable, in connection with Schedule Recovery Measures required by the Owner under or pursuant to this Section due to the failure of the Work to achieve the level of completion required by the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents). The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as reasonably necessary to ensure that the Contractor's performance of the Work complies with the progress of the Work set forth in the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents). Notwithstanding the foregoing, the Contractor shall not be required to take any corrective actions to expedite the progress of the Work, and the term "Schedule Recovery Measures" expressly excludes any actions: (a) not permitted by applicable laws; (b) impossible for the Contractor to provide or perform (it being acknowledged and agreed that the cost of an action shall not excuse the Contractor from taking such action); or (c) requiring means, methods, techniques, sequences, or procedures that cannot be safely performed. Nothing contained in any other provision of the Contract Documents shall limit the Contractor's obligations to perform, or the damages that may be recoverable against the Contractor for failing to perform, Schedule Recovery Measures in accordance with this Section 3.10.5.

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The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and 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 make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked by the Contractor currently to indicate field changes and selections made during construction (the "Record Documents"), and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Record Documents shall consist of record information including: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on the Drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; (v) the actual installed position of utilities and below ground components accurately located with respect to their elevation and alignment along their full length, showing bends and/or offsets (such as dimensioned expansion loops or changes to go around, under or over other utilities), valves, and thrust blocks, and tied back to (dimensioned from) existing permanent structures (the elevations, alignment, and tie backs shall be established in the field at the time of installation before backfilling and the field records (or copies thereof) shall be maintained by the Contractor on site as part of the Record Documents for review and inspection by Owner and Architect; this information must be suitable to accurately locate all the utilities and below grade components on the Owner's site survey plan); and (vi) such other information as the Owner may reasonably request. Upon completion of the Work, the Contractor shall deliver to the Owner and the Architect the marked Record Documents and electronic copies of the Record Documents in a format acceptable to the Owner. Separate marked and electronic files with the Record Documents shall be prepared and delivered for each of the architectural, mechanical, electrical, plumbing, and fire protection/sprinkler portions of the Work. The Contractor shall also deliver to the Architect and Owner all operations manuals for equipment.

§ 3.11.2 The Contractor shall preserve and maintain all documents and records related to the Project for a period of at least six (6) years following the receipt of final payment from the Owner.

**§ 3.11.3** The Contractor shall prepare complete sets of manufacturer's catalogs, instructions, and other similar data, including the necessary graphic cuts, diagrams, valve charts, and the like, covering all mechanical and manually operated devices furnished and/or installed in any permanent improvement as part of the Work, and all Subcontractor and manufacturer warranties (the "Operating Manuals"). The Operating Manuals are intended to serve to instruct and assist the maintenance staff in the care, operation, maintenance, and repair of all such devices. The Operating Manuals shall be in tangible binder form and in digitized, searchable electronic format acceptable to the Owner. Draft copies of the Operating Manuals shall be submitted to the Owner and the Architect for review and comment at least thirty (30) days prior to Substantial Completion of the Work. The Architect shall review the draft Operating Manuals and shall submit to the Contractor any comments on such draft Operating Manuals the Architect may have. Upon receiving any comments from the Architect or the Owner, the Contractor shall revise and re-submit the Operating Manuals as necessary to obtain the Architect's and the Owner's approval thereof. The Architect shall review any revised Operating Manuals prepared by the Contractor and, when the Architect considers the Operating Manuals to be satisfactory, the Architect shall recommend acceptance of the Operating Manuals by the Owner.

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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 the requirements of the Contract Documents by the Architect's written approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified 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 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.

...

**§ 3.12.10.1** 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 be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately 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~~ adequacy, completeness and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and 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.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect. When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Owner shall be entitled to rely upon such certifications, and neither the Owner nor the Architect shall be expected to make any independent examination with respect thereto.

...

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents, and shall not unreasonably encumber the site with materials or equipment. The Contractor shall conduct all activities so as not to cause damage, avoidable disturbance, or disruption to surrounding property or to those that own, have an interest in, visit, or utilize such surrounding property. The Owner shall have the right to refuse admittance to the site to, and/or to direct the Contractor to re-assign (or to cause any direct or lower tier subcontractor or supplier to re-assign), any agent or employee of the Contractor or any direct or lower tier subcontractor or supplier whose presence the Owner with reasonable cause deems hostile to the Owner's interest. Notwithstanding the foregoing, it is understood and agreed

that the Contractor shall be responsible for full operational control and security of the site in the customary and normal performance of its duties as "Contractor" during the construction period.

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**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. 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. Upon completion of the Work, Contractor shall clean the interior and exterior of all buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Contractor shall clean and polish all glass, plumbing fixtures, finish hardware, and similar finish surfaces and equipment, and shall remove all temporary fencing, barricades, planking, construction toilets, and similar temporary facilities. All damaged, broken, or scratched material (including, without limitation, glass, plastic, or finished architectural metal surfaces) shall be replaced by the Contractor at the Contractor's expense.

...

The Contractor shall provide the Owner and Architect-Owner, Architect, public authorities, and each of their respective representatives, consultants, agents, and designees with access to the Work in preparation and progress wherever located, and shall facilitate inspection of the Work by any of the foregoing whenever requested or required. Exercise of such rights shall not release the Contractor from any of its obligations under the Contract Documents.

...

**§ 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 any lender, each of their respective board members, affiliates, subsidiaries, successors and assigns, the members, managers, partners, officers, directors, shareholders, representatives, agents, consultants, and employees of any of them, and anyone else acting for or on behalf of any of them (each, an "Indemnitee," and collectively, "Indemnitees,") from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from: (1) 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 (subject to Section 11.3 below), or to other damages and economic losses not waived in the Contract, but only if caused in whole or in part by the acts or omissions of the Contractor, a Subcontractor, a Sub-subcontractor, anyone directly or indirectly employed by 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; or (2) fines, penalties, and/or liability imposed on the Project or one or more of the Indemnitees resulting from the failure of Contractor to comply with any applicable laws regarding the performance of construction work activities, or regarding any employment related acts or practices engaged in by the Contractor. 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. The Contractor shall further hold, keep harmless, indemnify, and defend the Owner from and against every liability, claim, demand, cost, loss, damage or expense in law or equity that may at any time arise or accrue or be made by reason of the Contractor's failure or alleged failure to timely pay any of its employees, agents, Subcontractors, or Sub-subcontractors. Notwithstanding the foregoing, the Contractor shall not be obligated under this Section 3.18 to indemnify an Indemnitee against liability for damages arising out of out of bodily injury to persons, death, or damage to property to the extent caused by or resulting from the negligence of such Indemnitee or such Indemnitee's independent contractors, agents, employees, or indemnitees.

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### **§ 3.19 SUBSTITUTIONS**

**§ 3.19.1** Any proposed substitutions initiated by the Contractor involving any materials or equipment specified in the Contract Documents, whether with or without design changes, shall be considered only if the Owner receives the advantage of either a decrease in the Guaranteed Maximum Price with no decrease in quality, or a reduction in the Contract Time, or both.

§ 3.19.2 All requests for substitutions shall be made in writing and sufficiently in advance of Work performance needs to permit a reasonable time for evaluation and written response by the Owner without jeopardizing the Contract Time.

§ 3.19.3 The acceptance of substitutions shall be at the Owner's sole and absolute discretion.

