



# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

for the following PROJECT:  
(Name and location or address)

**THE OWNER:**

(Name, legal status and address)  
Ozarks Technical Community College  
1001 East Chestnut Expressway  
Springfield, Missouri 65802

Telephone: (417) 447-4810

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**THE ARCHITECT:**

(Name, legal status and address)

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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 (as defined in Section 7.2, herein), (3) a Construction Change Directive (as defined in Section 7.3, herein) 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 requirements.

#### § 1.1.2 THE CONTRACT

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

#### § 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract 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 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 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 and certify termination of the Agreement under Section 14.2.2.

#### § 1.1.9 SCOPE OF WORK

The Contractor's Scope of Work shall be as set forth in the Contract.

**§ 1.1.9.1** The Contractor shall furnish all labor, materials, supplies, equipment (including all utilities during construction and until the Owner's acceptance of the Work) and superintendence for performing all operations necessary to complete all requirements of the specified Work in accordance with the Contract.

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§ 1.1.9.2 All Work shall be done in accordance with the Contract, shall at all times observe and comply with all Federal and State laws, local ordinances and lawful regulations of the particular locality which may affect the completion of the Work and shall meet the approval of inspection authorities having jurisdiction.

§ 1.1.9.3 All materials of every kind and description to be incorporated into the Project are to be new unless otherwise noted on drawings and of the quality as specified in the Contract. No substitution of materials or manufacturers herein specified shall be made without samples of designated materials having been submitted to the Owner for written approval.

#### § 1.1.10 PROPOSAL REQUEST

A Proposal Request is a written request to the Contractor from either the Owner or the Architect for a proposed cost, time change, material, equipment or other change in the Work.

### § 1.2 CORRELATION AND INTENT OF THE CONTRACT

§ 1.2.1 The intent of the Contract is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract is 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 and reasonably inferable from them as being necessary to produce the indicated results.

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

- .1 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall present an affidavit from the manufacturer when requested by the Architect or required in the Specifications, certifying that the product complies with the particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance.
- .2 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract, or if accepted as a Change in the Work.

§ 1.2.4 Drawings shall not be scaled to determine dimensions. If dimensions appear to be insufficient or incorrect, the Contractor shall request clarification from the Architect.

§ 1.2.5 In the case of any discrepancy between Drawings and Specifications, the Specifications are to govern. If there is a discrepancy in Drawings, between large and small scale details, the larger scale details are to govern.

§ 1.2.5.1 Notwithstanding the above, in the case of inconsistency between Drawings and Specifications, or within either Document not clarified by Addendum, the quality or quantity most consistent with the intent of the Contract, as reasonably determined by the Owner, shall control.

§ 1.2.5.2 If a conflict or omission identified by the Contractor is not otherwise resolved in accordance with this Article 1.2, then the Contractor shall consult the Architect for an interpretation and decision. Such decisions will be expressed in writing in the form of Architect's supplemental instructions, replies to the Contractor's request for information (hereinafter "RFI"), Construction Change Directives and Change Orders. If the Contractor fails to bring a known conflict or omission to the attention of the Architect prior to proceeding with the affected Work, then the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligation.

§ 1.2.5.3 If a portion of the Work is shown graphically or by symbol and described in narrative, then it is presumed that similar graphic depictions or symbols shall be governed by the same narrative description. In the event of any application of this rule that the Contractor knows would be contrary to good construction practice or logic, the

Contractor shall bring the issue to the attention of the Owner and the Architect for an interpretation before proceeding with that portion of the Work.

**§ 1.2.5.4** All Work that may be called for in the Specifications and not shown on the Drawings, or shown on the Drawings and not called for in the Specifications shall be executed and furnished by the Contractor as if described in both. The Specifications, General Conditions and Drawings are complimentary and what is called for by one shall be binding as if called for by all.

**§ 1.2.5** If Work described in the Contract is required in conditions making it impossible to execute in a reasonably acceptable manner considering normal industry trade-practices due to: i) congested work area, or ii) impossible or impracticable design requirements, the Contractor and the Architect are responsible for resolution and the Contractor shall request an interpretation and clarification from the Architect and Owner before proceeding. If no such request is made, no Claim shall be made by the Contractor for increased time or cost based on such known conditions.

**§ 1.2.6** The Contractor shall cause its Subcontractors (as defined in Section 5.1.1, herein) to observe and comply with the Contract to the extent applicable to their subcontract work. All construction subcontracts entered into by the Contractor shall incorporate by reference these General Conditions.

**§ 1.2.7** Specifications and Addenda are effective upon date of issue. Proposal Requests are not effective until a signed Change Order is issued.

**§ 1.2.8** Whenever the Contract reasonably implies materials or installation are necessary to produce the intended results, but do not fully detail or specify such materials, the Contractor shall provide the materials and labor required for installation nonetheless.

**§ 1.2.9** It is intended throughout that all Work be fully completed, and that all anchorage, fastenings, rough hardware items, scribing and fitting as necessary, painting and finishing, together with all shop and field equipment as needed for handling, manufacturing, assembling, hauling, hoisting, etc., be supplied whether or not directly specified or shown on the drawings. Wherever the nature of the Work may need patching, touch-up and repairing to complete it properly, that also shall be supplied.

**§ 1.2.10** Should the Contractor, its Subcontractors or their material suppliers discover, based upon their review of the Contract, that any material, equipment and/or its installation is indicated or specified in a manner not approved by the manufacturer or not consistent with normal installation procedures or not able to be covered by warranty, the Contractor shall notify the Architect and the Owner in writing and receive instructions. Failing to do so, the Contractor assumes the risk, and shall replace as reasonably necessary, the material or equipment with other equivalent items suitable to the installation as approved by the Architect at no additional cost to the Owner subject to the allowance, if any, provided in the Agreement.

**§ 1.2.11** If unworkable and difficult conditions or interference of various trades occur, all facts shall be given to the Architect and the Owner for a decision, especially where appearance of the Work may be involved. Should Contractor object to the decision rendered by the Architect and Owner, the dispute shall be subject to resolution pursuant to Article 15.

### **§ 1.3 CAPITALIZATION**

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

### **§ 1.4 INTERPRETATION**

**§ 1.4.1** In the interest of brevity the Contract frequently omits 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.

**§ 1.4.2** Drawings, Specifications, General and Supplementary Conditions are essential parts of the Contract and are incorporated herein by reference.

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

§ 1.5.1 Ownership of the Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants as Instruments of Service is governed by the Owner-Architect Agreement. Any designs prepared by or furnished through the Contractor for a design-build system or component shall be the sole property of the Owner. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. Notwithstanding anything to the contrary stated herein, it is expressly understood that the Contractor's project control system, including without limitation, estimating, scheduling, purchasing, cost reporting and project engineering systems and software, and all modifications, additions or alterations thereto, are and shall remain the sole property of the Contractor.

§ 1.5.2 The Contractor may retain one (1) record set of the Contract Documents. All other sets of the Contract Documents shall be returned or suitably accounted for to the Owner on request, upon completion of the Work or termination of the Contract. Such Contract Documents are not to be used by the Contractor or any Subcontractor or material or equipment supplier on other projects without the specific written consent of the Owner. The Contractor and its Subcontractors are authorized to reproduce and use applicable portions of the Contract Documents only for use on this Project in execution of the Work.

§ 1.5.3 The Project design, as depicted in the Drawings and Specifications, is deemed confidential and may be shared by the Contractor with Subcontractors, suppliers, employees, consultants and public officials on a need-to-know basis only for use in connection with the Work. The Contractor shall not provide copies of the Drawings or Specifications to other third parties not involved in the procurement or construction of this Project without the Owner's written consent.

## § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract .

## § 1.7 EXECUTION OF CONTRACT

§ 1.7.1 The Agreement shall be signed by the Owner and Contractor.

§ 1.7.2 Execution of the Agreement by the Contractor will be a representation that the Contractor has carefully examined and understands the intent of the Contract, that the Contractor has visited the Project site and has reviewed the conditions under which the Work will be performed (including labor availability, codes and regulations as pertain to execution of Work only, hazards, procedures, construction means and methods necessary and weather conditions), and that the Contractor has correlated its observations with the requirements of the Contract.

§ 1.7.3 The commencement of any Work by the Contractor on the Project site shall constitute the legal and binding acceptance by the Contractor of the Agreement if signed by the Owner and received by the Contractor prior to the commencement of such Work. For purposes of this Section, the mobilization of equipment, delivery of materials or the performance of actual labor on the Project site shall constitute a "commencement" of the Work by the Contractor. The Owner reserves the right, however, to insist on a signed Agreement as a precondition to any payment to the Contractor.

## 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 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. The Owners' authorized representative shall represent the Owner and communications given to the authorized representatives shall be binding as if given to the Owner. Except as otherwise provided in Section 4.2.1 herein, 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 (15) 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.

§ 2.1.3 The Owner's representative is to provide services solely for the benefit and protection of the Owner and not for the Contractor or the Architect. The presence or participation of the Owner's representative on site during construction does not relieve the Contractor of its responsibilities under the Contract. Any action by the Owner's representative to point out errors, defects or other problems with the Work does not alter the Contractor's role and responsibility to perform its Work in accordance with the Contract as it is first and foremost the Contractor's responsibility (not the Owner's) to perform in accordance with the Contract.

## § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Contractor may request reasonable evidence that the Owner has necessary financing for the Project as set forth in Section 3.1.2 of the Agreement.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract, including those required under Section 3.7.1 herein, the Owner 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. The Contractor shall pick up all building, demolition and related permits paid for by the Owner and shall provide a copy to the Owner, but the Contractor shall retain the original at the Project site until final completion of the Work, when it shall be delivered to the Owner with the close-out documents.

§ 2.2.3 The Owner, as applicable and upon request of Contractor, shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. This shall include a land survey of the Project site, providing, as applicable: grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning and deed restrictions; boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; available information concerning services and locations of public utility lines, above and below grade, including inverts and depths; and information regarding the existence and location of private utilities and other improvements. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner to the same extent the Owner may rely on the accuracy of the information, but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract 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.

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

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

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract as required by Section 12.2 herein, or repeatedly fails to carry out Work in accordance with the Contract, 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. herein.

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

§ 2.4.1 **Owner's Right to Carry Out the Work.** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract, and fails within a seven (7) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case the Contractor shall be charged the reasonable cost of correcting such deficiencies incurred by the Owner, including, but not limited to, the Owner's expenses and compensation for the Architect's additional services made necessary by such default,

neglect or failure, plus ten percent (10%) of the cost of the corrective work to cover the Owner's internal administration expenses. If such corrective costs are to be deducted from payments due the Contractor and payments then or thereafter due the Contractor are not sufficient to cover such amounts, or if such corrective costs are to be deducted from the Contract Sum and the unpaid balance is insufficient to cover such costs, the Contractor shall pay the difference to the Owner.

**§ 2.4.2 Failure to Maintain Construction Schedule.** In addition to any other rights the Owner may have under Section 2.4.1 or elsewhere in the Contract or by law, if the Contractor, without any fault of the Owner or those for whom the Owner is responsible, fails to supply sufficient manpower, equipment or materials, or fails to maintain the Construction Schedule, or otherwise fails to diligently prosecute the Work in accordance with the requirements of the Contract, then:

- .1 the Contractor shall propose a recovery schedule to correct the delay;
- .2 the Contractor will furnish such additional labor and/or services, or work sufficient overtime as may be necessary, to make progress conform to the Construction Schedule. Failure to adhere to the Construction Schedule, or failure to take steps to regain the Construction Schedule, shall constitute default subject to the terms of the Contract;
- .3 if within seven (7) days after the Contractor's receipt of written notice from the Owner the Contractor fails to take reasonable steps to adequately address such deficiencies, the Owner may take such steps as are necessary to supplement the Contractor's workforce without voiding the Contractor's warranties as to the Work actually performed by the Contractor including, but not limited to providing supplemental labor or equipment or hiring of other contractors in which case the Owner and its other contractors shall be entitled to use the materials, tools, scaffolding and equipment owned by the Contractor on site.

**§ 2.4.3 Labor Conditions and Disputes.** It is understood that contracts will be awarded and labor will be employed on the Project without discrimination as to whether employees of the Owner, Contractor, Subcontractors, Sub-subcontractors or others employed by the Owner are members or non-members of any labor organization.

**§ 2.4.4 Notice to Surety.** Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

#### **§ 2.4.5 OWNER'S DIRECT PAYMENT TO SUBCONTRACTORS AND MATERIAL SUPPLIERS**

**§ 2.4.5.1** If the Contractor is in default of its payment obligations to its Subcontractors for reasons not attributable to the Owner, the Owner reserves the right to make direct payments to any Subcontractor and to deduct such amounts from the Contractor's next Application for Payment if the Owner has already paid the Contractor for such Work. The Owner shall provide seven (7) days prior written notice to the Contractor before making any direct payment to a Subcontractor, to provide Contractor the opportunity to respond as to whether the Subcontractor has been fully paid for Work performed and the grounds on which the Contractor is withholding payment, if any, from the Subcontractor.

**§ 2.4.5.2** The Owner is not obligated herein to make any direct payments to a Subcontractor, and such payments do not create any obligation to make further payments to any Subcontractor.

#### **§ 2.5 EXTENT OF OWNER RIGHTS**

**§ 2.5.1** The rights stated in this Article 2 and elsewhere in the Contract are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract, (ii) at law or (iii) in equity.

**§ 2.5.2** In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract.

### **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 as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the

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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 Contractor's authorized representative shall represent the Contractor and communications given to the authorized representative shall be as binding as if given to the Contractor. The term "Contractor" means the Contractor or the Contractor's authorized representative. The term "Contractor" as used in this Agreement, A201-2007 as modified, shall mean the Construction Manager.

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

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

**§ 3.1.4** The Contractor agrees to comply with the provisions and any applicable local, state or federal ordinance, regulation, statute, or other mandate regarding affirmative action and/or minority/women's business enterprise participation.

**§ 3.1.5** The Contractor shall staff the Project with a competent superintendent and project manager, fluent in English, who shall not be changed without the Owner's consent, which consent shall not be unreasonably withheld. In the event that any member of the Contractor's staff assigned to the Project dies, becomes disabled or leaves the employ of the Contractor, the Contractor shall so advise the Owner and assign another of its employees with comparable experience and background to fill that position.

**§ 3.1.6** The Contractor shall give preference to Missouri labor and to products of mines, forests and quarries of the State of Missouri when they are found in marketable quantities in the State, and all such materials shall be of the best quality and suitable character that can be obtained at reasonable market prices, all as provided for in Section 8.280, Missouri Revised Statutes, Section 34.359 R.S.Mo, and cumulative supplements, incorporated herein by reference.

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

**§ 3.2.1** Execution of the Contract, or commencement of the Work in the absence of a signed Contract, by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract. Prior to execution of the Agreement, the Contractor and each Subcontractor evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the safety of the Contractor's Work performed on the Project site. The Contractor and its Subcontractors shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Subparagraph 3.2.1.

**§ 3.2.2** Because the Contract is complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the Contract relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3 herein, 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 Owner and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner or 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** Upon discovery that the Contract is not in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall promptly report such nonconformity to the Owner and Architect as a request for information in such form as the Owner or Architect may require.



**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, 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 and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Owner or Architect. If the Contractor is then instructed by the Owner to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

### **§ 3.4 LABOR AND MATERIALS**

**§ 3.4.1** Unless otherwise provided in the Contract, 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 authorized by the Architect in accordance with Sections 3.12.8 or 7.4 herein, the Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.2.1** By making requests for substitutions, the Contractor: 1) represents it has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified in the Contract; 2) warrants and represents it will provide the same or better warranty for the substitution that the Contractor would for that specified; and, 3) certifies that the cost proposal for the substitution is complete and includes all related costs whatsoever connected with this substitution (except the Architect's redesign costs, if any). The Contractor will coordinate with the Owner, the Architect and affected Subcontractors and suppliers the installation of the accepted substitute product, making such changes as may be required for the Work to be complete in all respects. To the extent deemed necessary by the Architect and in support of the supplier's claims of equality to that which is specified in the Contract, producers of substitute materials will be required to furnish samples, literature, warranty, test and performance data, record of other installations, names of owners, architects, contractors, and subcontractors, as references, statements of current financial condition, etc.

