

## **RESOLUTION R-20-52**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE PROFESSIONAL SERVICES CONTRACTS WITH TURNER CONSTRUCTION IN THE AMOUNT OF 1.95% OF THE MUTUALLY AGREED GUARANTEED MAXIMUM PRICE (GMP) PROPOSAL FOR THE CONSTRUCTION PROJECTS AND A FIXED FEE OF \$12,500.00 FOR PRE-CONSTRUCTION PHASE SERVICES FOR THE EXPANSION AND RENOVATION OF PUBLIC SAFETY DEPARTMENT FIRE STATION #2, 6569 NORTH PROSPECT, AND THE CONSTRUCTION OF A NEW PUBLIC SAFETY HEADQUARTERS POLICE FACILITY.**

**WHEREAS**, the accomplishment of the work and services described in this Agreement is necessary and essential to the expansion and renovation of Public Safety Department Fire Station #2 at 6569 North Prospect and the construction of a Public Safety Department Police Headquarters building; and

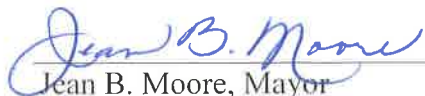
**WHEREAS**, the City desires to engage the services of Turner Construction to manage the construction of the expansion and renovation of Public Safety Department Fire Station #2 and a new Public Safety Headquarters Police facility and Turner Construction Company is willing to perform such services.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI AS FOLLOWS:**


**THAT**, the City Manager of the City of Gladstone, Missouri, is hereby authorized to enter into contracts with Turner Construction Company for construction management services for the expansion and renovation of Public Safety Department Fire Station #2 at 6569 N. Prospect and the construction of a new Public Safety Headquarters Police building for a total amount of 1.95% of the mutually agreed Guaranteed Maximum Price (GMP) proposal for the construction projects, plus \$12,500 for pre-construction phase services.

**FURTHER, THAT**, funds for such purpose are authorized from the General Fund.

**INTRODUCED, READ, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI THIS 9<sup>TH</sup> DAY OF NOVEMBER 2020.**

  
Jean B. Moore, Mayor

ATTEST:

  
Ruth E. Bocchino, City Clerk



## *Request for Council Action*

RES ☒ # R-20-52

BILL ☐ # City Clerk Only

ORD # City Clerk Only

Date: 11/2/2020

Department: Public Safety

Meeting Date Requested: 11/9/2020

Public Hearing: Yes ☐ Date: [Click here to enter a date.](#)

Subject: Resolution authorizing the City Manager to sign a contract with Turner Construction Company for Construction Management Services for the Public Safety Building Projects.

Background: A general sales tax was authorized by the voters of Gladstone to fund the construction of new police and fire/EMS facilities for the Public Safety Department in April, 2019. After issuing an RFP for construction manager-at-risk services City staff interviewed a number of individuals representing construction companies and Turner Construction was selected for recommendation to provide the required services.

Budget Discussion: Funds are budgeted in the amount of \$ 13.0 million from the General Fund. Ongoing costs are estimated to be \$      annually. Previous years' funding was \$

Public/Board/Staff Input: Public Safety Department staff recommends engaging the services of Turner Construction for construction management services for new Public Safety Department police and fire/EMS facilities.

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor

Mike Hasty  
Department Director/Administrator

PC  
City Attorney

SW  
City Manager



*Department of Public Safety  
Administration  
Memorandum MJH 20-36*

**DATE:** November 3, 2020

**TO:** Scott C. Wingerson, City Manager

**FROM:** Chief Michael J. Hasty, Director of Public Safety

**CC:** Chris Williams, City Attorney  
Captain Jeffrey R. Self, Support Services Division Commander  
Captain Robert L. Hays, Police Field Services Division Commander  
Division Chief Sean Daugherty, Fire/EMS Division Commander  
File

**RE:** TURNER CONSTRUCTION – INTRODUCTION TO CITY COUNCIL

In April, 2019 the citizens of Gladstone approved a ½ cent general sales tax to provide funding for building projects in the Public Safety Department and to augment salaries for specific positions in the city budget. A portion of the revenue generated from the new sales tax is to be used for the expansion and renovation of Public Safety Fire Station #2, 6569 N. Prospect and the construction of a new police facility. The City Council approved contracts with the architectural firm of Hoefer Wysocki to develop the building design of both projects at the July 13, 2020 (Resolution R-20-23) and August 24, 2020 (Resolution R-20-42) City Council Meetings.

The next step in the process is the selection of a company to provide construction management services. Several delivery methods for construction management services were considered including: Construction Manager Agency, Construction Manager-At-Risk, and Design-Bid-Build. A Request for Qualifications (RFQ) was prepared and published for Construction Management (Agency) Services in October, 2019 with a closing date for receiving proposals of November 12, 2019. Only two firms submitted proposals in response to the RFQ. At this point, consideration was given to evaluate other construction delivery methods for these projects.

In order for the City of Gladstone to utilize the Construction Manager-At-Risk delivery method, the process for selection of a firm must follow applicable Missouri statutes (67.5050 RSMo). Pursuant to this statute, the City of Gladstone must publicly disclose at a Regular City Council Meeting the intent to utilize this delivery method as well as the selection criteria at least one week prior to publishing the RFQ. You complied with this requirement at the August 24, 2020 Regular City Council Meeting by announcing the intention to issue a RFQ for Construction Manager-At-Risk services, during “Communications from the City Manager.”

I prepared a Request for Qualifications (RFQ) for Construction Manager-At-Risk services for the two building projects which was published on Tuesday, September 1, 2020 with a closing date for receiving proposals on Friday, September 25, 2020. Six proposals were received from the following construction firms: Turner Construction, McCown Gordon Construction, Fogel-Anderson Construction, Haren Contracting LLC, Paric Corporation, and Prairie Band Construction.

Missouri statutes require a "Two Step" process for selecting a firm for Construction Manager-At-Risk services. The first step requires an evaluation of proposals based on qualifications (with no fees included). An evaluation process of the Statements of Qualifications submitted by the six construction companies was prepared utilizing a cross-section of staff among four departments within the City of Gladstone.

In addition to Public Safety Department staff (Captain Jeff Self, Division Chief Sean Daugherty, Captain Rob Hays, and me), Assistant City Manager/Community Development Director Bob Baer, Public Works Director Tim Nebergall, and Parks, Recreation, and Cultural Arts Director Justin Merkey assisted with the evaluation of the proposals. Evaluations and scoring of the proposals were based on the following criteria: specialized experience and technical competence, responsiveness to the conditions/information in the RFQ, expertise of team, past record of performance, and proximity to the City of Gladstone.

The scoring submitted by each member of the evaluation team was combined to provide an aggregate score for each proposal. The scores were used to establish the rank order of the proposals. The following top three firms were selected to move to Step Two in the process: Turner Construction Company, McCown Gordon Construction Company, and Fogel-Anderson Construction Company. Interviews with these firms were conducted via the online video platform "Zoom" on Friday, October 16, 2020. Each firm was given an opportunity to deliver a fifteen minute presentation which was followed by a thirty minute "question and answer" segment (total of forty-five minutes).

After the interviews, the evaluation team discussed the interviews and reached consensus on the firm best suited to work on the Public Safety Department construction projects. Turner Construction Company was the clear choice of the evaluation team, therefore a decision was made to recommend the City engage a contract for Construction Manager-at-Risk services with them to the City Council. If you agree with this recommendation, I will arrange to have representatives from Turner Construction Company present at the November 9, 2020 City Council Study Session.

A contract for services was received from Turner Construction Company and presented to City Attorney Chris Williams for legal review and is subject to his approval. A resolution authorizing you to sign the contract has been placed on the Gladstone City Council Regular Meeting agenda for November 9, 2020. Please advise if you have question or need additional information.





2323 Grand Boulevard, Suite 1000  
Kansas City, Missouri 64108  
816.421.4460 F: 816.474.3447  
www.sb-kc.com

Gregory S. Gerstner  
816.265.4134  
cell 816.830.8768  
ggerstner@sb-kc.com

December 17, 2020

*Sent via Electronic Mail*

Mr. Scott Wingerson  
City of Gladstone  
City Manager  
7010 North Holmes  
Gladstone, Missouri 64118  
[scottw@gladstone.mo.us](mailto:scottw@gladstone.mo.us)

**Re: Construction Manager-At Risk Contract  
Public Safety Department Headquarters Facility  
Fire Station  
Engagement for Legal Services**

Dear Mr. Wingerson:

We appreciate the opportunity to assist the City of Gladstone, Missouri (the "**Client**" or the "**City**") in connection with reviewing, providing comments and assisting in the review and negotiation of the proposed Construction Manager-At Risk Contract (the "**Contract**") in connection with the construction of the Public Safety Department Headquarters Facility and Fire Station #2 (the "**Project**"). The purpose of this letter is to set forth our agreement regarding Seigfreid Bingham, P.C.'s (the "**Firm**") representation of the City in connection with the Project. If the City approves this engagement on the terms set forth below, I would appreciate it if you could sign where indicated below. The Firm would provide legal services in connection with the Project as follows:

1. **Client.** The Firm is representing only the Client. The Firm's representation does not extend to any other person. The Firm's duty is to the Client as directed by the Client's authorized agent(s).

2. **Legal Services.** The Firm will perform legal consulting services with respect to the Project, including reviewing the Contract; providing options for the form of the Contract; providing suggested terms of the Contract; providing comments and proposed revisions to the Contract; assisting in the negotiation of the Contract; and providing recommendations concerning compliance with all applicable procurement laws and requirements (the "**Legal Services**"). The time for which you will be charged will include, but will not be limited to, conferences with you or other personnel, other counsel, consultants; review of files and other investigation; drafting and review of documents and correspondence.

3. **Assigned Personnel.** Gregory S. Gerstner will be the lead attorney in connection with the rendering of the Legal Services. He may assign certain aspects of the necessary work to the Firm's other attorneys, paralegals and staff. We will assign such work in order to produce the highest quality work at the lowest cost to you, given the expertise, experience and availability of Firm personnel and the requirements of the work, including time constraints.

4. **Communication with the Client.** As we render the Legal Services, we will keep the Client's designated agent(s) informed of the status of the Legal Services and our recommendations to protect the best interest of Client.

5. **The Client's Duties.** The Client and its authorized representative agree, at all times, to cooperate with the Firm and keep the Firm informed of all information or developments that come to the Client's attention that could impact our representation.

6. **Fees; Time Charged.** The Firm's fees for rendering the Legal Services will be based on the time the Firm's attorneys spend working on this engagement charged at the individual's hourly rate at the time the service is rendered. We will bill our time in increments of tenths of an hour (i.e. six minute intervals). The hourly rate for my time is \$275.00. Hourly rates for associates range from \$210.00 to \$250.00, depending on experience level. The Firm will also bill Client for any out-of-pocket expenses incurred in connection with this engagement approved in advance by Client. The estimated time and fees for the initial review of the Contract is approximately 12 hours and \$3,300.00.

7. **Periodic Billing Statements.** The Firm's periodic statements will contain a detailed description of all services we have rendered to the Client, the date of such services, the identity of the person who rendered the services and a description of any expenses. The Firm will provide the Client monthly statements, and the amounts reflected thereon are due within thirty (30) days of receipt. If you have any questions concerning any statement, please contact me immediately.

8. **Termination of Representation.** The Client may terminate our representation at any time, for any reason, by providing written notice to us.

9. **Retention, Delivery and Destruction of Files.** The Firm reserves the right to make and retain copies of all documents generated or received by us in the course of our representation of the Client. If the Client requests documents from us, either during the course of our representation or in connection with or following termination of or withdrawal from such representation, such documents will be promptly provided to Client.

10. **Completion of Services.** Upon completion of our services with respect to the matter, the Firm will have no further obligation to advise the Client with respect to subsequent changes in the law or facts relevant to such matter and the attorney-client relationship will terminate unless the Client has requested, and the Firm has agreed in writing to provide, advice or representation with respect to one or more other matters which then are pending.