§ 3.19.4 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect, and in accordance with a Modification. By making a request for substitution, the Contractor:

- .1 represents that the Contractor has investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor shall provide the same warranty for the substitution that the Contractor would for that specified;
- .3 represents that the substitution complies with applicable requirements of the authorities having jurisdiction over the Project;
- .4 represents that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent;
- .5 represents that it is providing complete and accurate information regarding the impact of the substitution on the Contract Time; and
- .6 shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

### **§ 3.20 PROTECTION FROM WATER DAMAGE**

In performing the Work, the Contractor shall exercise diligent efforts to protect the Project structures and all materials, supplies, systems, and equipment which are delivered to the Project site from exposure to, and damage from, water. Without limiting the generality of the foregoing, the Contractor shall: (a) install temporary barriers adequate to prevent water entry to the Project structures from openings in the roof, exterior walls, or other applicable Project elements to the extent related to the Work; (b) cause all materials, supplies, systems, and equipment which are delivered to the Project site to be stored in a safe and secure location, packaged in a watertight manner, and stored in a manner which protects such items from inclement weather, the elements (including, without limitation, rain, snow, and water damage), and other damage until such items are incorporated into the Work; and (c) ensure that all components and exterior elements included within the Work are constructed and installed in accordance with the Contract Documents so as not to allow water leaks or penetration.

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§ 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 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. However, ~~the Architect will not~~ neither the Architect nor the Owner will be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ~~The Architect will not~~ Neither the Architect nor the Owner will 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.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner in writing (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, by the Contractor and approved by the Owner, and (3) defects and deficiencies observed in the Work. ~~The Architect will not~~ Neither the Architect nor the Owner will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. ~~The Architect will not~~ Neither the Architect nor the Owner will 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.

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§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests

will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations or responses to submittals required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations or responses until ten (10) business days after written request is made for them, and not then unless the Contractor shows that the Architect's delay has materially interfered with the progress of the Work. If the Contractor believes that the Architect is not providing timely responses to the Contractor's requests for interpretations or submittals, the Contractor shall promptly notify the Owner in writing so that the Owner can investigate and follow-up with the Architect.

...

**§ 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~~-site and includes vendors and materialmen providing materials, equipment, or other goods for the Project. 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 the subcontractors of a Separate Contractor.

**§ 5.1.2** A Sub-subcontractor or lower tier subcontractor 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~~-site and includes vendors and materialmen providing materials, equipment, or other goods for the Project. 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. The term "Subcontractor of any tier" refers to both a "Subcontractor," a "Sub-subcontractor," and any lower tier subcontractor.

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By appropriate written ~~agreement~~-agreement complying with the requirements of this Section 5.3, 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 that the Contractor, by these 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. 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, 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.

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**§ 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 notify the Architect and Owner in writing of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect and Owner in writing of apparent discrepancies or defects prior to proceeding with the Work 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. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

...

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5. If any such Separate Contractor sues or initiates a mediation or arbitration proceeding against the Owner on account of any

damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at the Contractor's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or mediation or arbitration costs which the Owner has incurred.

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§ 6.2.6 The Owner shall take reasonable steps to require its separate contractors to name the Owner and Contractor as Additional Insureds on the separate contractors' general liability insurance policies and file certificates of insurance with Owner and Contractor showing such compliance prior to commencing Work at the Project site.

...

§ 7.1.4 Notwithstanding anything to the contrary in the Contract Documents, the Owner shall have no obligation to pay for changed Work or alleged changed Work unless such changed Work has been authorized in advance in writing by the Owner; it being understood that the authority of the Architect to authorize changes to the Work shall be limited to minor changes under Section 7.4 hereof.

...

§ 7.2.2 A Change Order once executed is final. Each Change Order shall constitute a final settlement between the Owner and the Contractor with respect to all matters relating to the change in the Work which is the subject of such Change Order, including, but not limited to: any and all direct or indirect costs associated with such change; the cumulative effect of such change and all previous changes in the Work, the Contract Sum, or the Contract Time, including any and all costs and schedule impacts resulting from or associated with loss or labor productivity; and any and all adjustments to the Contract Sum or the Contract Time.

§ 7.2.3 The Contractor shall not submit any requested Change Order or other request for an increase in the GMP or an extension of the Contract Time due to any item that can be reasonably inferred from the Contract Documents.

§ 7.2.4 Any additive adjustment to the Contract Sum shall include such markups for overhead and profit as follows:

- a) If the Change is to Work self-performed by the Contractor that was awarded based on competitive bidding, Contractor shall receive ten percent (10%) overhead and five percent (5%) Fee;
- b) If the Change is to Work self-performed by the Contractor that was not awarded by competitive bidding, Contractor shall receive as its fee the Contractor's Fee as set forth in the Agreement. This Fee shall also apply to changes in the Work performed by a Subcontractor under Sections 7.2.2(c) and (d), below;
- c) Work performed by a Subcontractor shall include ten percent (10%) overhead and five percent (5%) Fee; and
- d) Work performed by a Sub-subcontractor shall include ten percent (10%) overhead and five percent (5%) Fee, plus a five percent (5%) Fee to the Subcontractor

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect 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. Within ten (10) calendar days of receipt of a Construction Change Directive, the Contractor shall provide to the Owner and the Architect a proposal that sets forth the Contractor's estimates of the cost and/or schedule impacts related to the Construction Change Directive. Within twenty (20) days of receipt of a Construction Change Directive, the Contractor shall provide to the Owner and Architect a final detailed breakdown of the cost and/or schedule impacts related to the Construction Change Directive.

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- .1 Costs of labor, including applicable payroll taxes, social security, old age, and unemployment insurance, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by ~~(1) an act or neglect of the Owner or~~ (1) wrongful or negligent acts or omissions of the Owner, the Architect, of an employee of either, anyone for whom the Owner is responsible, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, the Work, or by concealed or unknown physical conditions encountered at the site (subject to Section 3.7.4 above); (3) by labor disputes not directed at the Contractor or a direct or lower tier subcontractor or anyone for whom the Contractor is responsible; (4) fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine abnormal adverse weather (subject to Section 8.3.5 below), or (5) by other causes beyond the Contractor's control that the Owner determines may justify delay, then the Construction Schedule and/or Contract Time shall be extended by Construction Change Directive or Change Order for such reasonable time as agreed to by the Contractor and the Owner (or, if not so agreed to, as resolved by dispute resolution pursuant to Article 15 of these General Conditions of the Contract); however, the Contractor shall be required to use diligent efforts to mitigate both the necessity of the delay and the period of the delay. The Contractor acknowledges and agrees that: (a) the Contractor shall not be entitled to any adjustments of the Construction Schedule and/or Contract Time for any wrongful or negligent acts or omissions of the Owner, the Architect, a Separate Contractor, or an employee of any of them, unless the Contractor shall have provided the Owner with written notice describing with particularity such wrongful or negligent acts or omissions and such wrongful or negligent acts or omissions are not cured within ten (10) business days following receipt by the Owner of such notice; (b) no adjustments to the Construction Schedule and/or Contract Time shall be made unless the events described above have the effect of delaying completion of components of Work on the critical path indicated in the Construction Schedule; and (c) adjustments to the Construction Schedule and/or Contract Time will be permitted in connection with any of the events described above only to the extent that the delays resulting therefrom (i) are not caused and could not reasonably have been mitigated by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, (iii) have an impact of at least one (1) day, and (iv) have no concurrent or contributing cause for which the Contractor would not be entitled to an extension of the Contract Time. Any extension in the Construction Schedule and/or Contract Time shall be net of any contingency or "float" time included in the Construction Schedule.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.15 and Section 8.3.3.