**§ 3.4.2.2** The Contractor shall investigate the compatibility of proposed substitution with other trades, and shall notify the Owner and the Architect of any additional revisions required. The Contractor shall follow the substitution procedures outlined in the Contract.

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

**§ 3.4.4** The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use its best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

**§ 3.4.5** Pursuant to Missouri Revised Statutes, Section 290.550 *et seq.*, when there is "a period of excessive unemployment," only "Missouri laborers" and "laborers from non restrictive states" will be used on "public works," all as defined by statute, except that other laborers may be used when such laborers are not available or are incapable or performing the particular type of work if certified by the contractor and approved, to the extent enforceable under the law.

**§ 3.4.6** The Contractor, and its Subcontractors, shall not discriminate:

- .1 against recipients of service on the basis of race, color, religion, national origin, sex, handicap or age;
- .2 against any employee or applicant for employment on the basis of race, color, religion, national origin, sex or otherwise qualified handicapped status;
- .3 against any applicant for employment or employee on the basis of age, where such applicant or employee is between ages 40 and 70 and where such contractor employs at least 20 persons;
- .4 against any applicant for employment or employee on the basis of that person's status as a disable or Vietnam-era veteran.

### **§ 3.5 WARRANTY**

*(Paragraph deleted)*

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

**§ 3.5.2** The Contractor's warranty in Section 3.5.1 shall not be construed to replace, change or otherwise limit any statutory or common law warranty rights of the Owner, or any other Contract requirements.

**§ 3.5.3** The Contractor's warranty in Section 3.5.1 is not limited to one (1) year but is governed by the applicable statute of limitations for breach of contract.

**§ 3.5.4** The Contractor's obligation to correct Work under Section 12.2 of these General Conditions is not the limit of the Contractor's liability and shall not constitute a waiver of the Owner's rights under Section 3.5.1 nor elsewhere in the Contract nor as otherwise provided by law. Nothing herein shall limit the Contractor's liability under any applicable statute of limitations, manufacturer warranty, or any longer warranties required by the Contract.

**§ 3.5.5** Notwithstanding anything to the contrary set forth herein, the Contractor's warranty as to defects or deficiencies within materials and equipment specified in the Contract Documents that are installed as part of the Work, shall be limited to the period of one (1) year following Substantial Completion. If requested by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment so installed, to conform that such items comply with the specifications of the Contract Documents. If after expiration of the one (1) year period following Substantial Completion, any defect or deficiency is discovered in materials or equipment specified in the Contract Documents, the Owner shall have the right to proceed against the manufacturer and/or supplier and Contractor agrees to preserve for the Owner's benefit and assign to the Owner all manufacturer's and/or supplier's warranties for such materials and equipment. The one (1) year limitation set forth herein applies solely to defects or deficiencies in materials and equipment as specified in the Contract Documents and covered by a

manufacturer's warranty and does not apply to, or in any way limit, the rights of the Owner in the event the Contractor or other parties for whom the Contractor is responsible, failed to properly install the materials or equipment or otherwise failed to adhere to the requirements of the Contract Documents.

**§ 3.5.6** The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

### **§ 3.6 TAXES**

*(Paragraph deleted)*

**§ 3.6.1** The Owner is exempt from payment of State of Missouri, County, and City sales or use taxes on the purchase of all building materials and equipment made on behalf of the Owner. Therefore, unless otherwise stipulated, the Contractor shall not include sales taxes in the Work.

**§ 3.6.2** The Owner shall furnish the Contractor an exemption certificate authorizing purchases of tangible personal property and materials to be incorporated into or consumed in the Work. Such certificate is renewable for a given project at the option of the Owner only for the purpose of revising the certificate expiration date as necessary to complete the Project.

**§ 3.6.3** The Contractor shall furnish the exemption certificate to all Subcontractors, and any contractor purchasing materials shall present such certificate to all material suppliers as authorization to purchase, on behalf of the Owner, all tangible personal property and materials to be incorporated into or consumed in the Work, and no other, on a tax-exempt basis. Such suppliers shall execute to the purchasing contractor invoices bearing the name of the exempt entity and the Project identification number. Nothing in this Section shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in constructing, repairing or remodeling facilities for the Owner. All invoices for all personal property and materials purchased under a project exemption certificate shall be retained by the Contractor for a period of five (5) years and shall be subject to audit by the director of revenue.

**§ 3.6.4** Any excess resalable tangible personal property or materials which were purchased for the Project by Contractor under a project exemption certificate, but, which were not incorporated into or consumed in the Work, shall either be returned to the supplier for credit or the appropriate sales or use tax on such excess property or materials shall be reported on a return and paid by the Contractor not later than the due date of the Contractor's Missouri sales or use tax return following the month in which it was determined that the materials were not to be used in the project.

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

**§ 3.7.1** The Contractor shall cooperate with the Owner in obtaining the building permit. The Contractor shall secure, pay for and furnish Owner with copies or certificates of other applicable permits, licenses and inspections necessary for the Contractor to execute and complete the Work.

**§ 3.7.2** The Contractor shall comply with and give notices required by specifications and regulations in addition to all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

**§ 3.7.3** If the Contractor performs Work that it knows is contrary to specifications and regulations in addition 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 and damages sustained by the Owner due to the Contractor's failure.

**§ 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 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, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than twenty-one (21) 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 an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed by the Contractor's (i) prior inspections, tests, reviews, and preconstruction services for the Project, or (ii) inspections, tests, reviews, and preconstruction services that the contractor had the opportunity to make or should have performed in connection with the Project.

**§ 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, 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. 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,

- .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 also shall be included 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.

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

### **§ 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 furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent.

**§ 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 SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit to the Owner and Architect a construction milestone critical path schedule for the Work which, when approved by the Owner, shall become a part of the Contract (hereinafter, the "Construction Schedule"). The Construction Schedule shall not exceed time limits current under the Contract, shall be revised weekly or as otherwise required by the Owner, and shall provide for expeditious and practicable execution of the Work.

**§ 3.10.2** The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's and Owner's review. The Architect's and Owner's review shall not unreasonably be 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. A copy of such submittal schedule shall be submitted to the Architect and the Owner by the Contractor prior to the Contractor's First Application for Payment. No payment shall be due until the submittal schedule is received, nor shall the Contractor be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. Submittal of the submittal schedule in accordance with the requirements herein is a condition precedent to the Contractor's ability to file any Claim.

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

**§ 3.10.4** Failure to adhere to the Construction Schedule, as amended and approved by Owner, shall be a basis for the Owner to declare a default.

**§ 3.10.5** The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Architect and the Owner of any delays or potential delays. The Contractor shall provide updates comparing actual progress with the Construction Schedule (sometimes referred to as "progress reports") as set forth in Subparagraph 3.10.1. In the event any progress report indicates any delays, the Contractor shall propose a recovery schedule to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any milestone date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

**§ 3.10.6** In the event the Owner reasonably determines that the performance of the Work, as of a milestone date, has not progressed or reached the level of completion required by the Contract, the Owner shall have the right to direct the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures") and Contractor shall proceed with Extraordinary Measures to the extent they can reasonably be implemented in an effort to accelerate the Work. Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

- .1 If the delay to or deviation from the Construction Schedule is due to the acts or omissions of the Contractor or those for whom the Contractor is responsible, and not as a result of any concurrent delay or deviation caused by the Owner or those for whom the Owner is responsible, the Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.6.
- .2 If the delay to or deviation from the Construction Schedule is due to the acts or omissions of the Owner or those for whom the Owner is responsible, or is due to occurrences beyond the control and responsibility of the Contractor and which would otherwise support an extension of the Contract Time, the Contractor shall, if directed by the Owner to accelerate the Work, be entitled to recover all costs and expenses incurred to implement the Extraordinary Measures including, premium costs for shift and/or overtime work, increased costs of supervision, loss of efficiency due to proceeding on an accelerated basis, and related equipment or materials costs that would not otherwise have been incurred by the Contractor.
- .3 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.6 as frequently as the Owner deems necessary based upon the standard of commercial reasonableness to ensure that the Contractor's performance of the Work will comply with any milestone date or completion date set forth in the Contract.

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction ("As-Built Drawings"), and one copy of approved Shop Drawings, Product Data, Samples and

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similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **§ 3.12 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 or Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate materials or equipment for some portion of the Work.

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

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

**§ 3.12.5** The Contractor shall review for completeness and compliance with the Contract, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract in accordance with the submittal schedule approved by the Architect and 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 and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract. No Claims will be accepted from the Contractor in violation of this Subparagraph when Contractor has submitted an approved Shop Drawing, Product Data or Sample.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract requires submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Any Work performed prior to receipt of an approved Shop Drawing, Product Data or Sample is at the Contractor's sole risk and subject to rejection at Contractor's cost.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal by a separate written document and attached transmittal 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 written notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design

professional related to systems, materials or equipment are specifically required of the Contractor by the Contract, the Owner and the Architect will provide all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional and who shall comply with all reasonable requirements of the Owner regarding qualifications and insurance. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract, subject to Section 3.2 herein.

**§ 3.12.10.1** The Contractor shall require that any entity engaged by it to provide design services per Section 3.12.10 will maintain Professional Liability Insurance as set forth in Article 11, below. The Contractor shall furnish the Owner with a certificate of insurance evidencing such coverage. No submittals shall be accepted unless the certificate of insurance is received and approved by the Owner.

**§ 3.12.10.2** The Architect's services in connection with design-build portions of the Work shall be limited to the review by the Architect of such designs only for conformance to the aesthetic aspects of the architectural design and major space limitations; and the coordination of components designed by the Contractor and/or its Subcontractor or supplier with the Architect's design, to check for interferences, interface and compatibility of the design-build component with the Architect's design. The Architect has an obligation to review submittals for general conformance to the overall design of the Project and shall report any observed conflicts to the Owner and Contractor. The Architect shall assist the Owner in determining if the design-build portion of the Work complies with the performance or design criteria required by the Contract.

### **§ 3.13 USE OF SITE**

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract and shall not unreasonably encumber the site with materials or equipment. The Contractor shall be responsible for any damage caused to adjacent property or access roads by Contractor, its Subcontractors or Suppliers during the course of their Work on the Project including, but not limited to, soil erosion or run off due to failure to maintain all required storm water runoff protection on the site at all times.

**§ 3.13.2** The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner other than signage as required by law.

### **§ 3.14 CUTTING AND PATCHING**

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

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

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by performance of the Work. At final completion of the Work, the Contractor shall remove waste materials, rubbish, tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up within twenty-four (24) hours from written notice from the Owner, the Owner may do so, the cost of which shall be deducted from the Contractor's next following Application for Payment.

**§ 3.15.3** The Contractor shall be responsible to wash the mud and gravel off its vehicles (including vehicles operated by its Subcontractors and Suppliers) prior to leaving the site. Any mud or gravel that is tracked onto the surrounding roads shall be removed immediately. The Owner has the right to clean up surrounding roads immediately upon the Contractor's failure to do so, the cost of which shall be deducted from the Contractor's next following Application for Payment.

### **§ 3.16 ACCESS TO WORK**

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

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify and hold the Owner and Architect harmless from and against all claims, suits, liabilities, damages, losses, fines, costs, and expenses, including, but not limited to, reasonable attorneys' fees, court costs, investigation costs, expert witness and consultant costs, and all other reasonable costs and expenses (collectively hereafter "Liabilities") on account thereof, but shall not be responsible for such defense or Liabilities when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such Liabilities unless such information is promptly furnished to the Architect.

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Architect, the Owner, and their respective subsidiaries, shareholders, members, officers, directors, agents, consultants, employees, representatives and related or affiliated companies, trustees, receivers, successors and assigns (collectively, the "Indemnitees" plural or "Indemnitee" singular) 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, 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 and recoverable under the property insurance policy as set forth in Section 11.7 herein), but only to the extent caused by the negligent acts or omissions of the Contractor, a 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. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any Indemnitee 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 defense and indemnification obligations 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.

**§ 3.18.3** The Contractor's obligations under this Section 3.18 shall survive the expiration or termination of the Contract by either party. Any Indemnitee who incurs attorney's fees and legal costs in any action to enforce the Contractor's indemnity obligations shall be entitled to recover the same from the Contractor. The Contractor agrees to require all Subcontractors on the Project to include in their own contracts with the Contractor a provision requiring the Subcontractor to indemnify and defend the Owner and the Architect for any claims arising out of the negligence or breach of contract by the Subcontractors or their employees.



## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

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

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

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

§ 4.1.4 **Deduction for Architect's Additional Services.** The Contractor shall be responsible for costs actually incurred by the Owner for Architect's Additional Services and those of its subconsultants due to:

- .1 Responses to RFI's, including, but not limited to, the Architect's site visits, where such information is available to the Contractor from a study and comparison of the Contract, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .2 Evaluations of substitutions proposed by the Contractor and making subsequent revisions to the Contract resulting therefrom;
- .3 Repeated reviews of the same Shop Drawing, Product Data, Sample or similar submittal of the Contractor, after the initial review and one (1) re-submittal and for all reviews where re-submittals exceed thirty percent (30%) of the Contractor's total submittals;
- .4 Site visits beyond the number of regularly scheduled site visits for which the Architect has contracted, when such site visits are due to Contractor defects in Work or failure to meet the Construction Schedule or otherwise adhere to the Contract;
- .5 More than one (1) inspection of the Work to determine whether such portion of the Work has reached Substantial Completion or whether punch list items have been completed;
- .6 More than one (1) inspection of the Work to determine final completion;
- .7 Cost of time for the Owner's Representative (other than the Architect) spent dealing with any of the above items 1 through 6.

§ 4.1.5 The Owner shall give the Contractor written notice within ten (10) days of receipt of written request from the Architect for such Architect's Additional Services. If such notice is given, and not remedied by the Contractor within ten (10) days of receipt of written notice by the Owner, then the Owner may deduct such Architect's Additional Services by a unilateral Change Order, which does not require the Contractor's signature or approval. The Contractor may contest any such deduction by making a Claim in accordance with Section 4.3, below. However, nothing in Section 4.1.4 or 4.1.5 shall require the Contractor to pay for such Architect's Additional Services when made necessary due to the actions of the Owner or Architect, and not due to the fault or neglect of the Contractor or a Subcontractor.

### § 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 a representative of the Owner 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.

§ 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 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. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract and from the most recent Construction Schedule submitted by the Contractor, and (2) 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 nor shall they have control over or charge of, nor be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

The Owner and Contractor may communicate directly with one another, but shall endeavor to include the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. Any communications, either oral or written, between the Contractor and the Architect shall include or be copied to the Owner; any communication, either oral or written, between the Contractor and any of Architect's consultants shall also include or be copied to the Architect and the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract. 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 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. It is the Contractor's obligation to perform Work per the Contract with or without any inspection by the Architect, who is on site solely for the Owner's benefit, not for the benefit of the Contractor or its sureties or insurers.

§ 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. 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 permit adequate review. The Contractor shall allow a minimum of ten (10) working days from receipt for the Architect's review of any Shop Drawing, Product Data or Sample; and a minimum of ten (10) working days from receipt for the Architect's review of any re-submittal. 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. 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 authorize 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 duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract 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.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract 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 Deleted.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness but no earlier than five (5) working days. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. In the case of multiple requests for review and response to information by the Architect, the Contractor shall provide to the Architect a prioritized list.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

§ 5.2 Deleted.

*(Paragraphs deleted)*

### § 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 The Contractor shall require in writing 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, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract with respect to the Work to be performed by the Subcontractor. 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 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.

§ 5.3.2 The Owner, upon its sole discretion, shall be an intended third-party beneficiary of all the Contractor's rights under the subcontract agreements.

### § 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 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in *(Paragraphs deleted)*

writing. 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 thirty (30) days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

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

**§ 5.4.4** In the event of an assignment as set forth herein, the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment and for those obligations that accrued prior to the termination to the extent that the Owner has not made payment therefore to the Contractor.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

**§ 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 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 other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

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

### **§ 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.

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

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

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

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

### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner will allocate the cost among those responsible as further provided pursuant to Section 3.15.2 herein.

## 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.

§ 7.1.2 A Change Order shall be based upon written 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, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Paragraph 7.3 and Subparagraph 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment, shall be the basis of any claim to an increase in any amounts due under the Contract or a change in any time period provided for in the Contract.