Your signature below confirms the City's agreement to have the Firm represent the City in connection with the above-described matter.

Mr. Scott Wingerson  
City of Gladstone  
December 17, 2020  
Page 3

If the foregoing terms under which the Firm will provide the Legal Services are acceptable to the City, please indicate the City's approval and agreement by signing and returning the enclosed copy of this letter to the undersigned. We certainly appreciate the opportunity to provide service to you.

Sincerely,

**SEIGFREID BINGHAM, P.C.**  
"Firm"

A handwritten signature in black ink, appearing to read "Greg Gerstner", written in a cursive style.

By: Gregory S. Gerstner

**AGREEMENT TO ENGAGE COUNSEL**

The undersigned hereby retains Seigfreid Bingham, P.C. to perform the Legal Services under the terms and conditions described in the foregoing letter.

Dated: December 18, 2020

**CITY OF GLADSTONE, MISSOURI**  
**"Client" / "City"**

By: \_\_\_\_\_

  
Scott Wingerson, City Manager

**EXHIBIT A**  
**FORM OF GUARANTEED MAXIMUM PRICE AMENDMENT**

**GUARANTEED MAXIMUM PRICE AMENDMENT TO AGREEMENT BETWEEN  
OWNER AND CONSTRUCTION MANAGER AS CONSTRUCTOR**

**THIS GUARANTEED MAXIMUM PRICE AMENDMENT TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AS CONSTRUCTOR** (this "Amendment") is made and entered into this 1st day of July, 2021 by and between the City of Gladstone, Missouri, a municipality organized and existing under the laws of the State of Missouri, (the "Owner"), and Turner Construction Company, a corporation organized and existing under the laws of the State of New York, with a business address of 1220 Washington Street, Suite 100, Kansas City, Missouri 64105 ("Construction Manager").

**RECITALS**

**A. WHEREAS**, the Owner and Construction Manager entered into that certain Agreement Between Owner and Construction Manager as Constructor dated April 27, 2021 (the "Agreement") whereby Construction Manager agreed to provide Preconstruction Phase Services and provide the Work for the Project in accordance with the Contract Documents.

**B. WHEREAS**, pursuant to the Agreement, Construction Manager has submitted the Guaranteed Maximum Price proposal and any applicable revisions thereto.

**C. WHEREAS**, Construction Manager and the Owner desire to enter into this Amendment to incorporate and set forth their agreement as to certain terms for the Construction Phase, including the Guaranteed Maximum Price.

**NOW, THEREFORE**, in consideration of the mutual covenants hereunder set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and Construction Manager, intending to be bound, do hereby agree as follows:

1. **General Conditions Amount**. The Owner and Construction Manager acknowledge and agree that the General Conditions Amount, as defined in Section 6.1.1 of the Agreement, is the stipulated sum of One Hundred Thousand Nine Hundred and Fifty Dollars (\$ 195,650.00 )

2. **Construction Phase Fee**. The Owner and Construction Manager agree that the Construction Phase Fee defined and determined as set forth in Section 6.1.2 of the Agreement is the stipulated sum of Sixty Seven Thousand Eight Hundred and Ninety Dollars (\$ 67,890.00 ).

3. **Guaranteed Maximum Price**. The Owner and Construction Manager agree that the Guaranteed Maximum Price as defined in Section 6.1.3 of the Agreement is the sum of Four Million Thirty Nine Thousand Four Hundred and Fifty Three Dollars (\$ 4,039,453.00 ).

4. **Contingency**. The Guaranteed Maximum Price includes the Contingency as defined in Section 3.2.4 of the Agreement in the amount of One Hundred Nine Thousand Seven Hundred Ninety Six Dollars (\$ 109,796.00 ).

5. **Allowances**. The Guaranteed Maximum Price includes the allowances, if any, set forth in Exhibit 1 attached hereto (the "Allowances"). Construction Manager agrees that:

- a. The Allowances include the cost to Construction Manager (less any trade discounts) of materials and equipment required by the Allowances to be delivered to the site of the Work, and all applicable taxes; and

- b. Construction Manager's costs for unloading and handling on the site of the Project, labor, installation costs, overhead, profit, and other expenses contemplated for the Allowances have been included in the Contract Sum and not in the Allowances, and no demand for additional payment on account of any of the foregoing will be valid.

6. **Alternates.** The Guaranteed Maximum Price includes the alternates, if any, set forth on **Exhibit 1** ("Accepted Alternates") which are more fully described in the Contract Documents. The Guaranteed Maximum Price is not based upon the alternates if any, set forth on **Exhibit 1** designated as pending alternates ("Pending Alternates") which are more fully described in the Contract Documents. The Pending Alternates may later be accepted by Owner in writing; provided, however, that the Construction Manager shall furnish Owner with no less than twenty (20) days prior written notice of the date upon which any of the Pending Alternates which are not included in the Contract Sum as set forth in **Exhibit 1** must be accepted by Owner in order for Construction Manager to perform Work covered by such Pending Alternates for the price set forth in **Exhibit 1** and without adjustment to the Contract Time.

7. **Construction Schedule of Values.** The Construction Schedule of Values as defined in **Section 9.2** of the General Conditions is attached hereto as **Exhibit 2**.

8. **GMP Design Documents.** The GMP Design Documents as described in **Section 3.2.3.1** of the Agreement are listed on **Exhibit 3** attached hereto.

9. **Construction Schedule.** The construction schedule described in **Section 3.10** of the General Conditions is attached hereto as **Exhibit 4**. Construction Manager shall comply with such construction schedule and shall achieve Substantial Completion and Final Completion in accordance with the construction schedule. Those completion dates and Milestone Dates set forth in the construction schedule are part of the Contract Time.

10. **Unit Prices for Changes.** In the event of changes involving any class of Work or items covered in **Exhibit 5** attached hereto, if any, Construction Manager agrees to accept the amount of the established unit prices set forth in **Exhibit 5** attached hereto. Such unit prices set forth in **Exhibit 5** are considered complete and include: (a) all labor, fringe benefits, materials, tools, equipment, supplies, samples, shop drawings, layout, delivery, handling, storage, hoisting, distribution, protection, transportation, supervision, contributions, coordination, installation, compliance with all the requirements of any applicable governmental agency, overhead and profit; and (b) any other costs or expenses in connection with, or incidental to, the performance of the change to which said unit prices apply.

11. **Reports and Tests.** During the Preconstruction Phase of the Project, Construction Manager has been provided and has carefully studied the reports of explorations and tests of subsurface structures at or contiguous to the site of the Project, and any drawings and surveys of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site of the Project, including those reports listed on **Exhibit 6** attached hereto. Construction Manager acknowledges that these reports and tests are not Contract Documents.

12. **Terms.** Terms used but not defined in this Amendment shall have the meanings indicated in the Agreement or General Conditions.

13. **Remaining Terms Unaffected.** Except as specifically amended herein, all remaining terms, conditions, covenants and agreements contained in the Agreement and Contract Documents remain in full force and effect, and the parties remain obligation to perform the same.

14. **Waiver/Release.** No elected official or employee of the Owner incurs or assumes any individual or personal liability by the execution of the Agreement or this Amendment, or by reason of the default of the Owner in the performance of any of the terms hereof or the Contract Documents. All such liability of elected officials and employees of Owner as such is hereby released by Construction Manager as a condition of and consideration for the execution of this Amendment.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed pursuant to due and legal action authorizing the same to be done, the date first written above.

CITY OF GLADSTONE, MISSOURI  
"Owner"

By: Scott Wingersen

Printed Name: Scott Wingersen

Title: City Manager

Date: July 6, 2021

TURNER CONSTRUCTION COMPANY  
"Construction Manager"

By: Karen M. Hogan

Printed Name: Karen Hogan

Title: Vice President & General Manager

Date: July 1st, 2021



July 28, 2021

Scott Wingerson  
City Manager  
City of Gladstone Missouri  
7010 N. Holmes Street  
Gladstone, Missouri 64118

**Re: Gladstone Fire Station #2 – Contract Amendment**  
Fee Adjustment due to Scope and Construction Cost Increase

Dear Scott,

This proposal/amendment reflects the change of design fees due to the increased scope and construction cost as illustrated in the attached breakdown from the Turner Construction GMP. As outlined in our contract with the City, our fee for Basic Services will remain at 8%, but the agreed upon GMP has increased from \$1,800,000 to \$4,039,453 (\$2,239,453 increase). This change equates to a Basic Service increase of \$179,156. Since our contract contains fees for other services that will remain unused, we are proposing that some of these fees be utilized to offset our total fee increase. These items are also outlined on the attached Exhibit A from our contract.

The following outline reflects these scope and cost changes:

Basic Services Increase (8% of \$2,239,453)	\$179,156
Other Service Fee Conversion to Offset Basic Service Increase:	
Cost Estimating	(\$20,000)
Existing Furniture Inventory	(\$6,000)
Commissioning	(\$17,500)
<b>Total Fee Increase</b>	<b>\$135,656</b>

As directed, we have completed the design within the Basic Services, but request approval of this proposal to formalize our conversations. Please let us know if you have any questions or concerns. Thank you.

Best regards,  
**Hoefler Welker Architects, LLC**

Ken Henton, AIA, NCARB  
Partner

7.28.2021  
Date

Approved,

  
By: 8/10/2021  
Date:



EXHIBIT 2 - CONSTRUCTION SCHEDULE OF VALUES

BID PACKAGE NAME		Gross SF =	9,466
		Cost	Cost / SF
00.03	Equipment procurement	\$82,994	\$8.77
01.01	General requirements	\$63,479	\$6.71
02.01	Demo	\$70,802	\$7.48
03.01	Concrete	\$173,532	\$18.33
04.01	Masonry	\$237,977	\$25.14
05.01	Structural steel & miscellaneous metals	\$73,698	\$7.79
06.01	General trades	\$127,355	\$13.45
06.02	Architectural woodwork (Furnish casework & furnish/install of tops)	\$142,418	\$15.05
07.01	Roofing / sheet metal	\$298,805	\$31.57
07.02	Waterproofing / joint sealants	\$37,877	\$4.00
08.01	Doors / frames / hardware (Furnish)	\$61,535	\$6.50
08.02	Glass / glazing	\$109,068	\$11.52
08.03	Overhead doors / loading dock equipment	\$116,072	\$12.26
09.01	Metal framing / drywall / ceilings / frame install / blocking / sheathing	\$516,648	\$54.58
09.06	Resinous Flooring	\$55,938	\$5.91
09.03	Carpet / vct / sheet flooring / resilient base	\$39,561	\$4.18
09.04	Tile	\$38,377	\$4.05
09.05	Painting / wallcovering	\$31,440	\$3.32
10.01	Specialties	\$9,014	\$0.95
10.02	Signage	\$20,856	\$2.20
10.03	Operable Partitions	\$19,776	\$2.09
10.04	Lockers	\$4,810	\$0.51
12.01	Window treatment	\$10,114	\$1.07
12.02	Markerboards and Benches	\$12,458	\$1.32
21.01	Fire suppression	\$4,180	\$0.44
22.01	Plumbing	\$247,652	\$26.16
23.01	HVAC	\$264,029	\$27.89
26.01	Electrical	\$385,242	\$40.70
31.01	Earthwork	\$82,593	\$8.73
32.01	Asphalt paving	\$26,975	\$2.85
32.03	Landscaping & athletic surfaces	\$0	\$0.00
32.04	Segmented retaining walls	\$32,366	\$3.42
33.01	Site utilities (Storm, water & sanitary)	\$83,904	\$8.86
Permit	Permits	\$0	\$0.00
<b>SUBTOTAL</b>		<b>\$3,481,545</b>	<b>\$367.79</b>
<b>INSURANCE AND BONDING</b>		<b>\$178,321</b>	<b>\$18.84</b>
<b>ESCALATION AND CONTINGENCY</b>		<b>\$109,796</b>	<b>\$11.60</b>
DESIGN CONTINGENCY	0.00%	\$0	\$0.00
ESCALATION	0.00%	\$0	\$0.00
OWNER CONTINGENCY	0.00%	\$0	\$0.00
CONSTRUCTION CONTINGENCY	3.00%	\$109,796	\$11.60
<b>SUBTOTAL - DIRECT COSTS</b>		<b>\$3,769,662</b>	<b>\$398.23</b>
<b>CM SERVICES</b>		<b>\$269,790</b>	<b>\$28.50</b>
PRECONSTRUCTION		\$6,250	\$0.66
CONSTRUCTION STAFF & REIMBURSABLES		\$195,650	\$20.67
CM FEE	1.95%	\$67,890	\$7.17
<b>PROJECT CONSTRUCTION ESTIMATE TOTAL</b>		<b>\$4,039,453</b>	<b>\$426.73</b>