**§ 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. The Contractor shall give written notice to the Architect and the Owner within fourteen (14) days after the time that the Contractor knows or should know of any cause which will result (or has resulted) in delay for which the Contractor claims or intends to claim an extension of the Contract Time (including those causes which the Owner or the Architect is responsible for or has knowledge of). Such notice shall not be effective unless in writing given to both the Owner and the Architect. Any such written notice shall (i) explicitly state that an extension is claimed; (ii) state in detail the circumstances which form the basis of the delay; and (iii) describe as fully as practicable at the time the date of commencement and duration or expected duration of the delay and its effect on the various portions of the Work. The Contractor shall provide such supporting documentation as the Owner or Architect may require, including, where appropriate, a revised schedule for construction indicating all of the activities affected by the circumstances which form the basis for the claim. The submission of such written notice within the time period provided above shall be a condition precedent to any extension of the Construction Schedule and/or Contract Time; otherwise the claim shall be waived.

**§ 8.3.4** No claim for delay shall be allowed on account of failure of the Architect to furnish Drawings, Specifications, or instructions or to return Shop Drawings or Samples until a reasonable period of time (but in any event not less than ten (10) business days or such longer period as may be agreed to among the Architect, the Contractor, and the Owner) after receipt by the Architect of written request for such instructions, Drawings, Specifications, Shop Drawings, or Samples, and not then unless the Contractor shows that the Architect's delay has materially interfered with the progress of the Work.

**§ 8.3.5** Notwithstanding anything to the contrary in any of the Contract Documents, the Contractor acknowledges and agrees that no extension of time shall be granted on account of weather conditions except as provided for in this

paragraph. A Claim by the Contractor for an increase in the Contract Time on account of weather shall only be granted if all the following conditions are met: (1) the weather during any calendar month (or pro rata portions of partial months at the beginning and end of the Contract Time) is "abnormal," as defined below; (2) the Contractor demonstrates that such abnormal weather had the effect of delaying completion of components of Work on the critical path indicated in the Construction Schedule; and (3) such Claim is made by written notice. "Abnormal weather" shall, for purposes of this paragraph, be limited to circumstances in which adverse weather conditions significantly exceed those which have historically been encountered, or may reasonably be expected to be encountered, at the Project site, based on the 10-year NOAA average for the area.

**§ 8.3.6** If any of events described in this Section 8.3 of the General Conditions of the Contract or elsewhere in the Contract Documents entitle the Contractor to an extension of the Construction Schedule and/or Contract Time, the sole remedy of the Contractor shall be such extension of the Construction Schedule and/or Contract Time and the Contractor shall not be entitled to any adjustment of the Contract Sum or Guaranteed Maximum Price, as applicable, except as otherwise provided in the following sentence. If and to the extent that the Contract Time is extended on account of Compensable Delay Occurrences (as hereinafter defined) only, (a) the Contract Sum or Guaranteed Maximum Price, as applicable, shall be increased by the Contractor's reasonable and verified additional costs of performing the Work to the extent directly and solely attributable to extensions of the Contract Time on account of Compensable Delay Occurrences, and (b) the Maximum General Conditions Reimbursement Amount shall be increased by the Contractor's reasonable and verified additional costs for General Conditions Items to the extent directly and solely attributable to extensions of the Contract Time on account of Compensable Delay Occurrences, all without any markup or other increase in fee. As used herein, the term "Compensable Delay Occurrences" means, and is limited to, permitted extensions of the Contract Time to the extent attributable to: (i) wrongful or negligent acts or omissions of the Owner or Architect; (ii) changes in the Work directed by the Owner; (iii) concealed or otherwise unknown physical conditions that Contractor could not have discovered in exercising the Standard of Care required of Contractor by the Contract Documents; and (iv) any event beyond the Contractor's control which effects could not be reasonably mitigated by the Contractor.

The Contractor's remedies under this Section 8.3.6 are the Contractor's sole remedies for any delay or resulting loss (including, without limitation (a) delay in the commencement, prosecution, or completion of the Work, (b) hindrance or obstruction in the performance of the Work, (c) loss of productivity, or (d) other similar delays and losses), whether or not foreseeable. Without limiting the generality of the foregoing, in no event shall the Contractor be entitled to any other compensation or recovery of damages with respect to any delay or resulting loss, including consequential damages, lost opportunity costs, impact damages, or similar remuneration.

**§ 8.3.7** The Owner and Contractor agree that it is the intent of the Contract Documents that the Contractor shall have responsibility to achieve Substantial Completion of the Work within the Contract Time with an adequate work force, irrespective of any labor dispute (other than those of general applicability not directed at the Project, the Contractor, or anyone for whom the Contractor is responsible), including picketing at or near the Project site, whether or not the Contractor is the primary employer involved in the labor dispute or a neutral employer, and whether or not the Contractor has a collective bargaining relationship with the union(s) involved in the labor dispute. Notwithstanding anything to the contrary in any of the Contract Documents, the Contractor acknowledges and agrees that no extension of Contract Time or increase in the Contract Sum or GMP, as applicable, shall be granted on account of a labor dispute (other than those of general applicability not directed at the Project, the Contractor, or anyone for whom the Contractor is responsible).

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**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

...

**§ 9.3.1** At least ten days before the date established for each progress payment, 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, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Each Application for Payment shall be deemed to include a representation by the Contractor that, except as expressly disclosed to the Owner in writing in such Application for Payment: (a) the Contractor has paid all amounts owed to its Subcontractors and suppliers; (b) the Contractor has no knowledge that any party has filed or threatened to file a lien against the Project site, Owner or surety; and (c) the Contractor has no knowledge of any basis on which it may assert a claim for an extension of the Contract Time or an increase in the Contract Sum or Guaranteed Maximum Price, as applicable.

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**§ 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, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. 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, and shall be conditioned upon the Contractor's compliance with the requirements of Section 9.3.2.1.

**§ 9.3.2.1 STORAGE OF MATERIALS OFF-SITE.** The Contractor shall obtain prior written approval from the Owner to store materials to be incorporated in the Work, for which progress payments will be requested, at off-site locations. Any request for the Owner's approval shall also be submitted simultaneously to Architect. Any and all charges for storage, including insurance and all costs associated with Contractor's visits to such location, shall be included within the Contract Sum or Guaranteed Maximum Price, as applicable. Before approval, the Owner may require, without limitation: (a) delivery of a bill of sale and/or other documentation satisfactory to the Owner transferring title to such materials to the Owner free and clear of any liens, encumbrances, or security interests; (b) evidence that the location is properly secure; (c) proper proof of insurance and proof of satisfactory contractual arrangements for transportation to the site; (d) a certificate from the Contractor stating (i) the name of the Contractor and/or Subcontractor leasing or owning the storage area, (ii) the location of such storage space, including the storage area (i.e., the entire premises or certain areas of a warehouse giving the number of floor or portions thereof), and a certification that the Contractor has visited such location, verified the storage of such material therein or thereon, and payment of all current storage charges, (iii) the date on which the material is first stored, and (iv) a description, including quantities and value, of the materials stored; (e) commitment from the Contractor that the stored materials will be incorporated into completed construction within sixty (60) days from the submission of the Contractor's Application for Payment; and (f) compliance with any additional requirements of the Owner's lender. The Contractor shall furnish to the Owner, not less often than once per month, a current inventory of all materials being stored at any off-site location. The Contractor and all applicable Subcontractors shall mark each sealed carton or other item with the name of the Project and the Owner, and all materials stored off-site shall be segregated to the extent required by the Owner.