### § 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 Any and all costs, direct and indirect, plus any time extensions related to such change shall be included in the Change Order and the execution of the Change Order by Contractor shall constitute affirmation that there are no other related costs or time impacts as a result of the changed Work.

§ 7.2.3 Contractor shall respond to any Proposal Request from the Architect within ten (10) working days after its receipt and shall submit a proposal with the cost and time impact of the proposed changed Work.

§ 7.2.4 In such proposals, profit and overhead shall be computed as set out per the Contract.

§ 7.2.5 In no event shall Change Orders be made on a time-and-material basis, other than under Section 7.3.3, nor shall any costs exceed those unit prices originally provided the Owner and Architect.

§ 7.2.6 Upon Owner's approval of Contractor's proposal, the Architect will issue a Change Order.

§ 7.2.7 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Contract Time and the construction schedule.

## § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change 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.

§ 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, but in no case in an amount which exceeds the unit prices stated in the Contract:

- .1 Mutual acceptance of a negotiated lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract 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 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract 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 quantities of Work proposed will cause substantial inequity to the Owner, the applicable unit prices shall be equitably adjusted.

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner shall determine the method and 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, a fee 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 Owner or Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor in the field or at factories or workshops, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .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; and
- .4 Costs of additional premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 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 Owner or 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 Contractor or Owner may submit 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.

§ 7.3.11 The Contractor shall respond to any Construction Change Directive or Proposal Request within ten (10) calendar days from the Contractor's receipt thereof in any format (electronic or hard copy). If the Contractor fails to so respond, then the method and the adjustment determined by the Owner under Section 7.3.7 shall be final and binding on the parties. The Owner reserves the right to have such work performed by another contractor if the Contractor fails to so respond.

#### § 7.4 MINOR CHANGES IN THE WORK

With the Owner's written approval, the Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### 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 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 shall mean calendar day unless otherwise specifically defined.

#### § 8.2 PROGRESS AND COMPLETION

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

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

§ 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 by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by fire, labor disputes caused by the Owner's own forces, unusual delay in deliveries, unavoidable casualties or other independent causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and litigation; or by other causes that the Architect determines may justify delay, then the Contractor may submit a Claim pursuant to Article 15. The Contractor shall be responsible to document the impact of such delay upon critical path Work.

§ 8.3.2 Deleted.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract.

**§ 8.3.4** The Owner may direct the Contractor to work overtime, and to accelerate the Work, and if so instructed in writing, the Contractor agrees to work overtime and accelerate the Work to the extent reasonably practicable. If such direction is not due to delays due to the Contractor's fault or neglect, the Owner agrees to increase the Contract Sum and pay the increased costs incurred by the Contractor for such accelerated Work, together with the overhead and profit mark-up agreed for additive Change Orders in the Agreement. Allowable costs for accelerated Work include overtime charges which shall consist of the premium or extra hourly wage incurred by the Contractor, loss of efficiency resulting from such accelerated Work, increased costs of supervision and related equipment or materials costs that would not have otherwise been incurred by the Contractor. No insurance other than proven, payroll-related insurance shall be paid by the Owner based on any premium wage paid, nor will any applicable fringe benefits be paid based on any such premium wage unless required under a labor contract agreement or by law. Authorization for payment of overtime charges must be obtained by the Contractor from the Owner in writing prior to performing the Work and the Contractor is not required to proceed with any such acceleration without such written authorization from the Owner.

### **§ 8.3.5 Weather Delays**

**§ 8.3.5.1** Notwithstanding the foregoing, if the Contractor is delayed in the performance or progress of the Work by Abnormal Weather Conditions (as defined below) then the Contractor shall be entitled to an extension of the Contract Time for the impact on critical path Work provided the Contractor makes Claim in accordance with Article 15. "Abnormal Weather Conditions" shall be defined as temperature and precipitation that are abnormal for the location of the Work as defined by the National Climatic Data Center, based on the previous ten (10) year mean for the Project location.

**§ 8.3.5.2** If Abnormal Weather Conditions are the basis for a Claim for an increase in the Contract 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 critical path Work.

**§ 8.3.5.3** Extensions of the Contract Time for Abnormal Weather Conditions will not be considered as a justification for an increase in the Contract Sum.

**§ 8.3.5.4** The determination as to appropriate extension of the Contract Time shall be made by the Architect at the end of each month, based on the written notices received from the Contractor during the preceding month, the documented site weather conditions and the ten (10) year mean for that location. There shall be no "carry-over" of anticipated bad weather days from one month to another. For example, if March normally has seven (7) rain days and only has five (5), then the anticipated two (2) extra days do not carry into April.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

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

### **§ 9.2 SCHEDULE OF VALUES**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner and the Architect, within ten (10) days of award of the contract for construction, for the Owner's approval, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner or Architect may require. Submission of the schedule of values by the Contractor is a condition precedent to the Contractor's right to payment. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment and shall not be revised without the Owner's prior written approval.

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

**§ 9.3.1** The Contractor shall, consistent with the Agreement, submit to the Architect an itemized Application for Payment prepared in accordance with the approved schedule of values for completed portions of the Work. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current conditional Contractor's claim waiver in a form approved by Owner and duly executed and acknowledged sworn statement showing all Subcontractors and



material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers; (ii) duly executed waivers of mechanics' and material suppliers' claims in a form approved by Owner from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors, establishing payment or satisfaction of payment of all amounts due for work completed during the period of time covered in any previous Application for Payment and for which the Owner previously made payment; (iii) photographs of and invoices for all material stored at or off the site per Section 9.3.2 herein; and (iv) all information and materials required to comply with the requirements of the Contract or reasonably requested by the Owner or the Architect.

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

**§ 9.3.2** Unless otherwise provided in the Contract, 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. The Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed Three Hundred Thousand Dollars (\$300,000.00) at any time without written approval of the Owner.
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner, including, without limitation, recorded financing statements, UCC filings, and UCC searches.
- .3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.
- .4 Representatives of the Owner shall have the right to make inspections of the storage areas at any time.
- .5 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage facility.
- .6 Photographs shall be provided by the Contractor evidencing the condition of materials stored off site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

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

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the

best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment by the Architect and the Owner's subsequent review and approval of the Certificate of Payment will constitute a representation that the Contractor is entitled to payment in the amount certified. 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

### § 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 for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;  
or
- .7 repeated failure to carry out the Work in accordance with the Contract.

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 No payment will be made in contravention of any statute or other applicable law which provides for the withholding of payments for protection of subcontractors or others who have furnished labor or materials in connection with the Work under contract. If at any time Owner has reason to believe that any such subcontractor, laborer, or materialman has not been paid for its labor or materials, then, whether or not required to do so by law, Owner may withhold payment of the amount in question until Contractor has furnished satisfactory evidence that all such persons have been fully paid or their claims otherwise discharged.

### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a properly submitted and properly approved Certificate for Payment, the Owner shall make payment in accordance with the terms of the Agreement, and shall so notify the Architect. Retainage on progress payments shall be as follows unless more stringent retainage requirements are imposed pursuant to the terms of any lending documents:

- .1 The Owner will pay ninety percent (90%) of the amount properly due the Contractor on account of progress payments until the Project reaches Substantial Completion.
- .2 The Owner may, in its sole discretion, consider a reduction in the retainage percentage when the Project reaches fifty percent (50%) completion.
- .3 Upon Substantial Completion, the Owner, Architect and Contractor shall conduct a joint walk through so that the Owner and Architect can identify the incomplete and defective Work and issue a Final Completion punch list (the "Punch List"). Retainage shall thereafter be adjusted to an amount equal to two hundred percent (200%) of the value of the Work remaining to be completed pursuant to the Punch List, including defective work not yet remedied (whether covered by warranty or not), plus an amount sufficient to protect the Owner for liquidated or actual damages, or other charges, liens or offsets due the Owner. The valuation of the Punch List shall be based upon the Owner's reasonable assessment of the costs for the Owner to complete each item of the Work as identified on the Punch List.

**§ 9.6.2** The Contractor shall pay each Subcontractor no later than seven (7) 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. Notwithstanding anything in this Subparagraph 9.6.2 to the contrary, the Owner may elect, in the Owner's sole discretion, to make any payment requested by the Contractor on behalf of a subcontractor of any tier jointly payable to the Contractor and such subcontractor. The Contractor and such subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (i) contract between the Owner and a subcontractor of any tier, (ii) obligations from the Owner to such subcontractor, or (iii) rights in such subcontractor against the Owner. Calculation and payment of retainage shall be as set forth in the Agreement. However, to the extent that a Subcontractor's Work is completed early in the Project and is found to have been properly performed by the Contractor, the Architect and the Owner, the Contractor may request the early release of retainage for that Subcontractor. Upon such request the Architect will review the Work performed by that Subcontractor to confirm that it is Substantially Completed and, if so, will identify punch list items, if any, applicable to that Subcontractor's Work. If the Work is substantially complete and there are no questions or concerns regarding the manner in which the Subcontractor's Work was performed, the Owner will release the retainage applicable to that Subcontractor, subject to the Owner's right to withhold retainage for only the outstanding punch list consistent with the Contract, which punch list retainage will be released thereafter on a monthly basis as such items are completed or corrected.

**§ 9.6.3** The Architect shall have no obligation to furnish information to Subcontractors. All communications from Subcontractors to the Architect shall come through the Contractor.

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

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

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

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

## § 9.7 FAILURE OF PAYMENT

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

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have a right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled. Should the Contractor disagree with the Owner's decision, the disputes will be subject to resolution under Article 15.

## § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract so that the Owner can occupy or utilize the Work for its intended use provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project and whose procurement is the responsibility of the Contractor.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract.

§ 9.8.3 Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's and 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 so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such 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.

## § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided

the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 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.

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

**§ 9.10.1** Upon receipt of the Contractor's written notice by Contractor to Architect and Owner 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 or notify the Contractor of unfulfilled requirements. When the Architect and Owner finds the Work acceptable under the Contract 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 terms and conditions of the Contract and that the entire balance found to be due the Contractor and noted in the final Certificate, upon agreement and acceptance of such Work by the Owner, 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) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner has made payment and 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 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 substantial reason that the insurance will not be renewable to cover the period required by the Contract; (4) consent of surety, if any, to final payment; (5) other data establishing payment or satisfaction of obligations for which the Owner has made payments, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner; (6) executed AIA Documents G706 and G706A, if requested by the Architect or Owner; (7) final conditional waiver and release of all claims in a form acceptable to Owner; (8) completion of the punch list items; and (9) submission to the Architect of all close-out items including, but not limited to permits, recorded easements, As-Built drawings, warranties, operations and maintenance manuals, copies of certificates or other documentation from testing agencies, list of all updated finishes, list of materials as "shelf stock," and final certificate of occupancy. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner under Section 9.3.4 herein, to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.3** 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 only for that portion of the Work that has been fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

- § 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
  - .2 failure of the Work to comply with the requirements of the Contract; or
  - .3 latent defects; or
  - .4 terms of any warranties required by the Contract.

However, nothing in this Subsection shall waive Claims first arising after final payment, nor latent defects.

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

**§ 9.10.6** The Contractor shall furnish the Owner with a certificate of occupancy (or certificate of completion by the governing authority, where applicable) before any final construction payments are made; provided, however, this requirement shall be waived to the extent the failure to obtain the certificate of occupancy (or certificate of completion) is not due to the Contractor's fault or neglect.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

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

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

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

- .1 persons on the Property and other persons who may be affected by the Work;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Property, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the Project 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 erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions solely caused by 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 such 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. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### **§ 10.3 HAZARDOUS MATERIALS**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

**§ 10.3.2** Upon receipt of the Contractor's written 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 such material or substance or who are to perform the task of removal or safe containment of such 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 in the amount of the Contractor's reasonable additional costs of shut-down, 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 materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

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

## § 10.4 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. Any related Claim by the Contractor shall be made pursuant to Article 15.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 CONTRACTOR'S INSURANCE

§ 11.1.1 Contractor shall secure from the date of the Agreement and maintain for such periods of time as set forth below, insurance of such types and in such amounts specified below, to protect Contractor, Owner and others against all hazards or risks of loss described below. All insurance policies related to the Work and secured and maintained by the Contractor as required by Article 11, will include clauses stating each underwriter will waive all rights of recovery, under subrogation or otherwise, against Owner.

### § 11.2 COMMERCIAL GENERAL LIABILITY

§ 11.2.1 Contractor shall secure and maintain from the date of the Agreement and for a period of at least two (2) years from the date of Final Completion of the entire Work commercial general liability insurance ("CGL") with a combined single limit of not less than        Million Dollars (\$) per occurrence and        Million Dollars (\$) annual aggregate. Such CGL insurance shall be on an occurrence basis.

§ 11.2.2 The CGL insurance required herein shall be written on a comprehensive form and shall cover claims and liability in connection with or resulting from the Contractor's operations and activities under the Contract, for personal injuries, occupational sickness, disease, death or damage to tangible property of others arising out of operations or activities of the Contractor, its agents, or any Subcontractors of any tier or by anyone directly or indirectly employed by either of them.

§ 11.2.3 The CGL insurance required herein shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) coverages. There shall be no endorsement or modification of the CGL policy limiting the scope of coverage for liability arising from blasting, explosion, collapse, or underground property damage.

§ 11.2.4 The Owner shall be endorsed as "additional insureds" under the CGL policy. The CGL policy shall also contain a "Separation of Insureds" provision. If Contractor's CGL policy does not contain a "Separation of Insureds" provision, Contractor's CGL policy shall be endorsed to provide cross-liability coverage.

§ 11.2.5 Contractor and Owner waive all rights against each other and their officers and directors, representatives and employees for recovery of damages to the extent those damages are covered by the CGL policy required hereunder.

### § 11.3 AUTOMOBILE LIABILITY

§ 11.3.1 Contractor shall secure and maintain from the date of the Agreement and until Final Completion of the entire Work, insurance, to be on comprehensive form, which shall protect Contractor against any and all claims for all injuries and all damage to property arising from the use of automobiles, trucks and motorized vehicles, in connection with the performance of Work under this Contract, and shall cover the operation on or off the site of the Work of all motor vehicles licensed for highway use whether they are owned, non-owned or hired. Such insurance shall include contractual liability coverage and shall provide coverage on the basis of the date of any accident. The liability limits under such policy shall not be less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage per accident. The Owner shall be endorsed as an "additional insured" under the policy required by Paragraph 11.3.1.

§ 11.3.2 Contractor and Owner waive all rights against each other and their officers and directors, representatives and employees for recovery of damages to the extent such damages are covered by the automobile liability insurance required hereunder.

### § 11.4 WORKERS' COMPENSATION INSURANCE

§ 11.4.1 Contractor shall purchase and maintain workers' compensation insurance and employers' liability insurance which shall protect Contractor from claims for injury, sickness, disease or death of Contractor's



employees or statutory employees. The insurance policies required hereunder shall include an "all states" or "other states" endorsement.

**§ 11.4.2** Contractor's workers' compensation insurance coverage shall be in compliance with all applicable laws, including the statutes of the state where the Project is located. Contractor's employers' liability coverage limits shall not be less than Five Hundred Thousand (\$500,000) each accident for bodily injury by accident or Five Hundred Thousand (\$500,000) each employee for bodily injury by disease.

**§ 11.4.3** Contractor and Owner waive all rights against each other and their officers and directors, representatives and employees for recovery of damages to the extent these damages are covered by the workers' compensation and/or employers' liability insurance required hereunder.

#### **§ 11.5 UMBRELLA LIABILITY INSURANCE**

**§ 11.5.1** Umbrella liability insurance to follow form over the Contractor's primary general liability, automobile liability and employer's liability insurance policies with limits of not less than \_\_\_\_\_ Million Dollars (\$ \_\_\_\_\_) inclusive per occurrence per project. Contractor shall maintain umbrella liability insurance for a minimum of two (2) years after Final Completion of the Work.

#### **§ 11.6 GENERAL REQUIREMENTS FOR LIABILITY INSURANCE COVERAGES**

**§ 11.6.1** Any insurance coverages shall be provided by insurance companies that are duly licensed to conduct business in the state where the Project is located as an admitted carrier. All coverages required of the Contractor shall be obtained and paid for by Contractor, although subject to being a Cost of The Work to the extent permitted in the Agreement. Any approval of the form, content or insurance company by Owner shall not relieve the Contractor from the obligation to provide the coverages required herein.