Design Services for Design of the Fire Station #2 Expansion

**EXHIBIT A**

**PROJECT INFORMATION**

Total Project Budget:	\$2,300,000
Project Construction Budget:	\$1,800,000
Project FF&E Budget:	\$200,000

<b>PREDESIGN</b>	<b>FEES</b>
1. Field Verification and Building Assessment	\$14,000
2. 3D Model Development (Architectural, Structural, MEP)	\$8,800
3. Site Assessment	\$3,200
4. Survey	\$8,000
5. Geotechnical	By City
6. Program Verification (tours and interviews included)	\$4,500

**BASIC SERVICES**

1. Building Development (8% of Construction Cost)	\$144,000
2. Card Access	included
3. CCTV	included
4. AV	included
5. IT Infrastructure	included

**ADDITIONAL SERVICES**

1. City Process (Planning and Council Approval)	\$8,250
2. ECO Charette (evaluation of 4 to 5 Mechanical Systems)	\$12,850
3. Cost Estimating (if not included in CMAR scope)	\$23,950
4. Furniture (Option One – layout only)	included in basic services
5. Furniture (Option Two – one vendor @ 4% of budget)	\$8,000
6. Furniture (Option Three – bid package @ additional 6%)	\$12,000
7. Existing Furniture Inventory (allowance)	\$6,000
8. Record Documents (Allowance 4% of basic services)	\$5,760
9. Commissioning	\$17,500

<b>REIMBURSABLE EXPENSES (estimated 8% of Basic Services Fees)</b>	<b>\$11,500</b>
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R-20-52

# Document A312™ - 2010

Conforms with the American Institute of Architects AIA Document 312

Liberty Mutual Bond No. 015214575

## Payment Bond

### CONTRACTOR:

(Name, legal status and address)

Turner Construction Company

1220 Washington Street, Suite 100  
Kansas City, MO 64108

### SURETY:

(Name, legal status and principal place of business)

Liberty Mutual Insurance Company  
175 Berkeley Street  
Boston, MA 02116

Mailing address for Notices:  
Attention: Surety Claims Department  
1001 4th Avenue, Suite 3700  
Seattle, WA 98155

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

Any singular reference to Contractor, Surety Owner or other party shall be considered plural where applicable.

### OWNER:

(Name, legal status and address)

City of Gladstone, Missouri  
7010 North Holmes Street  
Gladstone, Missouri 64118-2646

## CONSTRUCTION CONTRACT

Date: Agreement dated 4/27/21 and GMP Amendment including Exhibits A, Exhibits 1 through 5 dated 7/01/21

Amount: \$ Four Million Thirty Nine Thousand Four Hundred Fifty Three and 00/00 Dollars ( \$4,039,453.00)

### Description:

(Name and location) Expansion and Renovation of Public Safety Department Fire Station #2; 6569 North Prospect, Gladstone, Missouri 64119. TCCO # 210033.

## BOND

Date: July 27, 2021

(Not earlier than Construction Contract Date)

Amount: \$ Four Million Thirty Nine Thousand Four Hundred Fifty Three and 00/00 Dollars ( \$4,039,453.00)

Modifications to this Bond: ☒ None

### CONTRACTOR AS PRINCIPAL

Company:

Turner Construction Company

### SURETY

Company:

Liberty Mutual Insurance Company

(Corporate Seal)

Signature

Name & Title: Karen Hogan VP/GM

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATIONAL ONLY - Name, address and telephone)

Signature:

Name & Title: John F. Surano

Attorney-In-Fact

### AGENT or BROKER:

Turner Surety and Insurance Brokerage, Inc.  
250 Pehle Avenue, Suite 311  
Saddle Brook, NJ 07663  
(201) 267-7500  
CA License # 0E81386

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Hoefer Wysocki Architects, LLC.  
11460 Tomahawk Creek Parkway, Suite 400  
Leawood, Kansas 66211

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the condition in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with other materials terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corporate Seal)

**SURETY**

Company: \_\_\_\_\_ (Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title:  
Address

Signature: \_\_\_\_\_  
Name and Title:  
Address

# CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF Missouri

COUNTY OF Jackson

On this 2 day of August, 2021, before me personally  
came Karen Hogan to me known, who, being by me  
duly sworn, did depose and say that she/he resides in Overland Park, Kansas  
that she/he is the Vice President / General Manager of the

Turner Construction Company the corporation  
described in and which executed the above instrument that she/he knows the seal of said  
corporation; that the seal affixed to said instrument is such corporate seal; that it was so  
affixed by order of the Board of Directors of said corporation, and that she/he signed  
her/his name thereto by like order.

(SEAL)



TIFFANY CORBET  
My Commission Expires  
March 26, 2024  
Buchanan County  
Commission #12412153

Tiffany Corbet

**CORPORATE ACKNOWLEDGMENT**

Form 152

STATE OF NEW JERSEY  
COUNTY OF BERGEN

On this 27th day of July, 2021 before me personally came John F. Surano to me known, who, being by me duly sworn, did depose and say that she/he resides in Basking Ridge, New Jersey that she/he is the ATTORNEY IN FACT of the LIBERTY MUTUAL INSURANCE COMPANY the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)



**SHERRYANNE DEPIRRO**  
NOTARY PUBLIC, STATE OF NEW JERSEY  
MY COMMISSION EXPIRES

**FEBRUARY 10, 2022**



LIBERTY MUTUAL INSURANCE COMPANY  
FINANCIAL STATEMENT — DECEMBER 31, 2020

Assets		Liabilities	
Cash and Bank Deposits .....	\$2,058,007,542	Unearned Premiums .....	\$8,448,706,991
*Bonds — U.S Government .....	2,209,760,437	Reserve for Claims and Claims Expense .....	23,879,216,613
*Other Bonds .....	15,902,755,586	Funds Held Under Reinsurance Treaties .....	343,068,613
*Stocks .....	18,517,107,230	Reserve for Dividends to Policyholders .....	1,192,716
Real Estate .....	193,169,809	Additional Statutory Reserve .....	77,397,000
Agents' Balances or Uncollected Premiums .....	6,970,170,469	Reserve for Commissions, Taxes and	
Accrued Interest and Rents .....	118,399,147	Other Liabilities .....	6,279,510,804
Other Admitted Assets .....	12,079,597,645	<b>Total .....</b>	<b>\$39,029,092,737</b>
		Special Surplus Funds .....	\$178,155,102
		Capital Stock .....	10,000,075
		Paid in Surplus .....	10,945,045,214
		Unassigned Surplus .....	7,886,674,737
		<b>Surplus to Policyholders .....</b>	<b>19,019,875,128</b>
<b>Total Admitted Assets .....</b>	<b><u>\$58,048,967,865</u></b>	<b>Total Liabilities and Surplus .....</b>	<b><u>\$58,048,967,865</u></b>



\* Bonds are stated at amortized or investment value; Stocks at Association Market Values.  
The foregoing financial information is taken from Liberty Mutual Insurance Company's financial statement filed with the state of Massachusetts Department of Insurance.

I, TIM MIKOLAJEWSKI, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the foregoing is a true, and correct statement of the Assets and Liabilities of said Corporation, as of December 31, 2020, to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at Seattle, Washington, this 25<sup>th</sup> day of March, 2021.

*TAMIKOLAJEWSKI*

Assistant Secretary





This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company

Certificate No: **8204080-974460**

## POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Charo J. Rosemond; Elliott W. Wolfe; James Baldassare Jr.; John F. Surano; Krista A. Burke; Lisa M. Soavetta; Maria L. Spadaccini; Nicholas F. Walsh; Sherryanne M. DePirro

all of the city of Saddle Brook state of NJ each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 3rd day of August, 2020.



Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company

By:

David M. Carey  
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss  
County of MONTGOMERY

On this 3rd day of August, 2020 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Teresa Pastella, Notary Public  
Upper Merion Twp., Montgomery County  
My Commission Expires March 28, 2021  
Member, Pennsylvania Association of Notaries

By:

Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

### ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

### ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 27th day of July, 2021.



By:

Renee C. Llewellyn  
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



# AIA Document A133™ – 2009

R-20-52  
11/9/2020

## Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 21st day of October in the year 2020  
(In words, indicate day, month and year.)

October twenty first, two thousand and twenty

BETWEEN the Owner:  
(Name, legal status and address)

City of Gladstone  
7010 N. Holmes Street  
Gladstone, MO 64118

and the Construction Manager:  
(Name, legal status and address)

Turner Construction Company  
1220 Washington St., Suite 100  
Kansas City, MO 64105-1439

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

Public Safety Department police headquarters facility located at a site to-be-determined in  
Gladstone, MO, AND the expansion and renovation of Public Safety Department Fire  
Station #2 at 6569 N. Prospect, Gladstone, MO

The Architect:  
(Name, legal status and address)

Hoefer Wysocki Architects  
11460 Tomahawk Creek Pwky #400  
Leawood, KS 66211

The Owner's Designated Representative:  
(Name, address and other information)

Chief Michael Hasty, Director of Public Safety  
7010 N. Holmes Street  
Gladstone, MO 64118  
(816) 423-4028, mikh@gladstone.mo.us

The Construction Manager's Designated Representative:  
(Name, address and other information)

Dave Dudzik, Construction Executive  
Turner Construction

### ADDITIONS AND DELETIONS:

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

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

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Public Safety  
Bldg

Init.

1220 Washington St., Suite 100  
Kansas City, MO 64105  
(913) 208-7221, ddudzik@tcco.com

The Architect's Designated Representative:  
*(Name, address and other information)*

Ken Henton  
Hofer Wysocki Architects  
11460 Tomahawk Creek Pwky #400  
Leawood, KS 66211

The Owner and Construction Manager agree as follows.

## TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8, at which time the Contractor's clarifications and assumptions on which the GMP is based shall govern over any inconsistent term. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.



## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### § 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

### § 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall

procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### § 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

#### § 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to construction means and methods under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

#### § 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. The Guaranteed Maximum Price is not intended to include any changes in scope, systems, kinds, qualities, quantities of materials, finishes or equipment differing from that shown or reasonably inferable from the information stated in the design documents upon which the Guaranteed Maximum Price was based, subject to the qualifications and assumptions to that Guaranteed Maximum Price, all of which, if required would warrant an adjustment to the Guaranteed Maximum Price by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use and freely accessible to cover those costs not otherwise reimbursable as the Cost of the Work and not included in a Change Order, provided, however, such contingency shall not be used to fund costs resulting from the CM's gross negligence or willful misconduct.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### § 2.3 Construction Phase

#### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

#### § 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents, Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

#### § 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence satisfactory to the CM that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager 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 Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.