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- ~~.4~~ reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract ~~Sum;~~Sum or Guaranteed Maximum Price, as applicable;
- ...
- ~~.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 failure to carry out the Work in accordance with the Contract Documents;~~with the Contract Documents;~~
- ~~.8~~ amounts previously paid to the Contractor in excess of amounts properly due to the Contractor;
- ~~.9~~ failure of the Contractor to comply with any of the Contractor's indemnification obligations as set forth in the Contract Documents;
- ~~.10~~ failure of the Contractor to maintain the Project site in a clean and safe condition;
- ~~.11~~ failure of the Contractor to meet any other monetary obligation imposed upon it pursuant to the Contract Documents;
- ~~.12~~ failure of the Contractor to maintain Record Documents; or

- .13 the expiration, withdrawal or threatened withdrawal prior to completion of any licenses, permits or approvals reasonably required to perform the Work due to the breach, fault or neglect of the Contractor, a Subcontractor, a Sub-subcontractor, or anyone else for whom the Contractor is responsible.

If the Owner determines that any of the reasons for withholding a Certificate for Payment or nullifying any previously issued Certificate for Payment described in this Section 9.5.1 exist, the Owner may (without action by the Architect) withhold payment to the extent as may be necessary in the Owner's opinion to protect itself from loss for which the Contractor is responsible; provided, however, that the Owner furnishes notice to the Contractor of the reason(s) for such withholding

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§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, or the Owner otherwise has reason to doubt that a Subcontractor or Sub-subcontractor will be properly paid., the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. In addition, Owner may, at its sole option, make payments directly to such Subcontractor or Sub-subcontractor if the Contractor is out of business or otherwise refuses or is reasonably considered unavailable to endorse or process a joint check. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment. All such payments made by the Owner will be credited against the Contract Sum. No such payment by the Owner shall create any express or implied duty on the part of the Owner to any Subcontractor or Sub-subcontractor.

...

§ 9.6.1 After the Architect has issued a Certificate for Payment, , and the Owner has approved such 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 may withhold payment for any of the reasons listed in Section 9.5.1.

...

§ 9.6.6 A Certificate for Payment, a progress payment, final 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 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 or provided by 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, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision. Contractor.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, defend, hold harmless and indemnify the Owner and the other Indemnified Parties, to the fullest extent allowed by law, from all loss, costs, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment asserted by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

...

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, (as approved or modified by the Owner, and subject to the Owner's rights under Section 9.5.1) or finally awarded by binding dispute resolution pursuant to Article 15 of these General Conditions of the Contract

(following expiration of any available appeal periods), then the Contractor may, upon seven additional days' written notice to the Owner and Architect, (during which the Owner fails to cure the default by paying such amounts to the Contractor), stop the Work until payment of the amount owing has been received-received; provided that Contractor shall have no right to stop the Work if Contractor is paid for all undisputed Work; and if so paid, Contractor shall proceed with the performance of its obligations under the Contract Documents with reservation of all rights and remedies it may have at law or in equity with respect to the disputed Work. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents, which shall be determined in accordance with Article 7.

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§ 9.8.1 Substantial Completion is the stage in the progress of the Work shall be achieved when (a) 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 and all intended users can commence beneficial use and occupancy of the Project as intended, (b) all Project systems included in the Work are operational as designed and specified, (c) all designated or required governmental inspections have been successfully completed (including, without limitation, all trade inspections, final Fire Marshall inspection, final building inspection, and Health Department inspection (if applicable)), and certificates of occupancy have been obtained, in each case to the extent required to occupy and use the Project for its intended use, and (d) all remaining Work is reasonably estimated to be completed within twenty (20) consecutive calendar days (or as otherwise agreed to by the Owner) following the date of Substantial Completion of the Work. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy the Project on the date of Substantial Completion and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's use and occupancy of the Project as intended.

§ 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 a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such together with the estimated value of completing or correcting such item (as approved or modified by the Architect and accepted by the Owner, the "punch list"). The Architect shall have the right to modify and supplement the list of items on the punch list and to modify or, for items added by the Architect, establish, the estimated value of completing or correcting such items. The Contractor shall proceed promptly to complete and/or correct all items on the punch list. The failure to include any items on the punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's punch list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's 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. In this regard, the Owner may deduct or withhold 150% of the reasonable estimated value of Work that is incomplete or not in accordance with the requirements of the Contract Documents until such Work has been corrected or completed. The Contractor shall correct or complete all the work on each approved punch list within thirty (30) days after receipt of such punch list, on a "time is of the essence" basis and prioritized to meet the needs of the Owner. In the event that the Contractor fails to commence performance of and thereafter diligently pursue completion of such items within such period, and after three (3) days' written notice, the Owner shall have the option of correcting and/or completing any outstanding punch list items and deducting the cost thereof from the outstanding balance of the Contract Sum.

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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 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 punch 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.

...

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that (1) a sworn affidavit from the Contractor and each Subcontractor indicating that all Subcontractors, Sub-subcontractors, and suppliers have been paid in full for all Work performed and labor, material, and equipment furnished for the Work and further documentation as may be requested by the Owner, including full unconditional lien waivers, evidencing that all 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, effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no 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, (5) assignment documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and warranties and guarantees remaining and pertaining to the Work not previously provided to the Owner, (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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. by the Owner and (7) all occupancy certificates obtained from any governmental authority and all other required approvals and acceptances by city, county, and state authorities having jurisdiction and not previously provided to the Owner; (8) an affidavit that Contractor has paid all federal, state, and local taxes arising out of the Work in a form satisfactory to the Owner; and (9) the operating and maintenance manual and a reproducible set of Drawing and Specifications marked up to show as-built conditions, warranties, and other close-out submittals required by the Contract Documents. 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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment matters expressly excluded by the Owner or the Architect as unsettled as of the date of making final payment;
- .5 any matter which was not known or reasonably discoverable to the Owner at the time of making final payment;
- .6 any error in the Contractor's accounting for the Project or overpayment by the Owner which the Owner did not actually discover during its audit or review of such accounting before making final payment; or
- .7 the Contractor's insurance and indemnification obligations under the Contract Documents.

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

...

The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract required by applicable laws, the Contract Documents, and Owner in connection with the performance of the Contract. Neither the Owner nor the Architect shall be liable to the Contractor, the Subcontractors, the lower tier subcontractors, their employees, or anyone else with respect to the conditions of the premises where Work under the Contract is performed.

...

§ 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. Provided, however, that the foregoing shall in no way authorize the use of hazardous materials prohibited in Section 10.3 of these General Conditions.

§ 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) ~~Documents~~, subject to the waiver of subrogation in Section 11.3.7)) 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is 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.