**§ 11.6.2** All insurance coverage procured by the Contractor shall be provided by insurance companies having policyholder ratings no lower than "A-" and financial ratings not lower than "X" in the Best's Insurance Guide, latest edition in effect as of the date of the Contract, and subsequently in effect at the time of renewal of any policies required by the Contract. Insurance procured by Contractor covering the additional insureds shall be primary insurance and any insurance maintained by Owner shall be excess insurance.

**§ 11.6.3** Deleted.

**§ 11.6.4** The Contractor shall furnish Owner with evidence of insurance on ACORD Form 25 (or its most current edition under insurance industry standards) which indicate the Contractor and Owner are covered by the required insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates, policies or binders shall be submitted to Owner within ten (10) days from the date of the execution of the Agreement. All certificates, policies and binders shall be executed by a duly authorized agent of each of the applicable insurance carriers and shall contain the statement that: "The insurance covered by this certificate will not be canceled or altered except after thirty (30) days' written notice has been received by Owner." All certificates, policies and binders shall be in a form acceptable to Owner. Contractor shall provide certified copies of all insurance policies required above within ten (10) days of Owner's written request for said copies.

**§ 11.6.5** With respect to all insurance coverages required to remain in force and affect after final payment, Contractor shall provide Owner additional certificates, policies and binders evidencing continuation of such insurance coverages along with the Contractor's application for final payment and shall provide certificates, policies and binders thereafter as requested by Owner.

**§ 11.6.6** The maintenance in full current force and effect of such forms and amounts of insurance and bonds required by the Contract shall be a condition precedent to Contractor's exercise or enforcement of any rights under the Contract.

**§ 11.6.7** Failure of Owner to demand certificates, policies and binders evidencing insurance coverages required by the Contract, approval by Owner of such certificates, policies and binders or failure of Owner to identify a deficiency from evidence that is provided by Contractor shall not be construed as a waiver of Contractor's obligations to maintain the insurance required by the Contract.

§ 11.6.8 Owner shall have the right to terminate the Contract if Contractor fails to maintain the insurance required by the Contract.

§ 11.6.9 If Contractor fails to maintain the insurance required by the Contract, Owner shall have the right, but not the obligation, to purchase said insurance at Contractor's expense. If Owner is damaged by the Contractor's failure to maintain the insurance required by the Contract, Contractor shall bear all reasonable costs properly attributable to such failure.

*(Paragraph deleted)*

§ 11.6.10 By requiring the insurance set forth herein and in the Contract, Owner does not represent or warrant that coverage and limits will necessarily be adequate to protect Contractor, and such coverages and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract.

§ 11.6.11 If Contractor's liability policies do not contain a standard separation of insureds provision, such policies shall be endorsed to provide cross-liability coverage.

*(Paragraphs deleted)*

§ 11.6.12 Deleted.

§ 11.6.13 **Subcontractors and Sub-subcontractors.** The Contractor shall, before permitting any of its Subcontractors to perform any Work at, or to enter upon, the Project site, require each Subcontractor to carry insurance with terms and limits that are specified above. Subcontractors are not required to carry pollution liability. As to professional liability, this requirement only applies to those Subcontractors furnishing design services as part of their scope of work. The requirements set forth in this Subsection shall apply equally to Sub-subcontractors.

*(Paragraph deleted)*

§ 11.6.14 **Deductibles.**

§ 11.6.14.1 All self insured retentions and deductible amounts on any policy required of the Contractor in this Article 11 shall be subject to Owner's prior written approval if over \$50,000.

*(Paragraph deleted)*

§ 11.6.14.2 Any and all deductibles or coinsurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at Contractor's sole risk.

*(Paragraph deleted)*

## § 11.7 PROPERTY INSURANCE

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

*(Paragraphs deleted)*

§ 11.7.2 Property insurance shall be on an "special form" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, earth movement, flood, sinkhole, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.7.3 The property insurance to be procured by the Owner pursuant to Section 11.7.1 shall be provided by insurance companies licensed to do business in the State of Florida, having policyholder ratings of no lower than

"A-" and financial ratings not lower than "x" in the latest edition of Best's Insurance Guide. As a condition precedent to Contractor's commencement of its Work, the Owner shall provide a Certificate of Insurance confirming that the property insurance required by Section 11.7.1 has been procured by the Owner, that such insurance includes the interests of the Contractor by listing the Contractor as an Additional Named Insured and Loss Payee, provides the coverage as set forth in Section 11.7.2 and shall contain a statement that: "The insurance covered by this certificate will not be cancelled or altered except after thirty (30) days (10 days for non-payment) written notice has been mailed to the Contractor."

*(Paragraph deleted)*

**§ 11.7.4** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

**§ 11.7.5** This property insurance shall cover portions of the Work stored off the site, with the written approval of the Owner, and also portions of the Work in transit.

*(Paragraph deleted)*

**§ 11.7.6** 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.

*(Paragraph deleted)*

**§ 11.7.7 LOSS OF USE INSURANCE**

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

**§ 11.7.8** 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 may, at its sole discretion, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate deductive Change Order for the cost of the premium.

*(Paragraph deleted)*

**§ 11.7.9** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.8.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

*(Paragraph deleted)*

**§ 11.7.10** The Owner shall make available to the Contractor, at the Owner's place of business during normal business hours, a copy of each policy that includes insurance coverages required by this Section 11.7. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project.

*(Paragraphs deleted)*

**§ 11.8 WAIVERS OF SUBROGATION**

*(Paragraphs deleted)*

**§ 11.8.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.7 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-

subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

*(Paragraph deleted)*

**§ 11.8.1.1** The waivers of subrogation in Subparagraph 11.8.1 shall apply equally to waive claims to the extent covered by Owner's or Contractor's comprehensive general liability insurance (CGL) and this provision shall be included in agreements with Contractor's Subcontractors and Suppliers. The policies of insurance shall provide such waivers of subrogation by endorsement or otherwise. Any cost associated with obtaining such endorsement shall be at the Owner's or Contractor's expense.

*(Paragraphs deleted)*

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

*(Paragraph deleted)*

## **§ 11.9 BONDS**

*(Paragraphs deleted)*

**§ 11.9.1** The Contractor shall furnish performance and payment bonds in an amount of one hundred percent (100%) of the Contract Sum, covering faithful performance of the Contract and payment of obligations arising thereunder. No payments shall be due until the Contractor furnishes fully executed original bonds to the Owner.

*(Paragraph deleted)*

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

**§ 11.9.3** The penal sum of the surety bond shall be increased commensurate with any increase in the Contract Sum but shall never be decreased by any reduction in the Contract Sum.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 UNCOVERING OF WORK**

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

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

### **§ 12.2 CORRECTION OF WORK**

**§ 12.2.1** The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract, whether discovered before or after 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. If prior to the date of Substantial 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. If the Contractor fails to correct nonconforming Work within thirty (30) days after receipt of written notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

**§ 12.2.2** If the Contractor proposes another contractor to perform the corrective work, then within ten (10) days from the Owner's notice of rejected or nonconforming Work, the Contractor shall submit in writing to the Owner for the Owner's approval the qualifications, schedule, insurance and other information as required by the Owner for such contractor. Notwithstanding the Owner's approval of the proposed contractor, the Contractor shall remain liable for the performance, quality and cost of such corrective work.

*(Paragraphs deleted)*

### **§ 12.2.3 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.3.1** In addition to the Contractor's obligations under Section 3.5, if, within one (1) 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 an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

**§ 12.2.3.2** 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.

**§ 12.2.4** The Contractor shall remove from the Project site portions of the Work that are rejected or not in accordance with the requirements of the Contract and are neither corrected by the Contractor nor accepted by the Owner

**§ 12.2.5** The Contractor shall bear the cost of correcting destroyed or damaged construction, materials or equipment, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract.

**§ 12.2.6** 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, nor relieve the Contractor of defects which are first noticed more than one (1) year from Substantial Completion. 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.

**§ 12.2.7** As part of the contract Work, the Contractor shall perform a one-year warranty inspection with the Architect and Owner, within one (1) year after Substantial Completion of the Work. The purpose of this inspection is to ascertain any defects or failures of the Work which may be covered by the Contractor's, Subcontractors' or any equipment or other warranties on the Project. If such defects, deficiencies or failures are noted, the Contractor shall promptly remedy such defect and shall assist the Architect and Owner in notifying the appropriate manufacturer, if any, of the nature of the problem and the applicable warranty.

**§ 12.2.8** If the Work has staggered Substantial Completion dates, then the provisions of Section 12.2 shall apply separately to each such portion or area of Work.

### **§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

§ 13.1.1 The Contract shall be governed by the law of the State of Missouri.

§ 13.1.2 In the event that any provision of this Agreement is deemed to be illegal, invalid, void or unenforceable, then that provision shall be deemed severed and stricken and to the fullest extent permitted by law the remainder of the agreements shall be deemed valid and enforceable.

§ 13.1.3 The Contractor will comply, during the course of this Agreement, with all provisions of the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*, or other applicable disability standards and related regulations as applicable to Contractor's services and as amended from time to time.

§ 13.1.4 The Contractor hereby irrevocably submits to the jurisdiction of any state or federal court sitting in Greene County, Missouri, in any action or proceeding arising out of or related to this Agreement and the Contractor further agrees that the Contractor shall not bring any such action or proceeding in any other court, or seek to remove such action or proceeding to any other court. The Contractor agrees and consents that service of process by registered or certified mail shall be sufficient to obtain jurisdiction.

### § 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. Except as provided in Section 13.2.2, neither shall assign the Contract without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.2.3 The Contractor shall not assign any of the funds to be received under or through this Agreement unless such assignment has the prior written approval of the Owner. In order to be so approved, any such assignment must include the following language: "It is agreed that the funds to be paid to the Assignee under this Assignment are subject to satisfactory performance of the construction contract by the Contractor (Assignor) and to payment of all labor, invoices, bills, claims or liens for services rendered or material supplied for the performance of any portion of the Work called for in this or any other contract between Owner and Contractor in favor of all persons, firms or corporation rendering such services or supplying such materials. Owner reserves the right to set-off against any funds which may be due Contractor by Owner of funds to be paid the Assignee the amount of any claims or liens arising; under or through this Agreement, or in the case of being determined insolvent, any other contract. Furthermore, Assignee agrees that Owner has a prior and superior right to any funds associated with this Agreement."

### § 13.3 WRITTEN NOTICE

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

### § 13.4 RIGHTS AND REMEDIES

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

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

## § 13.5 TESTS AND INSPECTIONS

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

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

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

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

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

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

§ 13.5.7 The Contractor will follow the provisions of any applicable statute or ordinance which requires persons or firms doing excavation to do so only after giving notice to utility companies and obtaining information on the location of utilities (such as "one-call" systems).

§ 13.5.8 Work that fails to pass inspection or approval from authorities having jurisdiction due to a Contractor error or omission will be automatically considered as being "rejected" with or without any action by the Architect or Owner. In the event of such failure, the Owner has the option to declare a default in performance and the Contractor shall expeditiously correct such Work in a manner acceptable both to the authorities having jurisdiction and to the Owner.

## § 13.6 INTEREST

Payments due and unpaid under the Contract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing in the Owner-Contractor Agreement.

## § 13.7 TIME LIMITS ON CLAIMS

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

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may, without submission of a Claim, terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

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

§ 14.1.2 The Contractor may, without submission of a Claim, terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for Substantial Completion, or one hundred twenty (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 (7) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed, including reasonable overhead and profit, and reasonable costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract with respect to matters important to the progress of the Work, the Contractor may, upon seven (7) additional days' written notice to the Owner and the Architect and without submission of a Claim, 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 submission of a Claim, terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials, equipment, services or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 or its Subcontractors or Sub-subcontractors cause a work stoppage due to any strike, picket, boycott or participates in any voluntary or involuntary cessation of Work; or
- .5 otherwise is guilty of substantial breach of a provision of the Contract.

§ 14.2.2 When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice, terminate the Contract and may, subject to any prior rights of the surety, if any:

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses, and legal, consultant and testing fees made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor or its surety, if any, shall pay the difference to the Owner



immediately upon demand. 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, if any, shall survive termination of the Contract.

#### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 14.3.2 The Contractor may submit a Claim for an equitable adjustment in the Contract Sum and/or Contract Time for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

#### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

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

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

§ 14.4.3 Upon such termination, the Contractor shall be entitled to recover such costs as set forth in Section 10.1.3 of the Agreement. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 CLAIMS

##### § 15.1.1 DEFINITION

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

##### § 15.1.2 NOTICE OF CLAIMS

§ 15.1.2.1 Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker.

§ 15.1.2.2 Deleted.

§ 15.1.2.3 The failure of the Owner or Contractor to require strict compliance with the Contract on any one or more items of performance, including but not limited to the procedures for Claims or Change Orders, shall not constitute a waiver of the Owner's or Contractor's right to insist on strict compliance on the balance of the Contract. The Owner or Contractor shall not make any Claim or assert a defense of waiver, or course of dealing or similar such argument based on the Owner's or Contractor's conduct related to a Claim. The only method to amend the requirements of the Contract is in writing, signed by Owner, Architect and Contractor, unless otherwise provided herein.

##### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

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payments of all undisputed amounts in accordance with the Contract. Any disputed payments shall be placed in an escrow account by the Owner. Failure to so proceed shall constitute a material breach of the Contract, regardless of the ultimate decision on the Claim, it being understood and agreed that any controversy between the parties shall not be deemed a basis to delay or suspend the Work unless agreed to in writing by the Owner and Contractor.

#### **§ 15.1.4 CLAIMS FOR INCREASE IN CONTRACT SUM**

**§ 15.1.4.1** If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4, however, any such Claim must be made within the time limits set forth in Section 15.1.2 herein.

#### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

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

**§ 15.1.5.2** If Abnormal Weather Conditions are the basis for a Claim for additional time, such Claim shall be submitted as set forth in Section 8.3.5 herein.

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes

- .1 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This waiver is applicable, without limitation, to all consequential damages due to the Contractor's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages in accordance with the requirements of AIA Document A133-2009, Section 2.2.10.

#### **§ 15.2 INITIAL DECISION**

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

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten (10) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

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

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

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

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

### § 15.3 MEDIATION

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

§ 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 sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

§ 15.3.4 Either party, at its sole discretion, may include in the mediation, by joinder, persons or entities substantially involved in a common question or law or fact whose presence is required if complete relief is to be accorded, provided that the party sought to be joined consents to such joinder in the mediation.

### § 15.4 DELETED

**NOTE: Nothing in this Agreement or these General Conditions shall require arbitration of disputes or Claims.**

*(Paragraphs deleted)*

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

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, 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 Order (as defined in Section 7.2, herein), (3) a Construction Change Directive (as defined in Section 7.3, herein)~~ 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 requirements.

...

The Contract Documents form the ~~Contract for Construction~~ Contract. 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.

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The term "Work" means the construction and services required by the ~~Contract Documents~~, ~~Contract~~, 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 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.

...

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.

...

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.

...

#### **§ 1.1.9 SCOPE OF WORK**

The Contractor's Scope of Work shall be as set forth in the Contract.

§ 1.1.9.1 The Contractor shall furnish all labor, materials, supplies, equipment (including all utilities during construction and until the Owner's acceptance of the Work) and superintendence for performing all operations necessary to complete all requirements of the specified Work in accordance with the Contract.

§ 1.1.9.2 All Work shall be done in accordance with the Contract, shall at all times observe and comply with all Federal and State laws, local ordinances and lawful regulations of the particular locality which may affect the completion of the Work and shall meet the approval of inspection authorities having jurisdiction.

§ 1.1.9.3 All materials of every kind and description to be incorporated into the Project are to be new unless otherwise noted on drawings and of the quality as specified in the Contract. No substitution of materials or manufacturers herein specified shall be made without samples of designated materials having been submitted to the Owner for written approval.

#### **§ 1.1.10 PROPOSAL REQUEST**

A Proposal Request is a written request to the Contractor from either the Owner or the Architect for a proposed cost, time change, material, equipment or other change in the Work.

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

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

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

- .1 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall present an affidavit from the manufacturer when requested by the Architect or required in the Specifications, certifying that the product complies with the particular Standard or Specification.