§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

Fixed Fee of \$12,500

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within eight (8) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

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## § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
*(Insert rate of monthly or annual interest agreed upon.)*

Six percent (6%) per annum

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 and the Construction Manager's contingency plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

1.95% of the GMP Amount.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

1.95% of the Change Amount.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Subcontractor overhead and profit on sub-subcontractors or vendors: Five percent (5%)

Subcontractor overhead and profit on self-performed work: Ten percent (10%)

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed one hundred ( 100% ) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

*(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
TBD in GMP amendment if applicable		

## § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

## § 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General

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Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs incurred by the Construction Manager in the performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

### **§ 6.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### **§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 6.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 6.5.4** Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**§ 6.5.5** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

### **§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

**§ 6.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs

of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

#### § 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.7.5 Certain insurance, bonds, wages, benefits and fringes shall be reimbursed as Costs of the Work at the fixed rates set forth as follows or if not set forth here as set forth in the Guaranteed Maximum Price or its Assumptions, Clarifications or Qualifications.

#### § 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 and except as provided with respect to the use of the CM's contingency of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

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#### **§ 6.9 Discounts, Rebates and Refunds**

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### **§ 6.10 Related Party Transactions**

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### **§ 6.11 Accounting Records**

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### **ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

#### **§ 7.1 Progress Payments**

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager between the 25th day and the 27<sup>th</sup> day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment. Construction Manager's Application for Payment to the extent speaking of completed Work shall be deemed to mean completed and forecasted work.

*(Federal, state or local laws may require payment within a certain period of time.)*

Owner shall pay Construction Manager interest at the prime rate plus 5% per annum for any late payments.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been or, as set forth in Section 7.1.3, forecasted to be completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work or forecasted to be completed as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, actual cost of the work shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. Add the Construction Manager's Fee less retainage of five percent (5%) of the Cost of the Work. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
4. Subtract five percent (5%) retainage from that portion of the Work that the Construction Manager self-performs.
5. Subtract the aggregate of previous payments made by the Owner;
6. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
7. Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

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§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- 1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- 2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- 3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

## ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*



Type of Insurance or Bond  
Payment and Performance Bond

Limit of Liability or Bond Amount (\$0.00)  
Equal to the Guaranteed Maximum Price, as Adjusted by  
Change Order

Builder's Risk Insurance

Per Supplementary General Conditions and as further clarified  
in the GMP Amendment

On-site Worker's Compensation, General  
Liability and Automotive Insurances

Per Supplementary General Conditions and as further clarified  
in the GMP Amendment

\*Mutually agreeable policy limits and coverages shall be  
specifically defined as an Exhibit to the GMP at a later date.

#### ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

☒ Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☐ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

#### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(Paragraphs deleted)*

#### ARTICLE 10 TERMINATION OR SUSPENSION

##### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Sections 14.1.1, 14.1.2 and 14.1.4 of A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

Init.

- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

#### § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

#### § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

### ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007.

#### § 11.2 Ownership and Use of Documents

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 11.3 Governing Law

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing

Init.

financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, 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.

§ 11.5 Other provisions:

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction

- .5 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

CM's clarifications and assumptions on which the GMP is based, which clarifications and assumptions shall govern over any inconsistent term.

This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*

*(Printed name and title)*

*(Row deleted)*

CONSTRUCTION MANAGER *(Signature)*

*Karen M. Hogan, Vice President & General Manager*

Init.

## Additions and Deletions Report for AIA® Document A133™ – 2009

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:50:34 ET on 10/22/2020.

### PAGE 1

AGREEMENT made as of the 21st day of October in the year 2020

...

October twenty first, two thousand and twenty

...

City of Gladstone  
7010 N. Holmes Street  
Gladstone, MO 64118

...

Turner Construction Company  
1220 Washington St., Suite 100  
Kansas City, MO 64105-1439

...

Public Safety Department police headquarters facility located at a site to-be-determined in Gladstone, MO, AND the expansion and renovation of Public Safety Department Fire Station #2 at 6569 N. Prospect, Gladstone, MO

...

Hoefer Wysocki Architects  
11460 Tomahawk Creek Pwky #400  
Leawood, KS 66211

...

Chief Michael Hasty, Director of Public Safety  
7010 N. Holmes Street  
Gladstone, MO 64118  
(816) 423-4028, mikeh@gladstone.mo.us

...

Dave Dudzik, Construction Executive  
Turner Construction

1220 Washington St., Suite 100  
Kanas City, MO 64105  
(913) 208-7221, ddudzik@tcco.com  
**PAGE 2**

Ken Henton  
Hoefer Wysocki Architects  
11460 Tomahawk Creek Pwky #400  
Leawood, KS 66211  
**PAGE 3**

## TABLE OF ARTICLES

...

## 12 SCOPE OF THE AGREEMENT

### EXHIBIT A - GUARANTEED MAXIMUM PRICE AMENDMENT

...

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section ~~2.2.8-2.2.8~~, at which time the Contractor's clarifications and assumptions on which the GMP is based shall govern over any inconsistent term. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### PAGE 4

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager ~~suggests~~ suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

#### PAGE 5

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance construction means and methods under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

...

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. ~~Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.~~

The Guaranteed Maximum Price is not intended to include any changes in scope, systems, kinds, qualities, quantities of materials, finishes or equipment differing from that shown or reasonably inferable from the information stated in the design documents upon which the Guaranteed Maximum Price was based, subject to the qualifications and assumptions to that Guaranteed Maximum Price, all of which, if required would warrant an adjustment to the Guaranteed Maximum Price by Change Order. § 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

...

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use and freely accessible to cover those costs ~~considered not otherwise reimbursable as the Cost of the Work but not included in a Change Order, and not included in a Change Order, provided, however, such contingency shall not be used to fund costs resulting from the CM's gross negligence or willful misconduct.~~



§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the ~~agreed-upon~~ agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

...  
§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents ~~without reservations or exceptions, but the Documents,~~ Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a ~~cost-plus~~ cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and ~~Architect~~ Architect

...  
§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, ~~systems,~~ systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence satisfactory to the CM that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager 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 Construction Manager and Architect.

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™ 2014, B103™ 2007, Standard Form of Agreement Between Owner and Architect, ~~Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement.~~ The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

...  
Fixed Fee of \$12,500



§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ~~(—) eight (8)~~ months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

PAGE 9

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid ~~thirty ( 30 )~~ days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

~~%—Six percent (6%) per annum~~

...

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds ~~funds for the Construction Manager's performance of the Contract.~~ The Contract Sum is the Cost of the Work as defined in Section 6.1.1 and the Construction Manager's contingency plus the Construction Manager's Fee.

...

1.95% of the GMP Amount.

...

1.95% of the Change Amount.

...

Subcontractor overhead and profit on sub-subcontractors or vendors: Five percent (5%)

Subcontractor overhead and profit on self-performed work: Ten percent (10%)

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed percent ~~(—%) one hundred ( 100% )~~ of the standard rate paid at the place of the Project.

...

TBD in GMP amendment if applicable

PAGE 10

§ 6.1.1 The term Cost of the Work shall mean costs ~~necessarily~~ incurred by the Construction Manager in the ~~proper~~ performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

PAGE 12

§ 6.7.5 Certain insurance, bonds, wages, benefits and fringes shall be reimbursed as Costs of the Work at the fixed rates set forth as follows or if not set forth here as set forth in the Guaranteed Maximum Price or its Assumptions, Clarifications or Qualifications.

...

- .5 Except as provided in Section 6.7.3 and except as provided with respect to the use of the CM's contingency of this Agreement, costs due to the negligence or failure of the Construction Manager,

Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

PAGE 13

§ 7.1 Progress Payments

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager ~~not later than the day of the~~ between the 25th day and the 27th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ~~(—) thirty (30)~~ days after the Architect receives the Application for Payment. Construction Manager's Application for Payment to the extent speaking of completed Work shall be deemed to mean completed and forecasted work.  
*(Federal, state or local laws may require payment within a certain period of time.)*

Owner shall pay Construction Manager interest at the prime rate plus 5% per annum for any late payments.

PAGE 14

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been or, as set forth in Section 7.1.3, forecasted to be completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work or forecasted to be completed as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, ~~amounts not in dispute~~ actual cost of the work shall be included as provided in Section 7.3.9 of AIA Document A201-2007;

.3 Add the Construction Manager's Fee, ~~less retainage of — percent (— %).~~ Fee less retainage of five percent (5%) of the Cost of the Work. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract ~~retainage of — percent (— %)~~ five percent (5%) retainage from that portion of the Work that the Construction Manager ~~self-performs;~~ self-performs.

PAGE 16

Payment and Performance Bond

Equal to the Guaranteed Maximum Price, as Adjusted by Change Order

Builder's Risk Insurance

Per Supplementary General Conditions and as further clarified in the GMP Amendment

On-site Worker's Compensation, General Liability and Automotive Insurances

Per Supplementary General Conditions and as further clarified in the GMP Amendment

\*Mutually agreeable policy limits and coverages shall be specifically defined as an Exhibit to the GMP at a later date.

...  
[ ☒ ] Arbitration pursuant to Section 15.4 of AIA Document A201-2007  
...

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

...  
§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in ~~Section 14.1.1~~ Sections 14.1.1, 14.1.2 and 14.1.4 of A201-2007.

PAGE 17

§ 10.2.1 If the Owner terminates the Contract after execution of the ~~Guaranteed Maximum Price~~ Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

PAGE 18

.3 — AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

...  
.4 — AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:  
...

CM's clarifications and assumptions on which the GMP is based, which clarifications and assumptions shall govern over any inconsistent term.

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
Karen M. Hogan, Vice President & General Manager

\_\_\_\_\_  
(Printed name and title)

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

**AIA® Document D401™ – 2003**

I, Karen M. Hogan, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:50:34 ET on 10/22/2020 under Order No. 0117631254 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, 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)*



# AIA® Document A201® – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

Public Safety Department police headquarters facility located at a site to-be-determined in Gladstone, MO, AND the expansion and renovation of Public Safety Department Fire Station #2 at 6569 N. Prospect, Gladstone, MO

### THE OWNER:

(Name and address)

City of Gladstone  
7010 N. Holmes Street  
Gladstone, MO 64118

### THE ARCHITECT:

(Name and address)

Hoefer Wysocki Architects  
11460 Tomahawk Creek Pwky #400  
Leawood, KS 66211

### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

### ADDITIONS AND DELETIONS:

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

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

Init.

## INDEX

(Numbers and Topics in Bold are Section Headings)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

### Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

### Access to Work

**3.16**, 6.2.1, **12.1**

### Accident Prevention

10

### Acts and Omissions

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

### Addenda

1.1.1, 3.11.1

### Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, **15.1.4**

### Additional Inspections and Testing

9.4.2, 9.8.3, **12.2.1**, **13.5**

### Additional Insured

11.1.4

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

### Administration of the Contract

3.1.3, 4.2, 9.4, 9.5

### Advertisement or Invitation to Bid

1.1.1

### Aesthetic Effect

4.2.13

### Allowances

3.8, **7.3.8**

### All-risk Insurance

11.3.1, 11.3.1.1

### Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.10, 11.1.3

### Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10, 4.2.7, 9.3.2, **13.5.1**

### Arbitration

8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4**

## ARCHITECT

4

### Architect, Definition of

#### 4.1.1

### Architect, Extent of Authority

2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3.1, 7.1.2, 7.3.7, 7.4, 9.2.1, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, **12.1**, **12.2.1**, **13.5.1**, **13.5.2**, **14.2.2**, **14.2.4**, **15.1.3**, **15.2.1**

### Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4.1, 9.4.2, 9.5.3, 9.6.4, **15.1.3**, **15.2**

### Architect's Additional Services and Expenses

2.4.1, 11.3.1.1, **12.2.1**, **13.5.2**, **13.5.3**, **14.2.4**

### Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, **15.2**, 9.4.1, 9.5

### Architect's Approvals

2.4.1, 3.1.3, 3.5.1, 3.10.2, 4.2.7

### Architect's Authority to Reject Work

3.5.1, 4.2.6, **12.1.2**, **12.2.1**

### Architect's Copyright

1.1.7, **1.5**

### Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3.1, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4.1, 9.5, 9.8.4, 9.9.1, **13.5.2**, **15.2**, **15.3**

### Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, **13.5**

### Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, **13.5.2**

### Architect's Interpretations

4.2.11, 4.2.12

### Architect's Project Representative

4.2.10

### Architect's Relationship with Contractor

1.1.2, **1.5**, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, **13.5**, **15.2**

### Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, **11.3.7**

### Architect's Representations

9.4.2, 9.5.1, **9.10.1**

### Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, **13.5**

### Asbestos

10.3.1

### Attorneys' Fees

3.18.1, 9.10.2, **10.3.3**

### Award of Separate Contracts

6.1.1, 6.1.2

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

**5.2**

### Basic Definitions

#### 1.1

### Bidding Requirements

1.1.1, **5.2.1**, **11.4.1**

### Binding Dispute Resolution

9.7.1, 11.3.9, 11.3.10, 13.1.1, **15.2.5**, **15.2.6.1**, **15.3.1**, **15.3.2**, **15.4.1**

### Boiler and Machinery Insurance

#### 11.3.2

### Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

### Bonds, Performance, and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

### Building Permit

3.7.1

Init.