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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 the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. twenty-one (21) days after discovery; provided, however, that any delay by the Owner in delivering notice of any such claim shall not relieve the Contractor (or any insurer, Subcontractor, Sub-subcontractor, surety, or other responsible party) from liability or responsibility for such claim. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 During the progress of the Work and at all times prior to the date of Substantial Completion or occupancy of the Work by the Owner, whichever is earlier, the Contractor shall provide temporary heat, ventilation, and enclosure adequate to permit the Work to proceed in a timely fashion, and to prevent damage to completed Work or Work in progress, or to materials stored at the premises. The permanent heating and ventilation systems may be used for these purposes when available unless otherwise provided for in the Contract Documents; provided, however, that: (a) the prior written approval of the Owner is obtained; (b) if the Contractor so uses the permanent heating and ventilation systems, such systems shall be (i) used, serviced, and maintained in accordance with any applicable Specifications or plan approved by the Owner and otherwise pursuant to requirements imposed by the Owner, (ii) cleaned, and all filters and any other parts and equipment that normally require periodic maintenance and replacement shall be replaced, so that the systems are left in "like new" condition at Substantial Completion of the Work, and (iii) used at the sole cost, risk, and responsibility of the Contractor; and (c) no such use by the Contractor shall cause any warranty or correction periods to commence prior to Substantial Completion of the Work. The Contractor must obtain the Owner's prior written approval for the source and type of fuel intended to be used for temporary heat.

...

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. The Contractor shall not use, introduce, or store any hazardous materials on the Project site, except that: (1) the Contractor may use and store fuel and other petroleum-based products necessary for the use and operation of the Contractor's trucks and equipment, (2) the Contractor may use hazardous materials required by the Contract Documents, and (3) the Contractor may use hazardous materials with the Owner's prior written approval, provided that in each of the foregoing circumstances, such use and storage is in accordance with all applicable laws, ordinances, rules, regulations, and other legal requirements. 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 notify the Owner and Architect of the ~~condition~~ condition in writing in no event more than five (5) days of first notice.

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§ 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~~-indemnity

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site ~~unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous 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.~~ site. The Contractor shall be solely responsible under this Section 10.3 for all hazardous materials or substances brought to the site by or on behalf of the Contractor or any Subcontractor or Sub-subcontractor.

**§ 10.3.5** The Contractor shall defend, indemnify, hold harmless and reimburse the Owner and any of the other Indemnitees for the cost and expense the Owner or other Indemnitee incurs (1) for remediation of hazardous materials or substances the Contractor brings to the ~~site and negligently handles, site,~~ (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.

**§ 10.3.6** 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 ~~reimburse~~-indemnify the Contractor for all cost and expense thereby ~~incurred~~-incurred provided, however, such indemnity obligation shall not apply with respect to any cost or expense attributable to remediation activities, if any, that are included in the Contractor's scope of Work.

...

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract ~~Documents.~~-Documents, 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. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located.~~-located, rated by A.M. Best & Co. with a minimum Financial Strength Rating of (or equivalent to) "A-" and a minimum Financial Size Category of (or equivalent to) "IX", and to which the Owner has no reasonable objection. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

- .1 Claims under workers' compensation, disability benefit, and other similar employee benefit acts that are applicable to the Work to be performed with coverage in the amounts required by law;
- .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.

The insurance required by this Section 11.1.1 shall include, without limitation, the following coverages with the indicated minimum coverage limits:

(a) Workers' Compensation Insurance compliant with the jurisdiction in which the accident occurs, the jurisdiction in which any employee resides and any other states which may claim jurisdiction, and Employer's Liability Insurance with minimum limits of \$1,000,000 each accident for Bodily Injury by accident, \$1,000,000 each employee for Bodily Injury by disease, and \$1,000,000 policy limit for Bodily Injury by disease. Such insurance shall be endorsed to include Other States Coverage and to include a Waiver of Our Right to Recover from Others Endorsement in favor of the Owner.

(b) Commercial General Liability Insurance, including coverage for Premises-Operations (including X-C-U), Independent Contractors' Protective, Products-Completed Operations, Blanket Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards), and including Cross Liability and Severability of Interests. Any limiting or exclusionary endorsements must be disclosed and approved by Owner in writing. The Commercial General Liability Insurance shall have the following minimum limits:

<u>(i)</u>	<u>\$1,000,000</u>	<u>Each Occurrence;</u>
<u>(ii)</u>	<u>\$100,000</u>	<u>Damage to Rented Premises;</u>
<u>(iii)</u>	<u>\$10,000</u>	<u>Medical Expense (Any One Person);</u>
<u>(iv)</u>	<u>\$2,000,000</u>	<u>General Aggregate;</u>
<u>(v)</u>	<u>\$1,000,000</u>	<u>Personal and Advertising Injury; and</u>
<u>(iv)</u>	<u>\$2,000,000</u>	<u>Products-Completed Operations Aggregate.</u>

Such policy shall be endorsed to have the General Aggregate on a per project basis. Products and Completed Operations insurance shall be maintained for a minimum period equal to the greater of (i) the period under which a claim can be asserted under the applicable statutes of limitations and/or repose or (ii) five (5) years after completion of the Project. The Contractual Liability Insurance shall include coverage sufficient to meet the obligations in Section 3.18 of these General Conditions of the Contract.

(c) Automobile Liability Insurance (covering all owned, non-owned and hired vehicles) for bodily injury and property damage with a minimum limit of \$1,000,000 combined single limit per accident.

(d) Umbrella Liability Insurance (excess of primary commercial general liability, automobile liability, and employer's liability insurance) with minimum limits of \$25,000,000 each occurrence and \$25,000,000 annual aggregate. Such limits shall apply on a per project basis. The Umbrella Liability Insurance shall be "follow form" coverage that is at least as broad as the primary Commercial General Liability and Automobile Liability Insurance, without additional exclusions or qualifications.

(e) Contractor's Pollution Liability Insurance covering liability of the Contractor arising out of any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense, that arise from the operations under Contract (whether by the Contractor or a Subcontractor or Sub-subcontractor). Coverage under this policy shall have a limit of liability of not less than \$1,000,000 each occurrence, with no exclusion or sublimit for mold and no sunset clause. Coverages under this policy shall also include, without limitation, emergency response costs, transportation coverage, and non-owned disposal site (NODS) coverage. Coverage under this policy, unless written on an occurrence basis, shall have an eight (8) year completed operations extended reporting period. The policy may contain a deductible of a maximum of \$50,000, but in such case the deductible is the sole responsibility of the Contractor, and no portion of such deductible is the responsibility of the Owner.

(f) Contractor's Professional Liability Insurance covering the liability of the Contractor for any and all errors or omissions committed in the performance of the work. The coverage shall be maintained during the entire term of the operations, and for at least eight (8) years following completion of the Project. The policy shall have limits of liability of not less than \$1,000,000 per claim and in the annual aggregate with limits reinstated annually. The policy may contain a deductible of a maximum of \$100,000, but in such case the deductible is the sole responsibility of the Contractor, and no portion of such deductible is the responsibility of the Owner.

(g) All Risk Property Insurance covering physical loss or damage to all property of the Contractor used in the performance of the Work. The policy shall have limits of liability adequate to cover all property of the

Contractor (including personal property of others in Contractor's care, custody, or control) and shall include a waiver of subrogation against the Owner and the other Indemnitees.

(h) Employment practices liability insurance (including third-party coverage) with minimum limits of \$1,000,000.