When requested by the Architect or specified, support test data shall be submitted to substantiate compliance.

- .2 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract, or if accepted as a Change in the Work.

§ 1.2.4 Drawings shall not be scaled to determine dimensions. If dimensions appear to be insufficient or incorrect, the Contractor shall request clarification from the Architect.

§ 1.2.5 In the case of any discrepancy between Drawings and Specifications, the Specifications are to govern. If there is a discrepancy in Drawings, between large and small scale details, the larger scale details are to govern.

§ 1.2.5.1 Notwithstanding the above, in the case of inconsistency between Drawings and Specifications, or within either Document not clarified by Addendum, the quality or quantity most consistent with the intent of the Contract, as reasonably determined by the Owner, shall control.

§ 1.2.5.2 If a conflict or omission identified by the Contractor is not otherwise resolved in accordance with this Article 1.2, then the Contractor shall consult the Architect for an interpretation and decision. Such decisions will be expressed in writing in the form of Architect's supplemental instructions, replies to the Contractor's request for information (hereinafter "RFI"), Construction Change Directives and Change Orders. If the Contractor fails to bring a known conflict or omission to the attention of the Architect prior to proceeding with the affected Work, then the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligation.

§ 1.2.5.3 If a portion of the Work is shown graphically or by symbol and described in narrative, then it is presumed that similar graphic depictions or symbols shall be governed by the same narrative description. In the event of any application of this rule that the Contractor knows would be contrary to good construction practice or logic, the Contractor shall bring the issue to the attention of the Owner and the Architect for an interpretation before proceeding with that portion of the Work.

§ 1.2.5.4 All Work that may be called for in the Specifications and not shown on the Drawings, or shown on the Drawings and not called for in the Specifications shall be executed and furnished by the Contractor as if described in both. The Specifications, General Conditions and Drawings are complimentary and what is called for by one shall be binding as if called for by all.

§ 1.2.5 If Work described in the Contract is required in conditions making it impossible to execute in an reasonably acceptable manner considering normal industry trade-practices due to: i) congested work area, or ii) impossible or impracticable design requirements, the Contractor and the Architect are responsible for resolution and the Contractor shall request an interpretation and clarification from the Architect and Owner before proceeding. If no such request is made, no Claim shall be made by the Contractor for increased time or cost based on such known conditions.

§ 1.2.6 The Contractor shall cause its Subcontractors (as defined in Section 5.1.1, herein) to observe and comply with the Contract to the extent applicable to their subcontract work. All construction subcontracts entered into by the Contractor shall incorporate by reference these General Conditions.

§ 1.2.7 Specifications and Addenda are effective upon date of issue. Proposal Requests are not effective until a signed Change Order is issued.

§ 1.2.8 Whenever the Contract reasonably implies materials or installation are necessary to produce the intended results, but do not fully detail or specify such materials, the Contractor shall provide the materials and labor required for installation nonetheless.

§ 1.2.9 It is intended throughout that all Work be fully completed, and that all anchorage, fastenings, rough hardware items, scribing and fitting as necessary, painting and finishing, together with all shop and field equipment as needed for handling, manufacturing, assembling, hauling, hoisting, etc., be supplied whether or not directly specified or shown on the drawings. Wherever the nature of the Work may need patching, touch-up and repairing to complete it properly, that also shall be supplied.

§ 1.2.10 Should the Contractor, its Subcontractors or their material suppliers discover, based upon their review of the Contract, that any material, equipment and/or its installation is indicated or specified in a manner not approved by the manufacturer or not consistent with normal installation procedures or not able to be covered by warranty, the Contractor shall notify the Architect and the Owner in writing and receive instructions. Failing to do so, the Contractor assumes the risk, and shall replace as reasonably necessary, the material or equipment with other equivalent items suitable to the installation as approved by the Architect at no additional cost to the Owner subject to the allowance, if any, provided in the Agreement.

§ 1.2.11 If unworkable and difficult conditions or interference of various trades occur, all facts shall be given to the Architect and the Owner for a decision, especially where appearance of the Work may be involved. Should Contractor object to the decision rendered by the Architect and Owner, the dispute shall be subject to resolution pursuant to Article 15.

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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. § 1.4.1 In the interest of brevity the Contract frequently omits 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.

§ 1.4.2 Drawings, Specifications, General and Supplementary Conditions are essential parts of the Contract and are incorporated herein by reference.

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§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. Ownership of the Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants as Instruments of Service is governed by the Owner-Architect Agreement. Any designs prepared by or furnished through the Contractor for a design-build system or component shall be the sole property of the Owner. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. Notwithstanding anything to the contrary stated herein, it is expressly understood that the Contractor's project control system, including without limitation, estimating, scheduling, purchasing, cost reporting and project engineering systems and software, and all modifications, additions or alterations thereto, are and shall remain the sole property of the Contractor.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work. Contractor may retain one (1) record set of the Contract Documents. All other sets of the Contract Documents shall be returned or suitably accounted for to the Owner on request, upon completion of the Work or termination of the Contract. Such Contract Documents are not to be used by the Contractor or any Subcontractor or material or equipment supplier on other projects without the specific written consent of the Owner, Architect and the Architect's consultants. Owner. The Contractor and its Subcontractors are authorized to reproduce and use applicable portions of the Contract Documents only for use on this Project in execution of the Work.

§ 1.5.3 The Project design, as depicted in the Drawings and Specifications, is deemed confidential and may be shared by the Contractor with Subcontractors, suppliers, employees, consultants and public officials on a need-to-know basis only for use in connection with the Work. The Contractor shall not provide copies of the Drawings or

Specifications to other third parties not involved in the procurement or construction of this Project without the Owner's written consent.

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If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## **§ 1.7 EXECUTION OF CONTRACT**

**§ 1.7.1** The Agreement shall be signed by the Owner and Contractor.

**§ 1.7.2** Execution of the Agreement by the Contractor will be a representation that the Contractor has carefully examined and understands the intent of the Contract, that the Contractor has visited the Project site and has reviewed the conditions under which the Work will be performed (including labor availability, codes and regulations as pertain to execution of Work only, hazards, procedures, construction means and methods necessary and weather conditions), and that the Contractor has correlated its observations with the requirements of the Contract.

**§ 1.7.3** The commencement of any Work by the Contractor on the Project site shall constitute the legal and binding acceptance by the Contractor of the Agreement if signed by the Owner and received by the Contractor prior to the commencement of such Work. For purposes of this Section, the mobilization of equipment, delivery of materials or the performance of actual labor on the Project site shall constitute a "commencement" of the Work by the Contractor. The Owner reserves the right, however, to insist on a signed Agreement as a precondition to any payment to the Contractor.

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**§ 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. The Owners' authorized representative shall represent the Owner and communications given to the authorized representatives shall be binding as if given to the Owner. Except as otherwise provided in Section 4.2.1, 4.2.1 herein, 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 (15) 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.

**§ 2.1.3** The Owner's representative is to provide services solely for the benefit and protection of the Owner and not for the Contractor or the Architect. The presence or participation of the Owner's representative on site during construction does not relieve the Contractor of its responsibilities under the Contract. Any action by the Owner's representative to point out errors, defects or other problems with the Work does not alter the Contractor's role and responsibility to perform its Work in accordance with the Contract as it is first and foremost the Contractor's responsibility (not the Owner's) to perform in accordance with the Contract.

**§ 2.2.1** Prior to commencement of the Work, the Contractor may request in writing that the Owner provide. The Contractor may request reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. necessary financing for the Project as set forth in Section 3.1.2 of the Agreement.

**§ 2.2.2** Except for permits and fees that are the responsibility of the Contractor under the ~~Contract Documents,~~ Contract, including those required under Section ~~3.7.1, 3.7.1~~ herein, the Owner 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. The Contractor shall pick up all building, demolition and related permits paid for by the Owner and shall provide a copy to the Owner, but the Contractor shall retain the original at the Project site until final completion of the Work, when it shall be delivered to the Owner with the close-out documents.

**§ 2.2.3** ~~The Owner~~ Owner, as applicable and upon request of Contractor, shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. This shall include a land survey of the Project site, providing, as applicable: grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning and deed restrictions; boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; available information concerning services and locations of public utility lines, above and below grade, including inverts and depths; and information regarding the existence and location of private utilities and other improvements. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner to the same extent the Owner may rely on the accuracy of the information, but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.2.4** The Owner shall furnish information or services required of the Owner by the ~~Contract Documents~~ Contract 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.

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

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If the Contractor fails to correct Work that is not in accordance with the requirements of the ~~Contract Documents~~ Contract as required by Section 12.2 herein, or repeatedly fails to carry out Work in accordance with the ~~Contract Documents,~~ Contract, 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. herein.

...

~~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~~ **§ 2.4.1 Owner's Right to Carry Out the Work.** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract, and fails within a seven (7) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case the Contractor shall be charged the reasonable cost of correcting such deficiencies incurred by the Owner, including, but not limited to, the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure, plus ten percent (10%) of the cost of the corrective work to cover the Owner's internal administration expenses. If such corrective costs are to be deducted from payments due the Contractor and payments then or thereafter due the Contractor are not sufficient to cover such amounts, or if such corrective costs are to be deducted from the Contract Sum and the unpaid balance is insufficient to cover such costs, the Contractor shall pay the difference to the Owner.

**§ 2.4.2 Failure to Maintain Construction Schedule.** In addition to any other rights the Owner may have under Section 2.4.1 or elsewhere in the Contract or by law, if the Contractor, without any fault of the Owner or those for whom the Owner is responsible, fails to supply sufficient manpower, equipment or materials, or fails to maintain the Construction Schedule, or otherwise fails to diligently prosecute the Work in accordance with the requirements of the Contract, then:

- .1 the Contractor shall propose a recovery schedule to correct the delay;

- .2 the Contractor will furnish such additional labor and/or services, or work sufficient overtime as may be necessary, to make progress conform to the Construction Schedule. Failure to adhere to the Construction Schedule, or failure to take steps to regain the Construction Schedule, shall constitute default subject to the terms of the Contract;
- .3 if within seven (7) days after the Contractor's receipt of written 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 deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The Contractor fails to take reasonable steps to adequately address such deficiencies, the Owner may take such steps as are necessary to supplement the Contractor's workforce without voiding the Contractor's warranties as to the Work actually performed by the Contractor including, but not limited to providing supplemental labor or equipment or hiring of other contractors in which case the Owner and its other contractors shall be entitled to use the materials, tools, scaffolding and equipment owned by the Contractor on site.

**§ 2.4.3 Labor Conditions and Disputes.** It is understood that contracts will be awarded and labor will be employed on the Project without discrimination as to whether employees of the Owner, Contractor, Subcontractors, Sub-subcontractors or others employed by the Owner are members or non-members of any labor organization.

**§ 2.4.4 Notice to Surety.** Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

#### **§ 2.4.5 OWNER'S DIRECT PAYMENT TO SUBCONTRACTORS AND MATERIAL SUPPLIERS**

**§ 2.4.5.1** If the Contractor is in default of its payment obligations to its Subcontractors for reasons not attributable to the Owner, the Owner reserves the right to make direct payments to any Subcontractor and to deduct such amounts from the Contractor's next Application for Payment if the Owner has already paid the Contractor for such Work. The Owner shall provide seven (7) days prior written notice to the Contractor before making any direct payment to a Subcontractor, to provide Contractor the opportunity to respond as to whether the Subcontractor has been fully paid for Work performed and the grounds on which the Contractor is withholding payment, if any, from the Subcontractor.

**§ 2.4.5.2** The Owner is not obligated herein to make any direct payments to a Subcontractor, and such payments do not create any obligation to make further payments to any Subcontractor.

#### **§ 2.5 EXTENT OF OWNER RIGHTS**

**§ 2.5.1** The rights stated in this Article 2 and elsewhere in the Contract are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract, (ii) at law or (iii) in equity.

**§ 2.5.2** In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract.

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**§ 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 Contractor's authorized representative shall represent the Contractor and communications given to the authorized representative shall be as binding as if given to the Contractor. The term "Contractor" means the Contractor or the Contractor's authorized

representative. The term "Contractor" as used in this Agreement, A201-2007 as modified, shall mean the Construction Manager.

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

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

**§ 3.1.4** The Contractor agrees to comply with the provisions and any applicable local, state or federal ordinance, regulation, statute, or other mandate regarding affirmative action and/or minority/women's business enterprise participation.

**§ 3.1.5** The Contractor shall staff the Project with a competent superintendent and project manager, fluent in English, who shall not be changed without the Owner's consent, which consent shall not be unreasonably withheld. In the event that any member of the Contractor's staff assigned to the Project dies, becomes disabled or leaves the employ of the Contractor, the Contractor shall so advise the Owner and assign another of its employees with comparable experience and background to fill that position.

**§ 3.1.6** The Contractor shall give preference to Missouri labor and to products of mines, forests and quarries of the State of Missouri when they are found in marketable quantities in the State, and all such materials shall be of the best quality and suitable character that can be obtained at reasonable market prices, all as provided for in Section 8.280, Missouri Revised Statutes, Section 34.359 R.S.Mo, and cumulative supplements, incorporated herein by reference.

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**§ 3.2.1** Execution of the ~~Contract~~ Contract, or commencement of the Work in the absence of a signed 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~~ of the Contract. Prior to execution of the Agreement, the Contractor and each Subcontractor ~~evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues.~~ The Owner assumes no responsibility or liability for the safety of the Contractor's Work performed on the Project site. The Contractor and its Subcontractors shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Subparagraph 3.2.1.

**§ 3.2.2** Because the ~~Contract Documents are~~ is 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 ~~2.2.3, 2.2.3~~ 2.2.3 herein, 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 Owner and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner or 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~~ Upon discovery that the Contract is not in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor the Contractor shall promptly report such nonconformity to the Owner and Architect as a request for information in such form as the Owner or Architect may require.

**§ 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 and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Owner or Architect. If the Contractor is then instructed by the Owner to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be ~~solely~~ responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

...

**§ 3.4.1** Unless otherwise provided in the ~~Contract Documents, Contract~~, 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 authorized by the Architect in accordance with Sections 3.12.8 or ~~7.4, 7.4~~ herein, the Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.2.1** By making requests for substitutions, the Contractor: 1) represents it has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified in the Contract; 2) warrants and represents it will provide the same or better warranty for the substitution that the Contractor would for that specified; and, 3) certifies that the cost proposal for the substitution is complete and includes all related costs whatsoever connected with this substitution (except the Architect's redesign costs, if any). The Contractor will coordinate with the Owner, the Architect and affected Subcontractors and suppliers the installation of the accepted substitute product, making such changes as may be required for the Work to be complete in all respects. To the extent deemed necessary by the Architect and in support of the supplier's claims of equality to that which is specified in the Contract, producers of substitute materials will be required to furnish samples, literature, warranty, test and performance data, record of other installations, names of owners, architects, contractors, and subcontractors, as references, statements of current financial condition, etc.

**§ 3.4.2.2** The Contractor shall investigate the compatibility of proposed substitution with other trades, and shall notify the Owner and the Architect of any additional revisions required. The Contractor shall follow the substitution procedures outlined in the Contract.

**§ 3.4.4** The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use its best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

**§ 3.4.5** Pursuant to Missouri Revised Statutes, Section 290.550 et seq., when there is "a period of excessive unemployment," only "Missouri laborers" and "laborers from non restrictive states" will be used on "public works," all as defined by statute, except that other laborers may be used when such laborers are not available or are incapable or performing the particular type of work if certified by the contractor and approved, to the extent enforceable under the law.

**§ 3.4.6** The Contractor, and its Subcontractors, shall not discriminate:  
.1 against recipients of service on the basis of race, color, religion, national origin, sex, handicap or age;



- .2 against any employee or applicant for employment on the basis of race, color, religion, national origin, sex or otherwise qualified handicapped status;
- .3 against any applicant for employment or employee on the basis of age, where such applicant or employee is between ages 40 and 70 and where such contractor employs at least 20 persons;
- .4 against any applicant for employment or employee on the basis of that person's status as a disable or Vietnam-era veteran.

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

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

§ 3.5.2 The Contractor's warranty in Section 3.5.1 shall not be construed to replace, change or otherwise limit any statutory or common law warranty rights of the Owner, or any other Contract requirements.