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## Capitalization

### 1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

### Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval  
13.5.4

Certificates of Insurance

9.10.2, 11.1.3

### Change Orders

1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3

Change Orders, Definition of

7.2.1

### CHANGES IN THE WORK

2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 7.4.1, 8.3.1, 9.3.1.1, 11.3.9

Claims, Definition of

15.1.1

### CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3.1, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4

Claims for Additional Time

3.2.4, 3.7.4.1.1, 8.3.2, 10.3.2, 15.1.5

Concealed or Unknown Conditions, Claims for  
3.7.4

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration

15.3.1, 15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4

Commencement of the Work, Definition of  
8.1.2

Communications Facilitating Contract  
Administration

3.9.1, 4.2.4

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2

### COMPLETION, PAYMENTS AND

### 9

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

### Compliance with Laws

1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

Consolidation or Joinder

### 15.4.4

### CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, 6

Construction Change Directive, Definition of  
7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.3

Contract, Definition of

1.1.2

### CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 11.3.9, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, The

1.1.1

Contract Documents, Copies Furnished and Use of  
1.5.2, 2.2.5, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

Contract Sum, Definition of

9.1

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7.1, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

Contract Time, Definition of

8.1.1

### CONTRACTOR

### 3

Contractor, Definition of

Init.



### **3.1, 6.1.2**

#### **Contractor's Construction Schedules**

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

#### **Contractor's Employees**

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1,

#### **Contractor's Liability Insurance**

11.1

#### **Contractor's Relationship with Separate Contractors and Owner's Forces**

3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

#### **Contractor's Relationship with Subcontractors**

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

#### **Contractor's Relationship with the Architect**

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

#### **Contractor's Representations**

3.2.1, 3.2.2, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

#### **Contractor's Responsibility for Those Performing the Work**

3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8

#### **Contractor's Review of Contract Documents**

3.2

#### **Contractor's Right to Stop the Work**

9.7

#### **Contractor's Right to Terminate the Contract**

14.1, 15.1.6

#### **Contractor's Submittals**

3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

#### **Contractor's Superintendent**

3.9, 10.2.6

#### **Contractor's Supervision and Construction Procedures**

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

#### **Contractual Liability Insurance**

11.1.1.8, 11.2

#### **Coordination and Correlation**

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

#### **Copies Furnished of Drawings and Specifications**

1.5, 2.2.5, 3.11

#### **Copyrights**

1.5, 3.17

#### **Correction of Work**

2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2

#### **Correlation and Intent of the Contract Documents**

1.2

#### **Cost, Definition of**

7.3.7

#### **Costs**

2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

### **Cutting and Patching**

3.14, 6.2.5

#### **Damage to Construction of Owner or Separate Contractors**

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

#### **Damage to the Work**

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4

#### **Damages, Claims for**

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

#### **Damages for Delay**

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

#### **Date of Commencement of the Work, Definition of 8.1.2**

#### **Date of Substantial Completion, Definition of**

8.1.3

#### **Day, Definition of**

8.1.4

#### **Decisions of the Architect**

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

#### **Decisions to Withhold Certification**

9.4.1, 9.5, 9.7, 14.1.1.3

#### **Defective or Nonconforming Work, Acceptance, Rejection and Correction of**

2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

#### **Defective Work, Definition of**

3.5.1

#### **Definitions**

1.1, 2.1.1, 3.1.1, 3.5.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

#### **Delays and Extensions of Time**

3.2., 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, 8.3, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

#### **Disputes**

6.3.1, 7.3.9, 15.1, 15.2

#### **Documents and Samples at the Site**

3.11

#### **Drawings, Definition of**

1.1.5

#### **Drawings and Specifications, Use and Ownership of 3.11**

#### **Effective Date of Insurance**

8.2.2, 11.1.2

#### **Emergencies**

10.4, 14.1.1.2, 15.1.4

#### **Employees, Contractor's**

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

#### **Equipment, Labor, Materials or**

1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

#### **Execution and Progress of the Work**

Init.

1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3  
Extensions of Time

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4.1, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3, 15.1.5, 15.2.5

#### **Failure of Payment**

9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

#### **Faulty Work**

(See Defective or Nonconforming Work)

#### **Final Completion and Final Payment**

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3.1, 14.2.4, 14.4.3

#### **Financial Arrangements, Owner's**

2.2.1, 13.2.2, 14.1.1.4

#### **Fire and Extended Coverage Insurance**

11.3.1.1

### **GENERAL PROVISIONS**

#### **1**

#### **Governing Law**

13.1

Guarantees (See Warranty)

#### **Hazardous Materials**

10.2.4, 10.3

#### **Identification of Subcontractors and Suppliers**

5.2.1

#### **Indemnification**

3.17.1, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7

#### **Information and Services Required of the Owner**

2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2.1, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

#### **Initial Decision**

15.2

#### **Initial Decision Maker, Definition of**

1.1.8

#### **Initial Decision Maker, Decisions**

14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

#### **Initial Decision Maker, Extent of Authority**

14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

#### **Injury or Damage to Person or Property**

10.2.8, 10.4.1

#### **Inspections**

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5

#### **Instructions to Bidders**

1.1.1

#### **Instructions to the Contractor**

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2

#### **Instruments of Service, Definition of**

1.1.7

#### **Insurance**

3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11

#### **Insurance, Boiler and Machinery**

11.3.2

#### **Insurance, Contractor's Liability**

11.1

#### **Insurance, Effective Date of**

8.2.2, 11.1.2

#### **Insurance, Loss of Use**

11.3.3

#### **Insurance, Owner's Liability**

11.2

#### **Insurance, Property**

10.2.5, 11.3

#### **Insurance, Stored Materials**

9.3.2, 11.4.1.4

### **INSURANCE AND BONDS**

#### **11**

#### **Insurance Companies, Consent to Partial Occupancy**

9.9.1, 11.4.1.5

#### **Insurance Companies, Settlement with**

11.4.10

#### **Intent of the Contract Documents**

1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

#### **Interest**

13.6

#### **Interpretation**

1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

#### **Interpretations, Written**

4.2.11, 4.2.12, 15.1.4

#### **Judgment on Final Award**

15.4.2

#### **Labor and Materials, Equipment**

1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

#### **Labor Disputes**

8.3.1

#### **Laws and Regulations**

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2, 13.6.1, 14, 15.2.8, 15.4

#### **Liens**

2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

#### **Limitations, Statutes of**

12.2.5, 13.7, 15.4.1.1

#### **Limitations of Liability**

2.3.1, 3.2.2, 3.5.1, 3.12.10, 3.17.1, 3.18.1, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2.1, 11.3.7, 12.2.5, 13.4.2

#### **Limitations of Time**

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2.1, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7.1, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

#### **Loss of Use Insurance**

11.3.3

#### **Material Suppliers**

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

#### **Materials, Hazardous**

10.2.4, 10.3

Init.

Materials, Labor, Equipment and  
1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5.1, 3.8.2, 3.8.3, 3.12,  
3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2,  
9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1,  
14.2.1.2

Means, Methods, Techniques, Sequences and  
Procedures of Construction  
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien  
2.1.2, 15.2.8

**Mediation**  
8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, 15.3,  
15.4.1

**Minor Changes in the Work**  
1.1.1, 3.12.8, 4.2.8, 7.1, 7.4

**MISCELLANEOUS PROVISIONS**  
13

**Modifications, Definition of**  
1.1.1

Modifications to the Contract  
1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7.1,  
10.3.2, 11.3.1

**Mutual Responsibility**  
6.2

**Nonconforming Work, Acceptance of**  
9.6.6, 9.9.3, 12.3

Nonconforming Work, Rejection and Correction of  
2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3,  
9.10.4, 12.2.1

Notice  
2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1,  
9.7.1, 9.10, 10.2.2, 11.1.3, 11.4.6, 12.2.2.1, 13.3,  
13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

**Notice, Written**  
2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7.1,  
9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, 13.3, 14,  
15.2.8, 15.4.1

**Notice of Claims**  
3.7.4, 4.5, 10.2.8, 15.1.2, 15.4

Notice of Testing and Inspections  
13.5.1, 13.5.2

Observations, Contractor's  
3.2, 3.7.4

Occupancy  
2.2.2, 9.6.6, 9.8, 11.3.1.5

Orders, Written  
1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2,  
14.3.1

**OWNER**  
2

**Owner, Definition of**  
2.1.1

**Owner, Information and Services Required of the**  
2.1.2, 2.2, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2,  
9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2.1, 11.3, 13.5.1,  
13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Owner's Authority

1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2,  
4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3.1,  
7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4,  
9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2,  
12.3.1, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Financial Capability  
2.2.1, 13.2.2, 14.1.1.4

**Owner's Liability Insurance**  
11.2

**Owner's Loss of Use Insurance**  
11.3.3

Owner's Relationship with Subcontractors  
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

**Owner's Right to Carry Out the Work**  
2.4, 14.2.2

**Owner's Right to Clean Up**  
6.3

**Owner's Right to Perform Construction and to  
Award Separate Contracts**  
6.1

**Owner's Right to Stop the Work**  
2.3

Owner's Right to Suspend the Work  
14.3

Owner's Right to Terminate the Contract  
14.2

**Ownership and Use of Drawings, Specifications  
and Other Instruments of Service**  
1.1.1, 1.1.6, 1.1.7, 1.5, 2.2.5, 3.2.2, 3.11.1, 3.17.1,  
4.2.12, 5.3.1

**Partial Occupancy or Use**  
9.6.6, 9.9, 11.3.1.5

**Patching, Cutting and**  
3.14, 6.2.5

Patents  
3.17

**Payment, Applications for**  
4.2.5, 7.3.9, 9.2.1, 9.3, 9.4, 9.5, 9.6.3, 9.7.1, 9.8.5,  
9.10.1, 14.2.3, 14.2.4, 14.4.3

**Payment, Certificates for**  
4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1,  
9.10.3, 13.7, 14.1.1.3, 14.2.4

**Payment, Failure of**  
9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

Payment, Final  
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 11.4.5,  
12.3.1, 13.7, 14.2.4, 14.4.3

**Payment Bond, Performance Bond and**  
7.3.7.4, 9.6.7, 9.10.3, 11.4.9, 11.4

**Payments, Progress**  
9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

**PAYMENTS AND COMPLETION**  
9

Payments to Subcontractors  
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8,  
14.2.1.2

PCB

Init.