The Contractor shall require all Subcontractors and Sub-subcontractors to comply with the identical insurance requirements as required of Contractor under clauses (a), (b), (c), (d) and (g) above and meeting the corresponding requirements of this Section 11.1.1 and Sections 11.1.2 through 11.1.5 below; provided, however, that (i) the minimum limits of the Employer's Liability Insurance to be maintained by Subcontractors and Sub-subcontractors shall be not less than \$500,000 each accident for Bodily Injury by accident, \$500,000 each employee for Bodily Injury by disease, and \$500,000 policy limit for Bodily Injury by disease, (ii) the minimum limits of the Commercial General Liability Insurance to be maintained by Subcontractors and Sub-subcontractors shall be not less than \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate, \$2,000,000 Personal and Advertising Injury and \$2,000,000 Products-Completed Operations Aggregate unless otherwise approved by Owner in writing, (iii) the Contractor shall also cause Subcontractors and Sub-subcontractors providing design, engineering, or other professional services to carry Professional Liability Insurance with limits of liability of not less than \$1,000,000 per claim and in the annual aggregate with limits reinstated annually for at least eight (8) years following completion of the Project; and (v) the Contractor shall cause Subcontractors and Sub-subcontractors transporting or disposing of hazardous materials or waste, as well as any disposal site operator, to carry pollution legal liability insurance naming the Owner as an additional insured (complying with the terms of clause (e) above, this Section 11.1.1, and Sections 11.1.2 through 11.1.5 below).

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. All insurance except for Professional Liability Insurance and Employer's Liability Insurance shall be written on an occurrence basis. The insurance carried by the Contractor and each Subcontractor and Sub-subcontractor shall be endorsed to provide that the coverage of such policy is primary and any coverage under any policy or policies of insurance held by the Owner or any other Indemnitee or additional insured is secondary. Each policy of insurance carried by the Contractor pursuant to Section 11.1.1 shall be endorsed to provide a separate general aggregate limit for the Work performed under this Contract, and will, by its terms, specifically cover the entire term of this Contract. The insurance carried by the Contractor and each Subcontractor and Sub-subcontractor shall not include any limitation or exclusion (i) for claims or suits by one insured against another insured, or (ii) for liabilities arising from blasting, subsidence, earth or land movement, or for any other type of services or work performed by such insureds. Coverages shall be maintained without interruption from the date of commencement of the Work until the date of final payment and, if later, termination of any coverage required to be maintained after final payment, and, with respect to products and completed operations coverage, for a minimum period equal to eight (8) years after completion of the Project.

§ 11.1.3 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. Certificates of insurance (and, if requested by the Owner, certified copies of the insurance policies) 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. The Owner may withhold any payments due Contractor at any time that Owner has not received current certificates of insurance (and, if requested by the Owner, certified copies of the insurance policies) complying with the requirements of this paragraph. 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, amended or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. These certificates (and, if requested by the Owner, insurance policies) shall set forth evidence of all coverage required by this Section 11.1 and shall be issued to the Owner and any other parties requested by the Owner from time to time. The form of certificate shall be the ACORD 25 form, modified as necessary to comply with the requirements herein. An additional certificate and certified copies of the insurance policies evidencing continuation of such 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. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending limits of coverage.

The Contractor shall (a) cause all Subcontractors and Sub-subcontractors to deliver and shall collect certificates of insurance naming the Owner as a certificate holder and all parties required to be named as additional insureds on the insurance policies pursuant to Section 11.1.4 as additional insureds (using the CG 20 10 10 01 and CG 20 37 10 01 forms or their equivalents ) or any form incorporating the terms of or adopting the language of that additional insured form) on a primary non-contributory basis (providing coverage for each additional insured for completed operations and ongoing operations), with coverage equal to the full policy limits (even if greater than the minimum limits required by the Contract Documents), and (b) deliver such certificates to the Owner's representative.

**§ 11.1.4 ~~Notice of Cancellation or Expiration of Contractor's Required Insurance.~~** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. The Contractor shall cause the insurance policies required by the Contract Documents (other than Worker's Compensation and Professional Liability) to name the Owner, Architect, any lender, each of their respective affiliates, board members, subsidiaries, successors and assigns, the members, managers, partners, officers, directors, shareholders, representatives, agents, consultants, and employees of any of them, anyone else acting for or on behalf of any of them, and such other persons or entities having a role or a beneficial interest in the Project as may be designated by the Owner from time to time in writing, as additional insureds (using the CG 20 10 10 01 and CG 20 37 10 01 forms or their equivalents) on a primary non-contributory basis (providing coverage for each additional insured for ongoing and completed operations equal to the full policy limits). Coverage afforded the additional insureds under all insurance carried by the Contractor and each Subcontractor and Sub-subcontractor shall be at least as broad as the coverage afforded the named insured(s), and such policies shall not include exclusionary language or limitations applicable only to the additional insureds. In the event that the Contractor has in force any insurance with coverages broader and/or limits higher than the minimum coverage amounts specified hereunder, (a) such broader coverages and higher limits shall insure and be available to the Owner and all other additional insureds and (b) this Contract shall be deemed to require such broader coverages and higher limits. No deductible or self-insured retention amount in any insurance required by the Contractor hereunder shall (i) apply to the Owner or any other additional insured, or (ii) exceed \$50,000, except that professional liability insurance may have a deductible as specified in Section 11.1.1(f). If, despite the preceding sentence, any deductible or self-insured retention amount in any such insurance does apply to the Owner or any other additional insured, the Contractor shall be required to fund the cost of such deductible or self-insured retention.

**§ 11.1.5** Notwithstanding anything to the contrary in the Contract Documents, the Contractor and each Subcontractor and Sub-subcontractor hereby waive all rights of recovery (including rights of subrogation) against the Owner and each of the other additional insureds for any claim, injury, loss, or damage arising from any occurrence that (a) is covered by any insurance maintained by the Contractor or such Subcontractor or Sub-subcontractor, or (b) would have been covered by any insurance required to be maintained by the Contractor or such Subcontractor or Sub-subcontractor under the Contract Documents. All of the Contractor's insurance policies and the policies of each Subcontractor and Sub-subcontractor shall include a waiver of subrogation clause or endorsement denying to the insurer rights of subrogation against the Owner and each of the other additional insureds. The provisions of this paragraph shall be deemed incorporated into each subcontract to the extent necessary to achieve the result intended.

**§ 11.1.6** Failure of the Contractor to secure insurance coverages or failure to comply fully with any of the insurance provisions of the Contract Documents shall in no way relieve the Contractor of its obligations under the Contract Documents. Nothing in this Article 11 shall modify or limit Contractor's indemnification obligations under Section 3.18 and other provisions of the Contract Documents.

**§ 11.1.7** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.8** 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.

**§ 11.1.9 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

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**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance. If the property insurance requires deductibles, the Owner shall pay costs on paid claims not covered because of such deductibles, except to the extent that (a) the Contractor, any direct or lower tier subcontractor, or any other party for whom the Contractor is responsible caused the loss, or (b) amounts are recoverable from insurance carried by the Contractor, any direct or lower tier subcontractor, or any other party for whom the Contractor is responsible; and to the extent either of these exceptions apply, the Contractor shall pay the deductible with its own funds (*i.e.*, outside of the Contract Sum or Guaranteed Maximum Price, as applicable).

**§ 11.2.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit, subject (in each case) to all of the terms, conditions, qualifications, exclusions, deductibles, sub-deductibles, sublimits, and other provisions of the policy. The Contractor shall be responsible for risk of loss to (and shall, either directly or through Subcontractors, insure for the full replacement value thereof) portions of the Work stored off the site and portions of the Work in transit, to the extent excluded from the Owner's builder's risk property insurance.

**§ 11.2.5** 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.

**§ 11.2.6** 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.

**§ 11.2.7 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall

be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

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§ 11.3.1 ~~The~~ Except as otherwise provided herein, 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. Nothing herein shall prevent the Owner from recovering deductibles in accordance with Section 11.2.

§ 11.3.2 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

...