§ 3.5.3 The Contractor's warranty in Section 3.5.1 is not limited to one (1) year but is governed by the applicable statute of limitations for breach of contract.

§ 3.5.4 The Contractor's obligation to correct Work under Section 12.2 of these General Conditions is not the limit of the Contractor's liability and shall not constitute a waiver of the Owner's rights under Section 3.5.1 nor elsewhere in the Contract nor as otherwise provided by law. Nothing herein shall limit the Contractor's liability under any applicable statute of limitations, manufacturer warranty, or any longer warranties required by the Contract.

§ 3.5.5 Notwithstanding anything to the contrary set forth herein, the Contractor's warranty as to defects or deficiencies within materials and equipment specified in the Contract Documents that are installed as part of the Work, shall be limited to the period of one (1) year following Substantial Completion. If requested by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment so installed, to conform that such items comply with the specifications of the Contract Documents. If after expiration of the one (1) year period following Substantial Completion, any defect or deficiency is discovered in materials or equipment specified in the Contract Documents, the Owner shall have the right to proceed against the manufacturer and/or supplier and Contractor agrees to preserve for the Owner's benefit and assign to the Owner all manufacturer's and/or supplier's warranties for such materials and equipment. The one (1) year limitation set forth herein applies solely to defects or deficiencies in materials and equipment as specified in the Contract Documents and covered by a manufacturer's warranty and does not apply to, or in any way limit, the rights of the Owner in the event the Contractor or other parties for whom the Contractor is responsible, failed to properly install the materials or equipment or otherwise failed to adhere to the requirements of the Contract Documents.

§ 3.5.6 The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

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

§ 3.6.1 The Owner is exempt from payment of State of Missouri, County, and City sales or use taxes on the purchase of all building materials and equipment made on behalf of the Owner. Therefore, unless otherwise stipulated, the Contractor shall not include sales taxes in the Work.

§ 3.6.2 The Owner shall furnish the Contractor an exemption certificate authorizing purchases of tangible personal property and materials to be incorporated into or consumed in the Work. Such certificate is renewable for a given project at the option of the Owner only for the purpose of revising the certificate expiration date as necessary to complete the Project.

§ 3.6.3 The Contractor shall furnish the exemption certificate to all Subcontractors, and any contractor purchasing materials shall present such certificate to all material suppliers as authorization to purchase, on behalf of the Owner, all tangible personal property and materials to be incorporated into or consumed in the Work, and no other, on a tax-exempt basis. Such suppliers shall execute to the purchasing contractor invoices bearing the name of the exempt entity and the Project identification number. Nothing in this Section shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in constructing, repairing or remodeling facilities for the Owner. All invoices for all personal property and materials purchased under a project exemption certificate shall be retained by the Contractor for a period of five (5) years and shall be subject to audit by the director of revenue.

§ 3.6.4 Any excess resalable tangible personal property or materials which were purchased for the Project by Contractor under a project exemption certificate, but, which were not incorporated into or consumed in the Work, shall either be returned to the supplier for credit or the appropriate sales or use tax on such excess property or materials shall be reported on a return and paid by the Contractor not later than the due date of the Contractor's Missouri sales or use tax return following the month in which it was determined that the materials were not to be used in the project.

§ 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. The Contractor shall cooperate with the Owner in obtaining the building permit. The Contractor shall secure, pay for and furnish Owner with copies or certificates of other applicable permits, licenses and inspections necessary for the Contractor to execute and complete the Work.

§ 3.7.2 The Contractor shall comply with and give notices required by specifications and regulations in addition to all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary that it knows is contrary to specifications and regulations in addition 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~~ correction and damages sustained by the Owner due to the Contractor's failure.

**§ 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, ~~Contract~~, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~24~~ twenty-one (21) 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 an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract

~~Documents~~ and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed by the Contractor's (i) prior inspections, tests, reviews, and preconstruction services for the Project, or (ii) inspections, tests, reviews, and preconstruction services that the contractor had the opportunity to make or should have performed in connection with the Project.

§ 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, Contract,~~ 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.

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§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the ~~Contract Documents, Contract,~~ 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, Contract,~~

...

- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts also shall be included in the Contract Sum but not in the allowances; and

...

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

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit ~~for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule to the Owner and Architect~~ a construction milestone critical path schedule for the Work which, when approved by the Owner, shall become a part of the Contract (hereinafter, the "Construction Schedule"). The Construction Schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, Contract, shall be revised weekly or as otherwise required by the Owner, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's ~~approval. The Architect's approval and Owner's review. The Architect's and Owner's review shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, Construction Schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not~~ A copy of such submittal schedule shall be submitted to the

Architect and the Owner by the Contractor prior to the Contractor's First Application for Payment. No payment shall be due until the submittal schedule is received, nor shall the Contractor be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. Submittal of the submittal schedule in accordance with the requirements herein is a condition precedent to the Contractor's ability to file any Claim.

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

§ 3.10.4 Failure to adhere to the Construction Schedule, as amended and approved by Owner, shall be a basis for the Owner to declare a default.

§ 3.10.5 The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Architect and the Owner of any delays or potential delays. The Contractor shall provide updates comparing actual progress with the Construction Schedule (sometimes referred to as "progress reports") as set forth in Subparagraph 3.10.1. In the event any progress report indicates any delays, the Contractor shall propose a recovery schedule to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any milestone date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.6 In the event the Owner reasonably determines that the performance of the Work, as of a milestone date, has not progressed or reached the level of completion required by the Contract, the Owner shall have the right to direct the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures") and Contractor shall proceed with Extraordinary Measures to the extent they can reasonably be implemented in an effort to accelerate the Work. Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

- .1 If the delay to or deviation from the Construction Schedule is due to the acts or omissions of the Contractor or those for whom the Contractor is responsible, and not as a result of any concurrent delay or deviation caused by the Owner or those for whom the Owner is responsible, the Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.6.
- .2 If the delay to or deviation from the Construction Schedule is due to the acts or omissions of the Owner or those for whom the Owner is responsible, or is due to occurrences beyond the control and responsibility of the Contractor and which would otherwise support an extension of the Contract Time, the Contractor shall, if directed by the Owner to accelerate the Work, be entitled to recover all costs and expenses incurred to implement the Extraordinary Measures including, premium costs for shift and/or overtime work, increased costs of supervision, loss of efficiency due to proceeding on an accelerated basis, and related equipment or materials costs that would not otherwise have been incurred by the Contractor.
- .3 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.6 as frequently as the Owner deems necessary based upon the standard of commercial reasonableness to ensure that the Contractor's performance of the Work will comply with any milestone date or completion date set forth in the Contract.

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The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during ~~construction~~, construction ("As-Built Drawings"), and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

...

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the ~~Contract Documents~~. Contract. 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 completeness and compliance with the ~~Contract Documents, Contract~~, 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, and 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 thereto~~ and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the ~~Contract Documents~~. Contract. No Claims will be accepted from the Contractor in violation of this Subparagraph when Contractor has submitted an approved Shop Drawing, Product Data or Sample.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents ~~require~~ requires submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Any Work performed prior to receipt of an approved Shop Drawing, Product Data or Sample is at the Contractor's sole risk and subject to rejection at Contractor's cost.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal by a separate written document and attached transmittal 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** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the ~~Contract Documents, Contract~~, the Owner and the Architect will specify provide all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such ~~professional~~ professional and who shall comply with all reasonable requirements of the Owner regarding qualifications and insurance. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and

the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, ~~provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy.~~ Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the ~~Contract Documents.~~ Contract. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the ~~Contract Documents.~~ Contract, subject to Section 3.2 herein.

§ 3.12.10.1 The Contractor shall require that any entity engaged by it to provide design services per Section 3.12.10 will maintain Professional Liability Insurance as set forth in Article 11, below. The Contractor shall furnish the Owner with a certificate of insurance evidencing such coverage. No submittals shall be accepted unless the certificate of insurance is received and approved by the Owner.

§ 3.12.10.2 The Architect's services in connection with design-build portions of the Work shall be limited to the review by the Architect of such designs only for conformance to the aesthetic aspects of the architectural design and major space limitations; and the coordination of components designed by the Contractor and/or its Subcontractor or supplier with the Architect's design, to check for interferences, interface and compatibility of the design-build component with the Architect's design. The Architect has an obligation to review submittals for general conformance to the overall design of the Project and shall report any observed conflicts to the Owner and Contractor. The Architect shall assist the Owner in determining if the design-build portion of the Work complies with the performance or design criteria required by the Contract.

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~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ § 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract and shall not unreasonably encumber the site with materials or equipment. The Contractor shall be responsible for any damage caused to adjacent property or access roads by Contractor, its Subcontractors or Suppliers during the course of their Work on the Project including, but not limited to, soil erosion or run off due to failure to maintain all required storm water runoff protection on the site at all times.

§ 3.13.2 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner other than signage as required by law.

...

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

...

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by ~~operations under the Contract.~~ At performance of the Work. At final completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as ~~provided in the Contract Documents,~~ the Owner may do so and Owner shall be entitled to reimbursement from the Contractor within twenty-four (24) hours from written notice from the Owner, the Owner may do so, the cost of which shall be deducted from the Contractor's next following Application for Payment.

§ 3.15.3 The Contractor shall be responsible to wash the mud and gravel off its vehicles (including vehicles operated by its Subcontractors and Suppliers) prior to leaving the site. Any mud or gravel that is tracked onto the surrounding roads shall be removed immediately. The Owner has the right to clean up surrounding roads

immediately upon the Contractor's failure to do so, the cost of which shall be deducted from the Contractor's next following Application for Payment.

**PAGE 24**

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 indemnify and hold the Owner and Architect harmless from loss and against all claims, suits, liabilities, damages, losses, fines, costs, and expenses, including, but not limited to, reasonable attorneys' fees, court costs, investigation costs, expert witness and consultant costs, and all other reasonable costs and expenses (collectively hereafter "Liabilities") on account thereof, but shall not be responsible for such defense or ~~loss~~-Liabilities when a particular design, process or product of a particular manufacturer or manufacturers is required by the ~~Contract Documents, Contract,~~ or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such ~~loss~~-Liabilities unless such information is promptly furnished to the Architect.

...

**§ 3.18.1** ~~To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them,~~ the Contractor shall indemnify, defend and hold harmless the Architect, the Owner, and their respective subsidiaries, shareholders, members, officers, directors, agents, consultants, employees, representatives and related or affiliated companies, trustees, receivers, successors and assigns (collectively, the "Indemnitees" plural or "Indemnitee" singular) 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, 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), itself and recoverable under the property insurance policy as set forth in Section 11.7 herein), but only to the extent caused by the negligent acts or omissions of the Contractor, a 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. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that which would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** ~~In claims against any person or entity indemnified~~ Indemnitee 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 defense and indemnification obligations 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.

**§ 3.18.3** The Contractor's obligations under this Section 3.18 shall survive the expiration or termination of the Contract by either party. Any Indemnitee who incurs attorney's fees and legal costs in any action to enforce the Contractor's indemnity obligations shall be entitled to recover the same from the Contractor. The Contractor agrees to require all Subcontractors on the Project to include in their own contracts with the Contractor a provision requiring the Subcontractor to indemnify and defend the Owner and the Architect for any claims arising out of the negligence or breach of contract by the Subcontractors or their employees.

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

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

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

**§ 4.1.4 Deduction for Architect's Additional Services.** The Contractor shall be responsible for costs actually incurred by the Owner for Architect's Additional Services and those of its subconsultants due to:

- .1 Responses to RFI's, including, but not limited to, the Architect's site visits, where such information is available to the Contractor from a study and comparison of the Contract, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .2 Evaluations of substitutions proposed by the Contractor and making subsequent revisions to the Contract resulting therefrom;
- .3 Repeated reviews of the same Shop Drawing, Product Data, Sample or similar submittal of the Contractor, after the initial review and one (1) re-submittal and for all reviews where re-submittals exceed thirty percent (30%) of the Contractor's total submittals;
- .4 Site visits beyond the number of regularly scheduled site visits for which the Architect has contracted, when such site visits are due to Contractor defects in Work or failure to meet the Construction Schedule or otherwise adhere to the Contract;
- .5 More than one (1) inspection of the Work to determine whether such portion of the Work has reached Substantial Completion or whether punch list items have been completed;
- .6 More than one (1) inspection of the Work to determine final completion;
- .7 Cost of time for the Owner's Representative (other than the Architect) spent dealing with any of the above items 1 through 6.

**§ 4.1.5** The Owner shall give the Contractor written notice within ten (10) days of receipt of written request from the Architect for such Architect's Additional Services. If such notice is given, and not remedied by the Contractor with ten (10) days of receipt of written notice by the Owner, then the Owner may deduct such Architect's Additional Services by a unilateral Change Order, which does not require the Contractor's signature or approval. The Contractor may contest any such deduction by making a Claim in accordance with Section 4.3, below. However, nothing in Section 4.1.4 or 4.1.5 shall require the Contractor to pay for such Architect's Additional Services when made necessary due to the actions of the Owner or Architect, and not due to the fault or neglect of the Contractor or a Subcontractor.

...

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be ~~an Owner's representative~~ a representative of the Owner during construction until the date the Architect issues the final Certificate ~~for~~ For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the ~~Contract Documents~~ Contract.

**§ 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~~ Contract. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the ~~Contract Documents~~ Contract, except as provided in Section 3.3.1.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract ~~Documents~~ and from the most recent ~~construction schedule~~ Construction Schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. ~~The 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~~ nor shall they have control over or charge of ~~and will not of, nor~~ 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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~~Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through The Owner and Contractor may communicate directly with one another, but shall endeavor to include the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. Any communications, either oral or written, between the Contractor and the Architect shall include or be copied to the Owner; any communication, either oral or written, between the Contractor and any of Architect's consultants shall also include or be copied to the Architect and the Owner.~~

...

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the ~~Contract Documents-Contract~~. 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 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. It is the Contractor's obligation to perform Work per the Contract with or without any inspection by the Architect, who is on site solely for the Owner's benefit, not for the benefit of the Contractor or its sureties or insurers.

**§ 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-Contract~~. 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 permit adequate review. The Contractor shall allow a minimum of ten (10) working days from receipt for the Architect's review of any Shop Drawing, Product Data or Sample; and a minimum of ten (10) working days from receipt for the Architect's review of any re-submittal. 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-Contract~~. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions ~~or, unless otherwise specifically stated by the Architect, 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.

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

**§ 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.

**§ 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.~~Deleted.

~~§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents.~~Contract. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable ~~promptness.~~promptness but no earlier than five (5) working days. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. In the case of multiple requests for review and response to information by the Architect, the Contractor shall provide to the Architect a prioritized list.

...

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

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

~~§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK~~Deleted.

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

~~§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner 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 previously selected if the Owner or Architect makes reasonable objection to such substitution.~~

~~By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these 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.~~ § 5.3.1 The Contractor shall require in writing 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, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract with respect to the Work to be performed by the Subcontractor. 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 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.

§ 5.3.2 The Owner, upon its sole discretion, shall be an intended third-party beneficiary of all the Contractor's rights under the subcontract agreements.

...

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

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

writing. 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~~ thirty (30) days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

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§ 5.4.4 In the event of an assignment as set forth herein, the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment and for those obligations that accrued prior to the termination to the extent that the Owner has not made payment therefore to the Contractor.

...

§ 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~~ contractor who executes each separate ~~Owner-Contractor Agreement~~ 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 other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the ~~construction schedule~~ 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.

...

§ 6.2.1 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~~Contract.

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

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

...

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~~Owner will allocate the cost among those ~~responsible~~responsible as further provided pursuant to Section 3.15.2 herein.

...

§ 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~~Contract.

§ 7.1.2 A Change Order shall be based upon written 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~~Contract, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Paragraph 7.3 and Subparagraph 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment, shall be the basis of any claim to an increase in any amounts due under the Contract or a change in any time period provided for in the Contract.

...

§ 7.2.2 Any and all costs, direct and indirect, plus any time extensions related to such change shall be included in the Change Order and the execution of the Change Order by Contractor shall constitute affirmation that there are no other related costs or time impacts as a result of the changed Work.

§ 7.2.3 Contractor shall respond to any Proposal Request from the Architect within ten (10) working days after its receipt and shall submit a proposal with the cost and time impact of the proposed changed Work.