10.3.1

**Performance Bond and Payment Bond**

7.3.7.4, 9.6.7, 9.10.3, 11.4.9, 11.4

**Permits, Fees, Notices and Compliance with Laws**

2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2

**PERSONS AND PROPERTY, PROTECTION OF**  
**10**

Polychlorinated Biphenyl

10.3.1

**Product Data, Definition of**

3.12.2

**Product Data and Samples, Shop Drawings**

3.11, 3.12, 4.2.7

**Progress and Completion**

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3

**Progress Payments**

9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

**Project, Definition of the**

1.1.4

**Project Representatives**

4.2.10

**Property Insurance**

10.2.5, 11.3

**PROTECTION OF PERSONS AND PROPERTY**  
**10**

**Regulations and Laws**

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,  
10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14,  
15.2.8, 15.4

**Rejection of Work**

3.5.1, 4.2.6, 12.2.1

**Releases and Waivers of Liens**

9.10.2

**Representations**

3.2.1, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1,  
9.8.2, 9.10.1

**Representatives**

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2,  
13.2.1

**Responsibility for Those Performing the Work**

3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

**Retainage**

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

**Review of Contract Documents and Field**  
**Conditions by Contractor**

3.2, 3.12.7, 6.1.3

**Review of Contractor's Submittals by Owner and**  
**Architect**

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

**Review of Shop Drawings, Product Data and Samples**  
**by Contractor**

3.12

**Rights and Remedies**

1.1.2, 2.3, 2.4, 3.5.1, 3.7.4, 3.15.2, 4.2.6, 4.5, 5.3, 5.4,  
6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2,  
12.2.4, 13.4, 14, 15.4

**Royalties, Patents and Copyrights**

3.17

**Rules and Notices for Arbitration**

15.4.1

**Safety of Persons and Property**

10.2, 10.4

**Safety Precautions and Programs**

3.3.1, 4.2.2, 4.2.7, 5.3.1, 10.1, 10.2, 10.4

**Samples, Definition of**

3.12.3

**Samples, Shop Drawings, Product Data and**

3.11, 3.12, 4.2.7

**Samples at the Site, Documents and**

3.11

**Schedule of Values**

9.2, 9.3.1

**Schedules, Construction**

1.4.1.2, 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

**Separate Contracts and Contractors**

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 11.4.7,  
12.1.2

**Shop Drawings, Definition of**

3.12.1

**Shop Drawings, Product Data and Samples**

3.11, 3.12, 4.2.7

**Site, Use of**

3.13, 6.1.1, 6.2.1

**Site Inspections**

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

**Site Visits, Architect's**

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

**Special Inspections and Testing**

4.2.6, 12.2.1, 13.5

**Specifications, Definition of the**

1.1.6

**Specifications, The**

1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

**Statute of Limitations**

13.7, 15.4.1.1

**Stopping the Work**

2.3, 9.7, 10.3, 14.1

**Stored Materials**

6.2.1, 9.3.2, 10.2.1.2, 10.2.4, 11.4.1.4

**Subcontractor, Definition of**

5.1.1

**SUBCONTRACTORS**

5

**Subcontractors, Work by**

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

**Subcontractual Relations**

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 11.4.7, 11.4.8, 14.1,  
14.2.1

**Submittals**

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8,  
9.9.1, 9.10.2, 9.10.3, 11.1.3

**Submittal Schedule**

3.10.2, 3.12.5, 4.2.7

**Subrogation, Waivers of**

Init.

6.1.1, 11.4.5, 11.3.7

**Substantial Completion**

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

**Substantial Completion, Definition of**

**9.8.1**

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

4.1.3

Substitutions of Materials

3.4.2, 3.5.1, 7.3.8

Sub-subcontractor, Definition of

**5.1.2**

Subsurface Conditions

3.7.4

Successors and Assigns

**13.2**

Superintendent

3.9, 10.2.6

Supervision and Construction Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

Surety

5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

Surety, Consent of

9.10.2, 9.10.3

Surveys

2.2.3

Suspension by the Owner for Convenience

**14.3**

Suspension of the Work

5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 11.4.9, 14

Taxes

3.6, 3.8.2.1, 7.3.7.4

Termination by the Contractor

14.1, 15.1.6

Termination by the Owner for Cause

5.4.1.1, 14.2, 15.1.6

Termination by the Owner for Convenience

**14.4**

Termination of the Architect

4.1.3

Termination of the Contractor

14.2.2

**TERMINATION OR SUSPENSION OF THE**

**CONTRACT**

**14**

Tests and Inspections

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, 13.5

**TIME**

**8**

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, 8.3, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

Time Limits

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 4.4, 4.5, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 13.7, 15.1.2

Title to Work

9.3.2, 9.3.3

Transmission of Data in Digital Form

**1.6**

**UNCOVERING AND CORRECTION OF WORK**

**12**

Uncovering of Work

**12.1**

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 7.3.4

Use of Documents

1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.4.2

Waiver of Claims by the Contractor

9.10.5, 11.4.7, 13.4.2, 15.1.6

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1,

13.4.2, 14.2.4, 15.1.6

Waiver of Consequential Damages

14.2.4, 15.1.6

Waiver of Liens

9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, 11.4.5, 11.3.7

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7.1

Weather Delays

15.1.5.2

Work, Definition of

**1.1.3**

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

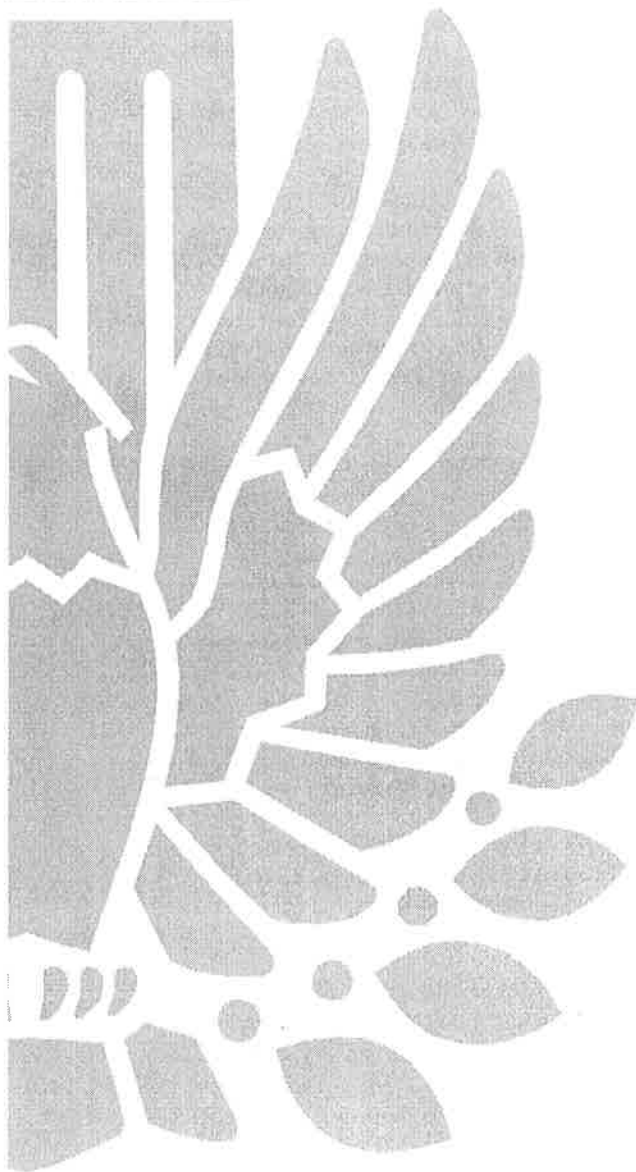
Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, 13.3, 14, 15.4.1

Written Orders

Init.

1.1.1, 2.3, 3.9, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2,  
14.3.1, 15.1.2



Init.

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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, Contractor's Assumptions and Clarifications, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. 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 Assumptions and Clarifications on which the Guaranteed Maximum Price is based shall govern over any inconsistent term in any of the Contract Documents.

#### § 1.1.2 THE CONTRACT

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

#### § 1.1.3 THE WORK

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

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

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

#### § 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 "GMP" as used herein, refers to the Guaranteed Maximum Price, if applicable to these Contract Documents.

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

§ 1.2.1 Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary and required of Contractor 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 Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

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

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors 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. 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.

§ 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 without the specific written consent of the Owner, Architect and the Architect's consultants.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

## ARTICLE 2 OWNER

### § 2.1 GENERAL

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

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

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

§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, as required by the Contractor, furnish to the Contractor evidence in a form and content satisfactory to the Contractor that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor and

shall notify Contractor within 48 hours should such financial arrangements change or should Owner have reason to know that such arrangements are in jeopardy. Failure to provide such evidence shall permit Contractor to suspend the Work. Contractor shall resume the performance of the Work upon the Owner providing such evidence, with the Contract Sum, GMP and Contract Time being equitably adjusted by Change Order.

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

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

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness and so as not to delay the progress of the Work. 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, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

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

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

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness or to provide a reasonable timetable for so doing, 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 the Guaranteed Maximum Price or if the Guaranteed Maximum Price has been paid by the Owner, from the Contract Sum, the reasonable cost of correcting such deficiencies, including Owner's reasonable expenses and reasonable 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 neither the balance of the Guaranteed Maximum Price nor payments then or thereafter due the Contractor are sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

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

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

§ 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, except for such activities or duties assumed by Owner under the Contract Documents..

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

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with visually observable conditions of the site under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall at a time appropriate to the performance of each portion of the Work, review 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, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional..

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes as required by current law, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by the Contractor as a request for information in such form as the 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 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 as required by current law, rules and regulations, and lawful orders of public authorities and the Contractor shall be entitled to make Claims for any rework required pursuant to Article 15.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's reasonable skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating the construction operations of 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 Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor the Owner shall be responsible for any loss or damage arising from those Owner-required means, methods, techniques, sequences or procedures, and shall provide the Contractor additional Contract Time, reimbursement of all costs and an increase in the Contract Sum and the GMP sufficient to provide relief for all attendant impacts and costs incurred..

**§ 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 a visual inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.3.4** If the Work is being performed on a cost reimbursable basis, nothing in these General Conditions is intended to preclude or limit reimbursement where otherwise permitted in the Agreement. For example, if these General

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Conditions state to the effect that a cost shall be "at Contractor's expense", such a provision shall not preclude reimbursement where otherwise permitted by the Agreement

#### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

#### § 3.5 WARRANTY

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise for a period of one (1) year following Substantial Completion. The Contractor further warrants that for such one year period 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 or instructions from Owner or Architect 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. Other than the foregoing warranty, Contractor makes no other warranty, representation or guaranty and assumes no other responsibility or liability for defective Work. Longer term warranties that may be required by the Contract Documents shall be provided directly by the relevant subcontractor, vendor or manufacturer directly to Owner and Contractor shall have no responsibility for such extended warranties. Contractor's rights to payment and reimbursement of Costs of the Work do not cease at any time and are expressly available to Contractor for Work performed under this Section.

#### § 3.6 TAXES

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

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

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices as required by current applicable laws, statutes, ordinances, codes rules and regulations, and lawful orders of public authorities applicable to performance of the Work that pertain to construction means and methods as opposed to design.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes as required by current law, 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, subject to reimbursement, if any, as herein provided in the Contract Documents.

§ 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 from those indicated in the Contract Documents or (2) physical conditions, that differ from those known to Contractor to exist and recognized by the Contractor as inherent in construction activities of the character provided for in the Contract Documents in the relevant location, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the

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Architect determines that they differ 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. Guaranteed Maximum Price or Contract Time, or all of the foregoing. If the Architect determines that the conditions at the site are not different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall notify the Owner and Contractor in writing within seven (7) days of Contractor's notification under this section, stating the reasons. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum, GMP or Contract Time, the adjustment shall be referred to the Initial Decision Maker for an initial determination, subject to further proceedings pursuant to Article 15. If either party disputes the Initial Decision Maker's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters objects or conditions that Contractor in good faith believes to be human remains, burial markers, archaeological sites, wetlands or other conditions that would warrant a suspicion that such matters are being encountered during the Work although they are not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features and adjustments to the Contract Sum, GMP and Contract Time arising from the existence of such remains or features shall be made promptly by Owner.

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor has included or shall include in the, GMP all allowances stated in the Contract Documents. Items covered by allowances shall be supplied 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 and shall not be required to proceed if Work subject to an allowance is not approved by Owner.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

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

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness so as not to delay the progress of the Work. If such selection causes delay, the Contract Time, Contract Sum and the GMP shall be increased to adjust for all impacts of such late selection.