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary in good faith 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 11.5.2. ~~The Owner shall pay the Architect and Contractor. Notwithstanding anything to the contrary, neither the Contractor nor any direct or lower tier subcontractor shall be named as loss payee under any policy of insurance purchased by the Owner with respect to the Project, and no draft or other instrument in payment of any loss shall name the Contractor or any direct or lower tier subcontractor as a joint payee. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner. Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors.~~

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work. The Owner shall have power to adjust and settle a loss with insurers without the consent or involvement of the Contractor.

**§ 11.6 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.6.1** The Owner shall have the right to require the Contractor to 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.

**§ 11.6.2** 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.

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**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time. Final Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

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**§ 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. Nothing in this Section shall preclude the Owner from pursuing any legal or equitable remedies allowed in the jurisdiction of the Project.

...

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so in writing 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.

...

**§ 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 attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. The Contractor shall not assign the whole or any portion of its interest in the Contract Documents or any payments due or to become due under the Contract Documents without the prior written consent of Owner, which will be subject to Owner's absolute discretion. No assignment by Contractor whether voluntary or involuntary shall be valid or effective without Owner's written consent. If the Contractor makes or suffers any such assignment, such shall be a breach of the Contract Documents by Contractor. A change in a majority of the ownership of the Contractor shall be deemed an assignment of Contractor's interest in the Contract Documents for purposes of this Section.

...

**§ 13.3.1** Duties-Unless otherwise provided in the Contract, 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.

...

**§ 13.4.1** 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~~ selected or approved in writing by 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 tests, inspections, or approvals that do not become requirements until after bids are received or negotiations ~~concluded.~~ concluded (except as provided in Section 13.4.3 or elsewhere in the Contract Documents). The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** 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 13.4.1, 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 written notice to the Architect and Owner of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

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**§ 13.4.4** 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. The Contractor shall obtain and deliver promptly to the Architect the final certificate of occupancy for the Project, certificates of final inspection of any part of the Work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, air compressors, etc., which may be required by law to permit full use and occupancy of the premises by the Owner.

...

### **§ 13.6 Survival**

The provisions of this Contract which by their nature survive termination of this Contract or final completion including, without limitation, all warranties, indemnities, payment obligations, and dispute resolution provisions shall remain in full force and effect after final completion or any termination of this Contract.

### **§ 13.7 No Joint Venture Or Partnership**

Nothing in this Contract shall be interpreted as creating any joint venture, partnership, joint tenancy, agency, or other similar legal relationship between the Owner and the Contractor, or as creating any contractual obligation, whether direct, indirect, or third-party beneficiary, on the part of the Owner to any Subcontractor or Sub-subcontractor.

While the Contractor is required to perform the Work in strict accordance with the Contract Documents, Contractor shall at all times be an independent contractor and solely responsible for and have control over all construction means, methods, techniques, sequences and procedures for constructing, coordinating and scheduling all portions of the Work to achieve the requirements of the Contract Documents. Nothing in the Contract Documents shall be deemed to imply or represent that Contractor, its Subcontractors, or Sub-subcontractors are agents, representatives, partners, or employees of the Owner or that Owner is otherwise liable for any of their acts, omissions, liabilities, or other such obligations.

### **§ 13.8 Advertisement And Publication; Signs**

Neither the Contractor nor any Subcontractor shall (a) cause or allow the name of the Owner to be used in any advertising or promotional literature, or in any articles in any publication, without prior written approval by the Owner, or (b) place or maintain, or allow to be placed or maintained, any advertising matter, sign, bill, poster, or similar item on or about the Project site, except as required by law or approved by the Owner in writing. The Contractor or Subcontractor will contact the Owner's Representative to request such approvals.

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- .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 of undisputed amounts on a Certificate for Payment within the time stated in the Contract Documents; ~~or Documents.~~
- .4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, 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.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' ~~notice to the Owner and Architect,~~ written notice to the Owner and Architect and a reasonable opportunity to cure, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such ~~termination.~~ termination, in addition to labor, equipment, and material costs which are directly and actually incurred by reason of such termination, and cannot be reasonably avoided by the Contractor. The foregoing amounts shall constitute the Contractor's sole and exclusive recovery with respect to termination. In no event shall the Contractor recover other amounts, such as overhead or profit on unexecuted Work or damages concerning any other project.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a 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, 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' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

§ 14.2.1 The Owner ~~may~~ may, without prejudice to any right or remedy of the Owner, terminate the Contract if the Contractor

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

...

- .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,
- .5 files a petition under any federal or state law concerning bankruptcy, reorganization, insolvency, or relief from creditors, or if such a petition is filed against the Contractor without its consent, it is not dismissed within sixty (60) days; or
- .6 is generally not paying its debts as they become due; or if the Contractor becomes insolvent; or if the Contractor consents to the appointment of a receiver, trustee, liquidator, custodian, or the like of the Contractor or of all or any substantial portion of its assets; or if a receiver, trustee, liquidator, custodian or the like is appointed with respect to the Contractor or takes possession of all or any substantial portion of its assets and such appointment or possession is not terminated within sixty (60) days; or if the Contractor makes an assignment for the benefit of creditors.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ 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' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, appliances, tools, and construction equipment and machinery thereon owned by the ~~Contractor;~~ Contractor, and all materials intended for the Work, wherever stored;

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- ~~.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.~~

...

~~§ 14.2.4 The Owner shall be entitled to collect from the Contractor all damages to which the Owner is entitled by law on account of the Contractor's default. 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, waived (collectively, "Completion Costs and Damages"), such excess shall be paid to the Contractor to the extent necessary to reimburse the Contractor for Work properly executed by the Contractor in accordance with the Contract Documents prior to termination. If the Completion Costs and Damages exceed the unpaid balance of the Contract Sum, 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. Owner upon demand. The Owner shall be entitled to hold all amounts due the Contractor at the date of termination until all of the Owner's damages have been established, and to apply such amounts to such Completion Costs and Damages. The respective obligations of the Owner and the Contractor under this Section.~~

~~§ 14.2.5 The parties acknowledge and Contractor warrants that it is financially solvent and possessed of sufficient working capital to complete the Work and perform all obligations hereunder. The parties further acknowledge that Contractor's breach of this warranty could impair or frustrate the Contractor's performance of the Contract. Accordingly, the parties agree that in the event Owner has reasonable concern that Contractor is not financially solvent or may not have sufficient working capital to complete the Work, Owner may request evidence from Contractor, in form and substance satisfactory to Owner, that Contractor remains financially solvent and possesses sufficient working capital to complete the Work and perform its obligations under the Contract. Contractor shall provide such evidence to Owner within ten (10) days of Owner's request of the same. In the event Contractor fails to provide such evidence satisfactory to the Owner within ten days, such failure shall be considered a Contractor default of the Contract, and Owner shall have the right to terminate the Contract in accordance with this Section 14.2.~~

...

~~§ 14.3.2 The Contract Sum and Contract Time If the suspension, delay, or interruption exceeds forty-five (45) consecutive days, the Contract Sum shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. The Contract Time shall be adjusted for increases in time caused by any suspension, delay, or interruption as described in Section 15.1.5. Adjustment of the Contract Sum shall include profit. 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. cause, terminate the Contractor's services for any portion of Work or any Subcontractor or all remaining Work by giving written notice to the Contractor specifying the portion of the Work or Subcontractor to be terminated and the effective date of termination. The Contractor shall continue to prosecute any portion(s) of the Work not terminated.~~

~~§ 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; in the notice, provided that the Owner, in its sole and absolute discretion, may require the Contractor to complete any Work necessary to facilitate transfer of Contractor's responsibilities to another contractor;~~
- ~~.2 place no further orders and enter into no further subcontracts for materials, labor, services, or facilities except as necessary to complete continued portions of the Contract;~~
- ~~.3 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and~~

~~3~~—4 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement. Contractor shall be entitled to receive, as its sole and exclusive remedy for termination, payment for Work properly executed under the Contract Documents comprised of the Cost of the Work and the Contractor's Fee for such properly executed Work in place through the date of termination.