§ 7.2.4 In such proposals, profit and overhead shall be computed as set out per the Contract.

§ 7.2.5 In no event shall Change Orders be made on a time-and-material basis, other than under Section 7.3.3, nor shall any costs exceed those unit prices originally provided the Owner and Architect.

§ 7.2.6 Upon Owner's approval of Contractor's proposal, the Architect will issue a Change Order.

§ 7.2.7 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Contract Time and the construction schedule.

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§ 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;~~ methods, but in no case in an amount which exceeds the unit prices stated in the Contract:

- .1 Mutual acceptance of a negotiated 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;

...

§ 7.3.4 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 quantities of Work proposed will cause substantial inequity to the ~~Owner or Contractor,~~ Owner, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Owner 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 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the ~~Architect~~ Owner shall determine the method and 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 a fee~~ 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 Owner or Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the ~~Contract Documents,~~ Contract, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of ~~labor,~~ labor in the field or at factories or workshops, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- ...
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; and
- .4 Costs of additional premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

...

§ 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 Owner or 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.~~ Contractor or Owner may submit 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.~~

**§ 7.3.11** The Contractor shall respond to any Construction Change Directive or Proposal Request within ten (10) calendar days from the Contractor's receipt thereof in any format (electronic or hard copy). If the Contractor fails to so respond, then the method and the adjustment determined by the Owner under Section 7.3.7 shall be final and binding on the parties. The Owner reserves the right to have such work performed by another contractor if the Contractor fails to so respond.

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

...

**§ 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.

...

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

...

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

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

...

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by ~~labor disputes, fire, fire,~~ labor disputes caused by the Owner's own forces, unusual delay in deliveries, unavoidable casualties or other independent causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and ~~arbitration; litigation;~~ or by other causes that the Architect

determines may justify delay, then the ~~Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.~~ Contractor may submit a Claim pursuant to Article 15. The Contractor shall be responsible to document the impact of such delay upon critical path Work.

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

~~§ 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.~~Contract.

§ 8.3.4 The Owner may direct the Contractor to work overtime, and to accelerate the Work, and if so instructed in writing, the Contractor agrees to work overtime and accelerate the Work to the extent reasonably practicable. If such direction is not due to delays due to the Contractor's fault or neglect, the Owner agrees to increase the Contract Sum and pay the increased costs incurred by the Contractor for such accelerated Work, together with the overhead and profit mark-up agreed for additive Change Orders in the Agreement. Allowable costs for accelerated Work include overtime charges which shall consist of the premium or extra hourly wage incurred by the Contractor, loss of efficiency resulting from such accelerated Work, increased costs of supervision and related equipment or materials costs that would not have otherwise been incurred by the Contractor. No insurance other than proven, payroll-related insurance shall be paid by the Owner based on any premium wage paid, nor will any applicable fringe benefits be paid based on any such premium wage unless required under a labor contract agreement or by law. Authorization for payment of overtime charges must be obtained by the Contractor from the Owner in writing prior to performing the Work and the Contractor is not required to proceed with any such acceleration without such written authorization from the Owner.

#### § 8.3.5 Weather Delays

§ 8.3.5.1 Notwithstanding the foregoing, if the Contractor is delayed in the performance or progress of the Work by Abnormal Weather Conditions (as defined below) then the Contractor shall be entitled to an extension of the Contract Time for the impact on critical path Work provided the Contractor makes Claim in accordance with Article 15. "Abnormal Weather Conditions" shall be defined as temperature and precipitation that are abnormal for the location of the Work as defined by the National Climatic Data Center, based on the previous ten (10) year mean for the Project location.

§ 8.3.5.2 If Abnormal Weather Conditions are the basis for a Claim for an increase in the Contract 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 critical path Work.

§ 8.3.5.3 Extensions of the Contract Time for Abnormal Weather Conditions will not be considered as a justification for an increase in the Contract Sum.

§ 8.3.5.4 The determination as to appropriate extension of the Contract Time shall be made by the Architect at the end of each month, based on the written notices received from the Contractor during the preceding month, the documented site weather conditions and the ten (10) year mean for that location. There shall be no "carry-over" of anticipated bad weather days from one month to another. For example, if March normally has seven (7) rain days and only has five (5), then the anticipated two (2) extra days do not carry into April.

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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.~~the Work.

...

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, ~~before the first Application for Payment,~~ Owner and the Architect, within ten (10) days of award of the contract for construction, for the Owner's approval, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner or Architect may require. Submission of the schedule of values by the Contractor is a condition precedent to the Contractor's right to payment. This schedule, unless objected to by the Owner or Architect, shall be used as a

basis for reviewing the Contractor's Applications for ~~Payment~~ Payment and shall not be revised without the Owner's prior written approval.

...

~~§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall~~ The Contractor shall, consistent with the Agreement, submit to the Architect an itemized Application for Payment prepared in accordance with the ~~schedule of values, if required under Section 9.2,~~ approved schedule of values for completed portions of the Work. Such application shall be ~~notarized, if required,~~ notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current conditional Contractor's claim waiver in a form approved by Owner and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers; (ii) duly executed waivers of mechanics' and material suppliers' claims in a form approved by Owner from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors, establishing payment or satisfaction of payment of all amounts due for work completed during the period of time covered in any previous Application for Payment and for which the Owner previously made payment; (iii) photographs of and invoices for all material stored at or off the site per Section 9.3.2 herein; and (iv) all information and materials required to comply with the requirements of the Contract or reasonably requested by the Owner or the Architect.

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~~§ 9.3.2 Unless otherwise provided in the Contract Documents, Contract,~~ 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. The Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed Three Hundred Thousand Dollars (\$300,000.00) at any time without written approval of the Owner.
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner, including, without limitation, recorded financing statements, UCC filings, and UCC searches.
- .3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.
- .4 Representatives of the Owner shall have the right to make inspections of the storage areas at any time.
- .5 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage facility.
- .6 Photographs shall be provided by the Contractor evidencing the condition of materials stored off site.

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



**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the ~~Contract Documents.~~ Contract. The foregoing representations are subject to an evaluation of the Work for conformance with the ~~Contract Documents~~ upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the ~~Contract Documents~~ prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment ~~will further~~ by the Architect and the Owner's subsequent review and approval of the Certificate of Payment will constitute a representation that the Contractor is entitled to payment in the amount certified. 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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.7 repeated failure to carry out the Work in accordance with the ~~Contract Documents.~~ Contract.

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**§ 9.5.4** No payment will be made in contravention of any statute or other applicable law which provides for the withholding of payments for protection of subcontractors or others who have furnished labor or materials in connection with the Work under contract. If at any time Owner has reason to believe that any such subcontractor, laborer, or materialman has not been paid for its labor or materials, then, whether or not required to do so by law, Owner may withhold payment of the amount in question until Contractor has furnished satisfactory evidence that all such persons have been fully paid or their claims otherwise discharged.

**§ 9.6.1** After the Architect has issued a properly submitted and properly approved Certificate for Payment, the Owner shall make payment ~~in the manner and within the time provided in the Contract Documents, and shall so notify the Architect,~~ accordance with the terms of the Agreement, and shall so notify the Architect. Retainage on progress payments shall be as follows unless more stringent retainage requirements are imposed pursuant to the terms of any lending documents:

- .1 The Owner will pay ninety percent (90%) of the amount properly due the Contractor on account of progress payments until the Project reaches Substantial Completion.
- .2 The Owner may, in its sole discretion, consider a reduction in the retainage percentage when the Project reaches fifty percent (50%) completion.
- .3 Upon Substantial Completion, the Owner, Architect and Contractor shall conduct a joint walk through so that the Owner and Architect can identify the incomplete and defective Work and issue a Final Completion punch list (the "Punch List"). Retainage shall thereafter be adjusted to an amount equal to two hundred percent (200%) of the value of the Work remaining to be completed pursuant to the Punch List, including defective work not yet remedied (whether covered by warranty or not), plus an amount sufficient to protect the Owner for liquidated or actual damages, or other charges, liens or offsets due the Owner. The valuation of the Punch List shall be based upon the Owner's reasonable assessment of the costs for the Owner to complete each item of the Work as identified on the Punch List.

**§ 9.6.2** The Contractor shall pay each Subcontractor no later than seven (7) 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. Notwithstanding anything in this Subparagraph 9.6.2 to the contrary, the Owner may elect, in the Owner's sole discretion, to make any payment requested by the Contractor on behalf of a subcontractor of any tier jointly payable to the Contractor and such subcontractor. The Contractor and such subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (i) contract between the Owner and a subcontractor of any tier, (ii) obligations from the Owner to such subcontractor, or (iii) rights in such subcontractor against the Owner. Calculation and

payment of retainage shall be as set forth in the Agreement. However, to the extent that a Subcontractor's Work is completed early in the Project and is found to have been properly performed by the Contractor, the Architect and the Owner, the Contractor may request the early release of retainage for that Subcontractor. Upon such request the Architect will review the Work performed by that Subcontractor to confirm that it is Substantially Completed and, if so, will identify punch list items, if any, applicable to that Subcontractor's Work. If the Work is substantially complete and there are no questions or concerns regarding the manner in which the Subcontractor's Work was performed, the Owner will release the retainage applicable to that Subcontractor, subject to the Owner's right to withhold retainage for only the outstanding punch list consistent with the Contract, which punch list retainage will be released thereafter on a monthly basis as such items are completed or corrected.

~~§ 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. shall have no obligation to furnish information to Subcontractors. All communications from Subcontractors to the Architect shall come through the Contractor.~~

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

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

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

~~§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held in trust by the Contractor for timely payment of those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision-Contractor.~~

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

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner

incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have a right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled. Should the Contractor disagree with the Owner's decision, the disputes will be subject to resolution under Article 15.

...

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work ~~or designated portion thereof~~ is sufficiently complete in accordance with the Contract ~~Documents~~ so that the Owner can occupy or utilize the Work for its intended ~~use-use provided, however, that as a condition precedent to Substantial Completion, the~~ Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project and whose procurement is the responsibility of the Contractor.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the ~~Contract Documents~~.Contract.

**§ 9.8.3** Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's and 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.

**§ 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, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract ~~Documents~~ shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such 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~~.Contract.

...

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

§ 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~~.Contract.

...

§ 9.10.1 Upon receipt of the Contractor's written notice by Contractor to Architect and Owner 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 ~~and, when the Architect or notify the Contractor of unfulfilled requirements.~~ When the Architect and Owner 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 terms and conditions of the ~~Contract Documents~~ and that the entire balance found to be due the Contractor and noted in the final ~~Certificate~~.Certificate, upon agreement and acceptance of such Work by the Owner, 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) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner has made payment and for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the ~~Contract Documents~~ to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least ~~30~~thirty (30) days' prior written notice has been given to the ~~Owner, Owner;~~ (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the ~~Contract Documents, Contract;~~ (4) consent of surety, if any, to final ~~payment and~~ (5), if required by the Owner, payment; (5) other data establishing payment or satisfaction of ~~obligations, obligations for which the Owner has made payments,~~ such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated ~~by the Owner, by the Owner;~~ (6) executed AIA Documents G706 and G706A, if requested by the Architect or Owner; (7) final conditional waiver and release of all claims in a form acceptable to Owner; (8) completion of the punch list items; and (9) submission to the Architect of all close-out items including, but not limited to permits, recorded easements, As-Built drawings, warranties, operations and maintenance manuals, copies of certificates or other documentation from testing agencies, list of all updated finishes, list of materials as "shelf stock," and final certificate of occupancy. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner under Section 9.3.4 herein, to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 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 only for that portion of the Work that has been fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the ~~Contract Documents, Contract,~~ and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

- .2 failure of the Work to comply with the requirements of the ~~Contract Documents; Contract;~~ or
- .3 ~~terms of special warranties required by the Contract Documents.~~latent defects; or
- .4 terms of any warranties required by the Contract.

However, nothing in this Subsection shall waive Claims first arising after final payment, nor latent defects.

...

§ 9.10.6 The Contractor shall furnish the Owner with a certificate of occupancy (or certificate of completion by the governing authority, where applicable) before any final construction payments are made; provided, however, this requirement shall be waived to the extent the failure to obtain the certificate of occupancy (or certificate of completion) is not due to the Contractor's fault or neglect.

...

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

- .1 ~~employees-persons~~ on the ~~Work-Property~~ and other persons who may be affected ~~thereby~~ by the Work;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the ~~site, Property,~~ under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the Project 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.

...

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the ~~Contract Documents~~) Contract to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions ~~of solely~~ caused by 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 such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ~~21~~ twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

...

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

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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.~~ Any related Claim by the Contractor shall be made pursuant to Article 15.

...

## **§ 11.1 CONTRACTOR'S INSURANCE**

**§ 11.1.1** Contractor shall secure from the date of the Agreement and maintain for such periods of time as set forth below, insurance of such types and in such amounts specified below, to protect Contractor, Owner and others against all hazards or risks of loss described below. All insurance policies related to the Work and secured and maintained by the Contractor as required by Article 11, will include clauses stating each underwriter will waive all rights of recovery, under subrogation or otherwise, against Owner.

## **§ 11.2 COMMERCIAL GENERAL LIABILITY**

**§ 11.2.1** Contractor shall secure and maintain from the date of the Agreement and for a period of at least two (2) years from the date of Final Completion of the entire Work commercial general liability insurance ("CGL") with a combined single limit of not less than \_\_\_\_\_ Million Dollars (\$ \_\_\_\_\_) per occurrence and \_\_\_\_\_ Million Dollars (\$ \_\_\_\_\_) annual aggregate. Such CGL insurance shall be on an occurrence basis.

**§ 11.2.2** The CGL insurance required herein shall be written on a comprehensive form and shall cover claims and liability in connection with or resulting from the Contractor's operations and activities under the Contract, for personal injuries, occupational sickness, disease, death or damage to tangible property of others arising out of operations or activities of the Contractor, its agents, or any Subcontractors of any tier or by anyone directly or indirectly employed by either of them.

**§ 11.2.3** The CGL insurance required herein shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) coverages. There shall be no endorsement or modification of the CGL policy limiting the scope of coverage for liability arising from blasting, explosion, collapse, or underground property damage.

**§ 11.2.4** The Owner shall be endorsed as "additional insureds" under the CGL policy. The CGL policy shall also contain a "Separation of Insureds" provision. If Contractor's CGL policy does not contain a "Separation of Insureds" provision, Contractor's CGL policy shall be endorsed to provide cross-liability coverage.

**§ 11.2.5** Contractor and Owner waive all rights against each other and their officers and directors, representatives and employees for recovery of damages to the extent those damages are covered by the CGL policy required hereunder.

## **§ 11.3 AUTOMOBILE LIABILITY**

**§ 11.3.1** Contractor shall secure and maintain from the date of the Agreement and until Final Completion of the entire Work, insurance, to be on comprehensive form, which shall protect Contractor against any and all claims for all injuries and all damage to property arising from the use of automobiles, trucks and motorized vehicles, in connection with the performance of Work under this Contract, and shall cover the operation on or off the site of the Work of all motor vehicles licensed for highway use whether they are owned, non-owned or hired. Such insurance shall include contractual liability coverage and shall provide coverage on the basis of any accident. The liability limits under such policy shall not be less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage per accident. The Owner shall be endorsed as an "additional insured" under the policy required by Paragraph 11.3.1.

**§ 11.3.2** Contractor and Owner waive all rights against each other and their officers and directors, representatives and employees for recovery of damages to the extent such damages are covered by the automobile liability insurance required hereunder.

## **§ 11.4 WORKERS' COMPENSATION INSURANCE**

**§ 11.4.1** Contractor shall purchase and maintain workers' compensation insurance and employers' liability insurance which shall protect Contractor from claims for injury, sickness, disease or death of Contractor's employees or statutory employees. The insurance policies required hereunder shall include an "all states" or "other states" endorsement.

§ 11.4.2 Contractor's workers' compensation insurance coverage shall be in compliance with all applicable laws, including the statutes of the state where the Project is located. Contractor's employers' liability coverage limits shall not be less than Five Hundred Thousand (\$500,000) each accident for bodily injury by accident or Five Hundred Thousand (\$500,000) each employee for bodily injury by disease.

§ 11.4.3 Contractor and Owner waive all rights against each other and their officers and directors, representatives and employees for recovery of damages to the extent these damages are covered by the workers' compensation and/or employers' liability insurance required hereunder.