### § 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. 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.

§ 3.9.3 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, as a part of the GMP Amendment, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**§ 3.10.2** The Contractor shall prepare a submittal schedule, promptly after approval of the GMP 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 shall not unreasonably be delayed so as not to delay the progress of the Work or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals that is shorter than seven (7) days. If the Architect delays or unreasonably withholds its approval, the Contract Sum, GMP and the Contract Time shall be adjusted.

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

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

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

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

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

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

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

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

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

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor or its Subcontractor represents to the Owner and Architect that the Contractor or its Subcontractor has (1) reviewed them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.



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

§ 3.12.8 The Work shall be in accordance with submittals approved by the Architect.

§ 3.12.9 The Contractor or its Subcontractor 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 review or 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. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor or its Subcontractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, Contractor 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 Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

#### § 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes as required by current law, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

#### § 3.14 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 as reasonably consistent with the requirements or information contained in the Contract Documents. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation that is not consistent with the requirements of the Contract Documents. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner; 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 operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 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 deduct the reasonable cost of so doing from the GMP. .

#### § 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 specifically identified as required in the Contract Documents. The Contractor shall defend suits or claims for infringement of copyrights and patent rights for the failure to pay such royalty and license fees and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor knows that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall promptly advise the Owner or Architect.

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law and to the extent not covered by the Owner's obligation to the Contractor under Sections 10.3 and 10.5 inclusive, the Contractor shall indemnify and hold harmless the Owner, and its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees should Contractor not provide a defense of Owner, 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 (a) the Work itself and/or (b) the materials, furnishings, equipment and other items contained therein), 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. In no event shall the Architect or any other designer be deemed to be an Indemnitee under this paragraph.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

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

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents or in the Agreement between Owner and Architect 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 and whose responsibilities shall be those required of the Architect being replaced.

### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of the Contractor's operations to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, and to determine in general if the Work is being performed in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with

the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed 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 submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents, unless such results from a directive of the Architect or a failure of Architect to perform its responsibilities under the Contract Documents. The Architect will not have control over or charge of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through 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.

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

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

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples. The 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 but in no event later than 7 days. 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 of equipment or systems unrelated to the design concept. The Architect's review of the Contractor's submittals shall not relieve the Contractor or its Subcontractors of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may 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 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.

§ 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 so as not to delay the progress of the Work.

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 information in, 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 and information expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise so as not to delay the progress of the Work. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. 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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, when 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 shall reply within 14 days to the Contractor in writing stating whether the Owner or the Architect has reasonable objection to any such proposed person or entity. 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 objection.

§ 5.2.3 If the Owner or Architect has reasonable and timely 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, in the Contractor's view, reasonably capable of performing the Work, the Contract Sum, GMP and Contract Time shall be increased or decreased by the difference, if any, occasioned by such objection, 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..

*(Paragraph deleted)*

### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to 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. Each subcontract agreement shall preserve and protect the rights of the Owner together with such other terms and conditions as Contractor may deem appropriate under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not

prejudice such rights.. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. Upon written request the Contractor shall make available to each proposed Subcontractor for review, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound.

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

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

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

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 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 Upon such assignment, the Owner shall indemnify Contractor against any and all claims of Subcontractors whose Subcontracts have been assigned to the Owner.

#### **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" as applicable in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. Owner shall ensure that any such action by Owner shall not cause delay or disruption to Contractor. The Contractor shall participate in a meeting with other separate contractors and the Owner to review construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement.

§ 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 specifically required by the Contract Documents and provided that such accommodations will not cause delay or disruption to Contractor's performance of the Work..

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect discrepancies or defects discovered in such other construction that would render it unsuitable



for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then discovered.

§ 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, to the extent resulting from the willful misconduct by the Contractor for the sole purpose of causing harm to Owner or separate contractor. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, disruption to work, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor willfully 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 Architect will reasonably allocate the cost among those responsible as further provided in Section 3.15.2.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, 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.

### § 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, GMP and any component of the GMP; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive ("CCD") 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 GMP or Contract Time, or all of them. 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, GMP 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:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;



- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties in the Agreement 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 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, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, subject to Section 15.2.9, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, stated in the Construction Change Directive for determining the proposed adjustment in the Contract Sum, GMP or Contract Time, provided that such disagreement only pertains to the method of the proposed adjustment, and not Contractor's entitlement to any adjustment.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum, GMP 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 or GMP, the Architect shall determine the amount of the adjustment on the basis of actual expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for insurance, employee benefits expenses, 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 present an itemized summary of such costs and increases together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall include all Cost of the Work and include at rates provided herein as applicable, the following:

- .1 Costs of labor, 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;
- .4 Costs of 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 related 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 GMP shall be actual net cost as confirmed by the Architect, if the Contractor agrees with the amount of such net decrease. 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. If Contractor does not agree to the amount of such net increase or decrease, Contractor shall not be obligated to proceed with the deletion or change unless and until a mutually acceptable means of determining such amount is agreed upon by Owner and Contractor.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor shall receive payment for Work performed 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 actual costs incurred by the Contractor or the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified, whichever is greater. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum, GMP 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. All determinations by Architect may be disputed by Contractor and addressed in accordance with Article 15.

#### **§ 7.4 MINOR CHANGES IN THE WORK**

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

### **ARTICLE 8 TIME**

#### **§ 8.1 DEFINITIONS**

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

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

§ 8.1.3 The date of Substantial Completion is the date upon which Substantial Completion is achieved in accordance with Section 9.8.

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

#### **§ 8.2 PROGRESS AND COMPLETION**

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that to its knowledge 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.

§ 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 labor disputes, fire, war, terrorism, incidence of disease or other illness that reaches outbreak, epidemic, endemic and/or pandemic proportions or other causes affecting the area in which the Project is located and/or the Contractor's labor and/or supply chain, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's reasonable control or responsibility hereunder; or by delay authorized by the Contract Documents or by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Sum, GMP and Contract Time shall be extended by Change Order and no less than for such reasonable time and amounts as arise out of or relate to such cause.

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

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

### **ARTICLE 9 PAYMENTS AND COMPLETION**

#### **§ 9.1 CONTRACT SUM**

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

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## § 9.2 SCHEDULE OF VALUES

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

## § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and if the Contract between the Owner and Contractor is for other than a stipulated sum, supported by such data substantiating the Contractor's right to payment as the Owner or Architect may have reasonably required, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 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 If the Contract between the Owner and Contractor is for other than a stipulated sum, 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 Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance to 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 any procedures set forth in the Contract Documents to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment in full. The Contractor shall, if requested by Owner as part of an Application for Payment warrant that all Work for which Certificates for Payment have been previously issued and payments received from the Owner that constitute payment in full, not subject to retention 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, except for that which Contractor brings to Owner's attention in such application.

## § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven 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. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment 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 from losses greater than amounts retained by Owner, for which Contractor is responsible under the Contract Documents, if the Architect's representations to the Owner required by Section 9.4.2 cannot be made for reasons related to the Contractor's performance of its obligations. If the Architect is unable to so 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 which represents the percentage completion of the entire Work. 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 following written notice from the Owner or Architect and a reasonable period of time and provided the amount of such claims exceeds the amount of retention held by the Owner;
- .2 uninsured third party claims filed for which the Contractor is solely responsible pursuant to the Contract Documents and provided the amount of such claims exceeds the amount of retention held by the Owner 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 when due to Subcontractors or for labor, materials or equipment and provided the amount of such claims exceeds the amount of retention held by the Owner;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum where the extent of the overrun is an amount greater than the amount of any retention held by the Owner;
- .5 uninsured physical damage to the Owner's property for which the Contractor is solely responsible pursuant to the Contract Documents and provided the amount of such claims exceeds the amount of retention held by the Owner; or
- .6 repeated failure to carry out the Work in accordance with the Contract Documents.

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

*(Paragraph deleted)*

#### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor after receipt of payment from the Owner in accordance with the terms of the Subcontract the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 Intentionally omitted.

§ 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 ten days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

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

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

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

#### § 9.7 FAILURE OF PAYMENT

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 on or before the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon 7 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 and GMP, 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.

#### § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, as reflected in the Contract Documents.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a 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.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, as reflected in the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. 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 that the Owner is responsible for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Architect shall provide a list of all items that Contractor is to complete for final payment, which time period shall not be more than 10 days. 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 as shown on the list to be provided pursuant to Section 9.8.4 by withholding no more than 150% of the reasonable cost of completing or correcting such Work.

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

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

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

## § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon completion of the items on the list provided in accordance with Section 9.8.4 or, if no list, upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work required of Contractor 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 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 or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, or will be paid upon final payment by Owner. (2) a certificate evidencing that insurance if required by the Contract Documents to remain in force after final payment, is currently in effect, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, in writing delivered prior to Substantial Completion other data establishing payment or satisfaction of mechanic's liens filed by Subcontractors or suppliers to Contractor's obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract and the Work paid for by Owner, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien in exchange for which the Owner shall make final payment, or, if no such bond is provided, Owner may withhold the amount of the final payment to the relevant Subcontractor or supplier until such lien is no longer a viable encumbrance.

§ 9.10.3 On a monthly basis, after Substantial Completion of the Work, Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted in that month. If the 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 progress payments.

*(Paragraph deleted)*

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

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

§ 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 and any amount withheld.

## 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 reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

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

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes as required by current law, 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 to be insured under property insurance required by the Contract Documents or any other insurance maintained by Owner) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are separate from and are not to be construed as being included in 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 include 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,

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shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 In the event the Contractor identifies activities or conditions during performance of the Work or at the Project, which, in the Contractor's good faith opinion, pose an unreasonable risk of bodily injury or property damage, whether immediate or in the future, the Contractor shall have the right to immediately take steps to protect its personnel and Subcontractors and stop Work and remove its personnel from the affected area. However, it is understood that the Contractor shall not be deemed to have assumed any obligation to identify such risks. In taking action as provided under this paragraph, the Contractor shall be entitled to an increase in the Contract Time and an equitable adjustment to the Contract Sum and Guaranteed Maximum Price for any additional costs and/or time lost as a consequence thereof.

### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 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 and provided that such damage, loss or expense is not due to the sole negligence of a 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 Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's sole fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 If, in bringing a hazardous material onto the Site, 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.

*(Paragraph deleted)*

### § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance required by the Contract Documents as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by 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 and contents of the Project, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

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

§ 11.1.3 Certificates of insurance on generally acceptable forms shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. 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. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required by Section 11.1. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of the cancellation or expiration.

*(Paragraph deleted)*

### § 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance together with any additional insurance or coverages as follows: \_\_\_\_\_

### § 11.3 PROPERTY INSURANCE

§ 11.3.1 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 an amount not less than the greater of the initial Contract Sum or the full cost of replacement including subsequent Contract Modifications, professional fees, costs related to delay or interruption due to a covered cause of loss to the Work and cost of materials supplied or installed by others the contents of the Project during construction and when completed and occupied, existing buildings, facilities and contents, comprising total value for the entire Project at the site on a replacement cost basis without 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 earlier. This insurance shall include interests of the Owner, the Contractor and Subcontractors of all tiers

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in the Project and the Contractor and Subcontractors of all tiers shall be named as additional insureds under such policies. The Owner shall notify the Contractor in writing if the property insurance contains "Protective Safeguard" language and Contractor shall be reimbursed any and all costs associated with enforcing these criteria as an increase to the Contract Sum and GMP.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, terrorism coverage, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, glass breakage, 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 as well as all increased costs of the Work (including General Conditions) resulting from any related delay or disruption of the Work. The property insurance shall not include a Water Infiltration Exclusion.

§ 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 and Subcontractors of all tiers 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. Notwithstanding any other provision in the Contract Documents to the contrary, including, without limitation, Section 3.18.1 above, the Owner shall not have any rights against the Contractor for any matter that is to be insured by the Owner hereunder.