§ 14.4.4 The Contractor shall not be entitled to consequential or incidental damages, including, but not limited to, damages for loss of anticipated profits on Work not performed, on account of any termination described in Section 14.4.1. Upon a determination by a court of competent jurisdiction that termination of Contractor's services pursuant to Section 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4.1 and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments for termination for convenience as set forth in this Section 14.4.

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A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment, or interpretation of Contract terms, payment of money, a change in the Contract Time, 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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

...

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by containing a clear statement of the basis of the Claim and the relief sought by the claimant, to the other party and, in the case of Claims by the Contractor only, shall 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 Contractor under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, later, or such shorter period of time as may be provided for elsewhere in the Contract Documents; provided, however, that the Contractor shall use its best efforts to furnish the Architect and the Owner, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized, and shall cooperate with the Architect and the Owner in an effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition which is the cause of such a Claim. THE CONTRACTOR EXPRESSLY AGREES THAT FAILURE OF THE CONTRACTOR TO INITIATE A CLAIM WITHIN THE TIME LIMITS SPECIFIED IN THIS SECTION 15.1.3 SHALL RESULT IN SUCH CLAIM BEING WAIVED. Inclusion of a proposed change in a proposed change order log or other similar listing, or discussion of the basis of the Claim and the relief sought by the claimant and/or including the basis of the Claim and the relief sought by the claimant in any meeting minutes or records shall not, without a specific notice, be sufficient to provide notice of a Claim as required herein. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. The Owner shall endeavor to give notice of a Claim against the Contractor within twenty-one (21) days after the Owner first has knowledge of the Claim, but the Owner's failure to do so shall not be a waiver of any rights and remedies which may be available to the Owner and shall not excuse the Contractor's obligations under the Contract Documents.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4.1 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 (unless ordered by the Owner to suspend all or a portion of service hereunder) without any interruption or delay and the Owner shall continue to make payments which are not in dispute in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

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The Contractor shall have a duty to attempt to mitigate reasonably the effects of any known condition or event which gives rise to or is likely to give rise to any increase in the GMP. Notwithstanding any other provision of the Contract, the Contractor shall not be entitled to any increase in the GMP for any event or condition to the extent caused by the Contractor's or a Subcontractor's, or Sub-subcontractor's negligence or failure to perform its contractual obligations pertaining to the Work. Further, in no event shall an increase in material or labor prices serve as the basis for an increase in the GMP.

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor shall have the burden of demonstrating the effect of the claimed delay on the Contract Time, and shall furnish such documentation relating thereto as may be reasonably required by the Owner. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. Work, which estimate shall be seasonably updated by the Contractor. No Claim for any increase in the Contract Time shall be valid unless so made. In the case of a continuing delay, only one Claim is necessary. In no event shall the Contractor be entitled to an increase in the Contract Time for any delay that does not affect the critical path of the Project. The Contractor shall have the duty to use reasonable efforts to mitigate the effects of any event or condition which may give rise to an increase in the Contract Time.

...

§ 15.1.6.3 Any Claim for an increase in the Contract Time is further subject to the conditions and limitations in Section 8.3.

...

2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, for losses arising from inefficiency, lost productivity, lost opportunities, and for loss of profit, except anticipated profit arising directly from the Work-profit on Work properly performed.

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 15.1.7 shall be deemed to ~~preclude assessment (i)~~ preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. ~~the Contract Documents, (ii) limit the Contractor's indemnity obligations under the Contract Documents to the Owner and the other Indemnitees regarding claims by third-parties, regardless of whether such claims include consequential damages, or (iii) limit the Contractor's liability for damages (whether consequential or otherwise) that would be covered by available insurance in the absence of this Section.~~

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§ 15.2.9 Claims arising out of or relating to the interpretation, construction, or performance of the Contract Documents, or breach thereof, shall be resolved in accordance with this Section 15.2. Unless ordered by the Owner to suspend all or any portion of the Work, the Contractor shall proceed with the performance of the Work without any interruption or delay during the pendency of any of the dispute resolution procedures herein and shall comply with any orders which the Owner may issue regarding the acceleration of all or any portion of the Work in accordance with the

terms of the Contract. During the pendency of any of the dispute resolution procedures, the Owner shall continue to make all payments which are not in dispute in accordance with the provisions of the Contract Documents.

**§ 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 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution. The Owner and the Contractor shall endeavor to resolve any claim, dispute or other matter in question arising out of or relating to the Project, the Work or the Contract Documents (a "dispute") by negotiations between duly authorized representatives of the parties. If such duly authorized representatives are unable to resolve any dispute within thirty (30) days after written notice of such dispute is given by either party to the other, the matter shall be subject to arbitration by either party as set forth below; provided, however, that at the written request of either the Contractor or the Owner (either prior to or after the filing of a demand for arbitration), the Owner and the Contractor shall submit the dispute to mediation with a mediator selected by the mutual agreement. If the Owner and the Contractor cannot reach an agreement on the selection of a mediator, either party may file a formal request for mediation with the AAA and a mediator will be selected in accordance with the current mediation rules of the AAA. The procedures for the mediation (including the requirements for any exchange of information between the parties) shall be established by the mediator. Each party shall bear its own attorneys' fees and costs of the mediation and the parties shall share in the fees and expenses of the mediator. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (with each party bearing its own attorneys' fees and costs). All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any mediation company employees, are confidential, privileged and inadmissible for any purpose (including, without limitation, impeachment) in any litigation, arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable solely as a result of its use in the mediation. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Notwithstanding the foregoing, (1) nothing herein shall be deemed to deprive a party of its rights to seek injunctive relief when irreparable harm is threatened and (2) if any dispute shall arise or remain unresolved prior to the expiration of the period for negotiation (and the period for mediation if requested by the Owner) at a time when the applicable statute of limitations or repose would expire, arbitration may be instituted to satisfy the applicable statute of limitations or repose, but the parties agree that such arbitration shall be stayed until sixty days following the expiration of the period for negotiation (and the period for mediation if requested by the Owner or Contractor). The provisions of this Section 15.2 requiring negotiation (and mediation if requested by the Owner or Contractor) prior to commencing arbitration, may be enforced by the arbitrator or AAA (and any party seeking to enforce such provisions shall be entitled to an order for specific performance therefor), and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.

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**§ 15.4.4.1** ~~Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party~~ The Owner, 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).

The Owner 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. The Contractor consents to being joined by the Owner in any other arbitration proceeding involving the Project to which the Owner is a party, including, without limitation, any arbitration proceeding between the Owner and the Architect, in the event that such proceeding involves or is likely to involve an issue regarding the Work or the Project. 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.

**§ 15.4.4.2** ~~Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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.~~

# **Certification of Document's Authenticity**

## **AIA® Document D401™ – 2003**

I, \_\_\_\_\_, 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 09:08:31 ET on 08/30/2021 under Order No. 3343451608 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™ – 2017, 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.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*