#### **§ 11.5 UMBRELLA LIABILITY INSURANCE**

§ 11.5.1 Umbrella liability insurance to follow form over the Contractor's primary general liability, automobile liability and employer's liability insurance policies with limits of not less than \_\_\_\_\_ Million Dollars (\$ \_\_\_\_\_) inclusive per occurrence per project. Contractor shall maintain umbrella liability insurance for a minimum of two (2) years after Final Completion of the Work.

#### **§ 11.6 GENERAL REQUIREMENTS FOR LIABILITY INSURANCE COVERAGES**

§ 11.6.1 Any insurance coverages shall be provided by insurance companies that are duly licensed to conduct business in the state where the Project is located as an admitted carrier. All coverages required of the Contractor shall be obtained and paid for by Contractor, although subject to being a Cost of The Work to the extent permitted in the Agreement. Any approval of the form, content or insurance company by Owner shall not relieve the Contractor from the obligation to provide the coverages required herein.

§ 11.6.2 All insurance coverage procured by the Contractor shall be provided by insurance companies having policyholder ratings no lower than "A-" and financial ratings not lower than "X" in the Best's Insurance Guide, latest edition in effect as of the date of the Contract, and subsequently in effect at the time of renewal of any policies required by the Contract. Insurance procured by Contractor covering the additional insureds shall be primary insurance and any insurance maintained by Owner shall be excess insurance.

§ 11.6.3 Deleted.

§ 11.6.4 The Contractor shall furnish Owner with evidence of insurance on ACORD Form 25 (or its most current edition under insurance industry standards) which indicate the Contractor and Owner are covered by the required insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates, policies or binders shall be submitted to Owner within ten (10) days from the date of the execution of the Agreement. All certificates, policies and binders shall be executed by a duly authorized agent of each of the applicable insurance carriers and shall contain the statement that: "The insurance covered by this certificate will not be canceled or altered except after thirty (30) days' written notice has been received by Owner." All certificates, policies and binders shall be in a form acceptable to Owner. Contractor shall provide certified copies of all insurance policies required above within ten (10) days of Owner's written request for said copies.

§ 11.6.5 With respect to all insurance coverages required to remain in force and affect after final payment, Contractor shall provide Owner additional certificates, policies and binders evidencing continuation of such insurance coverages along with the Contractor's application for final payment and shall provide certificates, policies and binders thereafter as requested by Owner.

§ 11.6.6 The maintenance in full current force and effect of such forms and amounts of insurance and bonds required by the Contract shall be a condition precedent to Contractor's exercise or enforcement of any rights under the Contract.

§ 11.6.7 Failure of Owner to demand certificates, policies and binders evidencing insurance coverages required by the Contract, approval by Owner of such certificates, policies and binders or failure of Owner to identify a deficiency from evidence that is provided by Contractor shall not be construed as a waiver of Contractor's obligations to maintain the insurance required by the Contract.

§ 11.6.8 Owner shall have the right to terminate the Contract if Contractor fails to maintain the insurance required by the Contract.

§ 11.6.9 If Contractor fails to maintain the insurance required by the Contract, Owner shall have the right, but not the obligation, to purchase said insurance at Contractor's expense. If Owner is damaged by the Contractor's failure to maintain the insurance required by the Contract, Contractor shall bear all reasonable costs properly attributable to such failure.

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

§ 11.6.10 By requiring the insurance set forth herein and in the Contract, Owner does not represent or warrant that coverage and limits will necessarily be adequate to protect Contractor, and such coverages and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract.

§ 11.6.11 If Contractor's liability policies do not contain a standard separation of insureds provision, such policies shall be endorsed to provide cross-liability coverage.

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

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

§ 11.6.12 Deleted.

§ 11.6.13 Subcontractors and Sub-subcontractors. The Contractor shall, before permitting any of its Subcontractors to perform any Work at, or to enter upon, the Project site, require each Subcontractor to carry insurance with terms and limits that are specified above. Subcontractors are not required to carry pollution liability. As to professional liability, this requirement only applies to those Subcontractors furnishing design services as part of their scope of work. The requirements set forth in this Subsection shall apply equally to Sub-subcontractors.

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

#### **§ 11.6.14 Deductibles.**

§ 11.6.14.1 All self insured retentions and deductible amounts on any policy required of the Contractor in this Article 11 shall be subject to Owner's prior written approval if over \$50,000.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the



insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.6.14.2 Any and all deductibles or coinsurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at Contractor's sole risk.

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

### **§ 11.7 PROPERTY INSURANCE**

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

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

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

§ 11.7.2 Property insurance shall be on an "special form" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, earth movement, flood, sinkhole, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.7.3 The property insurance to be procured by the Owner pursuant to Section 11.7.1 shall be provided by insurance companies licensed to do business in the State of Florida, having policyholder ratings of no lower than "A-" and financial ratings not lower than "x" in the latest edition of Best's Insurance Guide. As a condition precedent to Contractor's commencement of its Work, the Owner shall provide a Certificate of Insurance confirming that the property insurance required by Section 11.7.1 has been procured by the Owner, that such insurance includes the interests of the Contractor by listing the Contractor as an Additional Named Insured and Loss Payee, provides the coverage as set forth in Section 11.7.2 and shall contain a statement that: "The insurance covered by this certificate will not be cancelled or altered except after thirty (30) days (10 days for non-payment) written notice has been mailed to the Contractor."

### **§ 11.3 PROPERTY INSURANCE**

§ 11.7.4 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.7.5 This property insurance shall cover portions of the Work stored off the site, with the written approval of the Owner, and also portions of the Work in transit.

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

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

~~§ 11.3.1.1 Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.~~

#### § 11.7.7 LOSS OF USE INSURANCE

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

§ 11.7.8 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 may, at its sole discretion, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate deductive Change Order for the cost of the premium.

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

§ 11.7.9 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.8.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

~~§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~

§ 11.7.10 The Owner shall make available to the Contractor, at the Owner's place of business during normal business hours, a copy of each policy that includes insurance coverages required by this Section 11.7. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project.

~~§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

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

#### **§ 11.3.2 BOILER AND MACHINERY INSURANCE**

~~The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.~~

#### **§ 11.8 WAIVERS OF SUBROGATION**

##### **§ 11.3.3 LOSS OF USE INSURANCE**

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

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

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

§ 11.8.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.7 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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

§ 11.8.1.1 The waivers of subrogation in Subparagraph 11.8.1 shall apply equally to waive claims to the extent covered by Owner's or Contractor's comprehensive general liability insurance (CGL) and this provision shall be included in agreements with Contractor's Subcontractors and Suppliers. The policies of insurance shall provide

such waivers of subrogation by endorsement or otherwise. Any cost associated with obtaining such endorsement shall be at the Owner's or Contractor's expense.

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

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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

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

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

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

#### **§ 11.9 BONDS**

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

**§ 11.4.1** 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.

**§ 11.9.1** The Contractor shall furnish performance and payment bonds in an amount of one hundred percent (100%) of the Contract Sum, covering faithful performance of the Contract and payment of obligations arising thereunder. No payments shall be due until the Contractor furnishes fully executed original bonds to the Owner.

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

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

§ 11.9.3 The penal sum of the surety bond shall be increased commensurate with any increase in the Contract Sum but shall never be decreased by any reduction in the Contract Sum.

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

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

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### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the ~~Contract Documents, Contract,~~ whether discovered before or after 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. If prior to the date of Substantial 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. If the Contractor fails to correct nonconforming Work within thirty (30) days after receipt of written notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION If the Contractor proposes another contractor to perform the corrective work, then within ten (10) days from the Owner's notice of rejected or nonconforming Work, the Contractor shall submit in writing to the Owner for the Owner's approval the qualifications, schedule, insurance and other information as required by the Owner for such contractor. Notwithstanding the Owner's approval of the proposed contractor, the Contractor shall remain liable for the performance, quality and cost of such corrective work.

§ 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 an applicable special warranty required by the ~~Contract Documents,~~ any of the Work is found to be not in accordance with the requirements of the ~~Contract Documents,~~ the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct

~~nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.~~

~~§ 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.~~

#### **AFTER SUBSTANTIAL COMPLETION**

§ 12.2.3.1 In addition to the Contractor's obligations under Section 3.5, if, within one (1) 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 an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.3.2 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.

~~§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is remove from the Project site portions of the Work that are rejected or not in accordance with the requirements of the Contract Documents, and are neither corrected by the Contractor nor accepted by the Owner~~

~~§ 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. The Contractor shall bear the cost of correcting destroyed or damaged construction, materials or equipment, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract.~~

§ 12.2.6 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, nor relieve the Contractor of defects which are first noticed more than one (1) year from Substantial Completion. 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.

§ 12.2.7 As part of the contract Work, the Contractor shall perform a one-year warranty inspection with the Architect and Owner, within one (1) year after Substantial Completion of the Work. The purpose of this inspection is to ascertain any defects or failures of the Work which may be covered by the Contractor's, Subcontractors' or any equipment or other warranties on the Project. If such defects, deficiencies or failures are noted, the Contractor shall promptly remedy such defect and shall assist the Architect and Owner in notifying the appropriate manufacturer, if any, of the nature of the problem and the applicable warranty.

§ 12.2.8 If the Work has staggered Substantial Completion dates, then the provisions of Section 12.2 shall apply separately to each such portion or area of Work.

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

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~~The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ § 13.1.1 The Contract shall be governed by the law of the State of Missouri.

§ 13.1.2 In the event that any provision of this Agreement is deemed to be illegal, invalid, void or unenforceable, then that provision shall be deemed severed and stricken and to the fullest extent permitted by law the remainder of the agreements shall be deemed valid and enforceable.

§ 13.1.3 The Contractor will comply, during the course of this Agreement, with all provisions of the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*, or other applicable disability standards and related regulations as applicable to Contractor's services and as amended from time to time.

§ 13.1.4 The Contractor hereby irrevocably submits to the jurisdiction of any state or federal court sitting in Greene County, Missouri, in any action or proceeding arising out of or related to this Agreement and the Contractor further agrees that the Contractor shall not bring any such action or proceeding in any other court, or seek to remove such action or proceeding to any other court. The Contractor agrees and consents that service of process by registered or certified mail shall be sufficient to obtain jurisdiction.

...

§ 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~~. Contract. 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 such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.2.3 The Contractor shall not assign any of the funds to be received under or through this Agreement unless such assignment has the prior written approval of the Owner. In order to be so approved, any such assignment must include the following language: "It is agreed that the funds to be paid to the Assignee under this Assignment are subject to satisfactory performance of the construction contract by the Contractor (Assignor) and to payment of all labor, invoices, bills, claims or liens for services rendered or material supplied for the performance of any portion of the Work called for in this or any other contract between Owner and Contractor in favor of all persons, firms or corporation rendering such services or supplying such materials. Owner reserves the right to set-off against any funds which may be due Contractor by Owner of funds to be paid the Assignee the amount of any claims or liens arising; under or through this Agreement, or in the case of being determined insolvent, any other contract. Furthermore, Assignee agrees that Owner has a prior and superior right to any funds associated with this Agreement."

...

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

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

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

...

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

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

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

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

§ 13.5.7 The Contractor will follow the provisions of any applicable statute or ordinance which requires persons or firms doing excavation to do so only after giving notice to utility companies and obtaining information on the location of utilities (such as "one-call" systems).

§ 13.5.8 Work that fails to pass inspection or approval from authorities having jurisdiction due to a Contractor error or omission will be automatically considered as being "rejected" with or without any action by the Architect or Owner. In the event of such failure, the Owner has the option to declare a default in performance and the Contractor shall expeditiously correct such Work in a manner acceptable both to the authorities having jurisdiction and to the Owner.

...

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

...

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements



of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.law.

...

§ 14.1.1 The Contractor ~~may~~may, without submission of a Claim, terminate the Contract if the Work is stopped for a period of ~~30~~thirty (30) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

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- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the ~~Contract Documents;~~  
Contract; or

...

§ 14.1.2 The Contractor ~~may~~may, without submission of a Claim, terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than ~~100 percent~~one hundred percent (100%) of the total number of days scheduled for ~~completion, or 120~~Substantial Completion, or one hundred twenty (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 (7) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed, including reasonable overhead and profit, and reasonable costs incurred by reason of such ~~termination, and damages.~~termination.

§ 14.1.4 If the Work is stopped for a period of ~~60~~sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the ~~Contract Documents~~ with respect to matters important to the progress of the Work, the Contractor may, upon seven (7) additional days' written notice to the Owner and the ~~Architect,~~Architect and without submission of a Claim, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

§ 14.2.1 The Owner ~~may~~may, without submission of a Claim, terminate the Contract if the Contractor

- .1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for ~~materials~~materials, equipment, services or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 or its Subcontractors or Sub-subcontractors cause a work stoppage due to any strike, picket, boycott or participates in any voluntary or involuntary cessation of Work; or
- .4—.5 otherwise is guilty of substantial breach of a provision of the ~~Contract Documents.~~Contract.

§ 14.2.2 When any of the above reasons exist, the ~~Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action,~~Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice, terminate ~~employment of the Contractor~~the Contract and may, subject to any prior rights of the ~~surety;~~surety, if any:

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

...

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and ~~expenses~~ expenses, and legal, consultant and testing fees made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor or its surety, if any, shall pay the difference to the ~~Owner.~~ Owner immediately upon demand. 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~~ payment, if any, shall survive termination of the Contract.

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**§ 14.3.2** ~~The Contract Sum and Contract Time shall be adjusted.~~ Contractor may submit a Claim for an equitable adjustment in the Contract Sum and/or Contract Time for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

...

**§ 14.4.3** ~~In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed. Upon such termination, the Contractor shall be entitled to recover such costs as set forth in Section 10.1.3 of the Agreement. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.~~

...

~~Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 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.~~ **§ 15.1.2.1** Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker.

**§ 15.1.2.2** Deleted.

**§ 15.1.2.3** The failure of the Owner or Contractor to require strict compliance with the Contract on any one or more items of performance, including but not limited to the procedures for Claims or Change Orders, shall not constitute a waiver of the Owner's or Contractor's right to insist on strict compliance on the balance of the Contract. The Owner or Contractor shall not make any Claim or assert a defense of waiver, or course of dealing or similar such argument based on the Owner's or Contractor's conduct related to a Claim. The only method to amend the requirements of the Contract is in writing, signed by Owner, Architect and Contractor, unless otherwise provided herein.

...

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker, of all undisputed amounts in accordance with the Contract. Any disputed payments shall be placed in an escrow account by the Owner. Failure to so proceed shall constitute a material breach of the Contract, regardless of the ultimate decision on the Claim, it being understood and agreed that any controversy between the parties shall not be deemed a basis to delay or suspend the Work unless agreed to in writing by the Owner and Contractor.

#### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST CLAIMS FOR INCREASE IN CONTRACT SUM**

~~If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.~~ **§ 15.1.4.1** If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4, however, any such Claim must be made within the time limits set forth in Section 15.1.2 herein.

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

**§ 15.1.5.2** ~~If adverse weather conditions~~ Abnormal 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.~~ submitted as set forth in Section 8.3.5 herein.

...

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

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

This ~~mutual~~ waiver is applicable, without limitation, to all consequential damages due to ~~either party's~~ the Contractor's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated ~~damages, when applicable, damages~~ in accordance with the requirements of ~~the Contract Documents.~~ AIA Document A133-2009, Section 2.2.10.

...

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

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten ~~(10)~~ 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.

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**§ 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~~, ~~therefore~~; 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.

...

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

...

**§ 15.3.2** The parties shall endeavor to resolve their Claims by ~~mediation~~ 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~~ sixty (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.~~

...

**§ 15.3.4** Either party, at its sole discretion, may include in the mediation, by joinder, persons or entities substantially involved in a common question or law or fact whose presence is required if complete relief is to be accorded, provided that the party sought to be joined consents to such joinder in the mediation.

#### **§ 15.4 ARBITRATION DELETED**

**NOTE: Nothing in this Agreement or these General Conditions shall require arbitration of disputes or Claims.**

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

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

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

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

#### **§ 15.4.4 CONSOLIDATION OR JOINDER**

~~**§ 15.4.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration~~

~~permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

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

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

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

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, 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 14:31:52 on 11/03/2011 under Order No. 1253855017\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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

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

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