§ 11.3.1.3 If the property insurance requires deductibles, or contains coverage gaps, sublimits or exclusions, the Owner shall pay costs not covered because of such deductibles or coverage gaps, sublimits or exclusions as an increase to the Contract Sum and GMP.

§ 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.

§ 11.3.1.6 Should Owner elect to procure Builder's Risk Insurance without terrorism coverage, Owner acknowledges that it is accepting the risk of all terrorist related events, and Owner waives all rights as against Contractor and the other parties to be insured under the Owner's Builder's Risk policy for terrorist related events and agrees to indemnify, hold harmless and defend Contractor from all costs, expenses (including legal fees and disbursements), claims, suits, liabilities and judgments arising out of any terrorist act or acts, to the fullest extent permitted by law.

#### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall include within the Project insurance or otherwise purchase and maintain boiler and machinery insurance, 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 and Subcontractors of all tiers in the Work, and the Owner and Contractor and Subcontractors of all tiers shall be named insureds.

#### § 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.

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

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of 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. The Owner shall provide written notification to the Contractor of the cancellation or expiration of any insurance required by Sections 11.2 and 11.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration.

#### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors of all tiers, 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.

§ 11.3.10 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.

#### § 11.4 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. If Performance and Payment bonds are required, they shall be included in the GMP Amendment..

*(Paragraph deleted)*

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be by Contractor without adjustment to the GMP 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 and to increase the GMP and to extend the Contract Time. The Contract Time shall also be adjusted.

### § 12.2 CORRECTION OF WORK

#### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work properly rejected by the Architect as failing to conform to the requirements of the Contract Documents, whether discovered before or as provided in Section 12.2.2.1 after Substantial Completion until expiration of the one year period referred to in Section 12.2.2.1 below. 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 reimbursable to the extent permitted by the Agreement.

#### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, 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 or contract. 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 not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

*(Paragraph deleted)*

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall, unless covered by insurance, without increase to the GMP, correct destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

*(Paragraph deleted)*

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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



## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

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

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make 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. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 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 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, except where inconsistent with the Contract Documents, in which case the Contract Documents shall prevail.

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

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, as required by current law, 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 as Cost of the Work pay all related costs of tests, inspections and approvals provided for in the Contract Documents. 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 all other 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, in addition to the GMP.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by the correction of such failure including those of repeated procedures thereafter and compensation for the Architect's services and expenses shall be without increase to the GMP.

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

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

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

#### § 13.6 INTEREST

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

#### § 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, but in any case not more than 3 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.

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor 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 Documents;
- .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; or

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 or for which Contractor is entitled to an extension of time constitute in the aggregate more than 30 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages, together with fee on Work not executed calculated as provided in Section 14.4.4.

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

#### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract in accordance with Section 14.2.2 if the Contractor

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

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- .2 persistently fails to make payment to Subcontractors for materials or labor when due in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes as required by current law, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .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 properly 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 GMP exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damage, to the extent permitted hereunder, incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

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

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit.

#### § 14.4 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. In the event the Owner terminates for its convenience whether (i) pursuant to this Section 14.4 or (ii) pursuant to any other provision of the Contract Documents, the provisions of Section 14.4.4, will also apply to the termination and shall also survive the termination.

§ 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 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment including profit or fee for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

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

#### § 15.1.2 NOTICE OF CLAIMS

Claims by 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 arising after final payment 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 or same shall be deemed waived.

#### § 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 Work provided 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.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

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

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 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 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, and a general description of how the conditions had an adverse effect on the scheduled construction.

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

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

### § 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless

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the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest the appropriate resolution 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 or suggest the appropriate resolution.

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

§ 15.2.6 Either party may file for mediation of an initial decision at any time..

*(Paragraph deleted)*

§ 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 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

#### § 15.4 ARBITRATION

*(Paragraph deleted)*

§ 15.4. Arbitration shall be utilized 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 earlier of the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or the Contract Documents. 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.



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### PAGE 1

Public Safety Department police headquarters facility located at a site to-be-determined in Gladstone, MO, AND the expansion and renovation of Public Safety Department Fire Station #2 at 6569 N. Prospect, Gladstone, MO

...

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

City of Gladstone  
7010 N. Holmes Street  
Gladstone, MO 64118

...

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

Hoefer Wysocki Architects  
11460 Tomahawk Creek Pwky #400  
Leawood, KS 66211

### PAGE 2

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

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

...

1.1.1, ~~3.4~~3.11.1

...

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5.1, 9.6.3, ~~9.7~~, 9.7.1, 9.10, 11.1.3

...

8.3.1, 11.3.10, ~~13.1~~, 13.1.1, 15.3.2, 15.4

...

2.4, 2.4.1, 3.12.7, 4.1, 4.2, 5.2, ~~6.3~~, 6.3.1, 7.1.2, 7.3.7, 7.4, ~~9.2~~, 9.2.1, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

...

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, ~~7.4~~, 7.4.1, 9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2

~~2.4~~, 2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

~~2.4~~, 3.1.3, ~~3.5~~, 2.4.1, 3.1.3, 3.5.1, 3.10.2, 4.2.7

~~3.5~~, 3.5.1, 4.2.6, 12.1.2, 12.2.1

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, ~~6.3~~, 6.3.1, 7.3.7, 7.3.9, 8.1.3, 8.3.1, ~~9.2~~, 9.2.1, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.5.2, 15.2, 15.3

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, ~~3.5~~, 3.5.1, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2

~~9.7~~, 9.7.1, 11.3.9, 11.3.10, ~~13.1~~, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1

#### PAGE 3

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, ~~9.7~~, 9.7.1, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

1.1.1, ~~2.4~~, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, ~~3.11~~, 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, ~~7.2~~, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3

2.2.1, 3.11, 4.2.8, 7, ~~7.2.1~~, 7.3.1, ~~7.4~~, 7.4.1, 8.3.1, 9.3.1.1, 11.3.9

3.2.4, 6.1.1, ~~6.3~~, 6.3.1, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

3.2.4, 3.7.4, ~~6.1.1~~, 3.7.46.1.1, 8.3.2, 10.3.2, 15.1.5

~~1.6~~, ~~1.6.1~~, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

**Contract Documents, The**

**1.1.1**

...

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, ~~9.7, 9.7.1~~, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

**PAGE 4**

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, ~~14.2.1, 14.2.1.1~~,

...

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, ~~3.5, 3.5.1~~, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

...

3.2.1, 3.2.2, ~~3.5, 3.5.1~~, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

...

3.3.2, 3.18, ~~5.3, 5.3.1~~, 6.1.3, 6.2, 9.5.1, 10.2.8

...

~~2.4, 2.4.1~~, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

...

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, ~~10.4, 10.4.1~~, 11.3.1, 12.2.4

...

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, ~~9.2, 9.2.1~~, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

...

~~2.3, 2.4, 3.5, 2.3.1, 2.4.1, 3.5.1~~, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

**Defective Work, Definition of**

**3.5.1**

1.1, 2.1.1, 3.1.1, ~~3.5, 3.5.1~~, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

...

~~3.2, 3.2.1~~, 3.7.4, 5.2.3, 7.2.1, 7.3.1, ~~7.4, 7.4.1~~, 8.3, 9.5.1, ~~9.7, 10.3.2, 10.4, 9.7.1, 10.3.2, 10.4.1~~, 14.3.2, 15.1.5, 15.2.5

...

~~6.3, 6.3.1~~, 7.3.9, 15.1, 15.2

...

1.1.3, 1.1.6, 3.4, ~~3.5~~, 3.5.1, 3.8.2, 3.8.3, 3.12, ~~3.13~~, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

PAGE 5

1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, ~~3.5~~, 3.5.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, ~~7.4~~, ~~9.5.1~~, ~~9.7~~, ~~10.3.2~~, ~~10.4~~, ~~7.4.1~~, ~~9.5.1~~, ~~9.7.1~~, ~~10.3.2~~, ~~10.4.1~~, 14.3, 15.1.5, 15.2.5

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5, ~~12.3~~, 12.3.1, 14.2.4, 14.4.3

~~3.17~~, ~~3.17.1~~, ~~3.18~~, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7

2.1.2, ~~2.2~~, ~~3.2.2~~, ~~3.12.4~~, ~~3.12.10~~, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, ~~11.2~~, 11.2.1, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

~~10.2.8~~, ~~10.4~~, 10.4.1

~~9.3~~, ~~29.3.2~~, 11.4.1.4

Insurance Companies, Consent to Partial Occupancy

9.9.1, 11.4.1.5

9.9.1 Insurance Companies, Settlement with  
11.4.10

1.1.3, 1.1.6, 3.4, ~~3.5~~, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

1.5, 3.2.3, 3.6, 3.7, 3.12.10, ~~3.13~~, 3.13.1, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, ~~13.1~~, 13.1.1, 13.4, 13.5.1, 13.5.2, ~~13.6~~, 13.6.1, 14, 15.2.8, 15.4

~~2.3~~, ~~3.2.2~~, ~~3.5~~, ~~3.12.10~~, ~~3.17~~, ~~2.3.1~~, ~~3.2.2~~, ~~3.5.1~~, ~~3.12.10~~, ~~3.17.1~~, ~~3.18.1~~, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, ~~11.2~~, 11.2.1, 11.3.7, 12.2.5, 13.4.2

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, ~~5.3, 5.3.1~~, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, ~~9.2, 9.2.1~~, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, ~~9.7, 9.7.1~~, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

#### PAGE 6

1.1.3, 1.1.6, 1.5.1, 3.4.1, ~~3.5, 3.5.1~~, 3.8.2, 3.8.3, 3.12, ~~3.13, 3.13.1~~, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

...

1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, ~~9.7, 9.7.1~~, 10.3.2, 11.3.1

...

~~2.3, 2.4, 3.5, 2.3.1, 2.4.1, 3.5.1~~, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1

...

2.2.1, ~~2.3, 2.4, 2.3.1, 2.4.1~~, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, ~~9.7, 9.7.1~~, 9.10, 10.2.2, 11.1.3, ~~11.4.6~~, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

...

~~2.3, 2.4, 2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7, 9.7.1~~, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1

...

3.7.4, ~~4.5~~, 10.2.8, **15.1.2**, 15.4

...

2.1.2, 2.2, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, ~~11.2, 11.2.1~~, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

...

1.5, 2.1.1, ~~2.3, 2.4, 2.3.1, 2.4.1~~, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, ~~6.3, 6.3.1~~, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, ~~12.3, 12.3.1~~, 13.2.2, 14.3, 14.4, 15.2.7

...

#### Owner's Loss of Use Insurance

##### 11.3.3

#### Owner's Relationship with Subcontractors

...

1.1.1, 1.1.6, 1.1.7, 1.5, 2.2.5, 3.2.2, ~~3.11, 3.17, 4.2.12, 5.33.11.1, 3.17.1, 4.2.12, 5.3.1~~

...

4.2.5, 7.3.9, ~~9.2, 9.2.1~~, **9.3**, 9.4, 9.5, 9.6.3, ~~9.7, 9.7.1~~, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

...

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, ~~9.7, 9.7.1~~, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, ~~12.3~~, ~~11.4.5~~, ~~12.3.1~~, 13.7, 14.2.4, 14.4.3

7.3.7.4, 9.6.7, 9.10.3, ~~11.4.9~~, ~~11.4~~

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, ~~11.4.8~~, 14.2.1.2

PAGE 7

7.3.7.4, 9.6.7, 9.10.3, ~~11.4.9~~, ~~11.4~~

Project, Definition of the

~~3.5~~, ~~3.5.1~~, 4.2.6, 12.2.1

3.2.1, ~~3.5~~, ~~3.5.1~~, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

3.3.2, 3.18, 4.2.3, ~~5.3~~, ~~5.3.1~~, 6.1.3, 6.2, 6.3, 9.5.1, 10

1.1.2, 2.3, 2.4, ~~3.5~~, ~~3.5.1~~, 3.7.4, 3.15.2, 4.2.6, ~~4.5~~, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, 13.4, 14, 15.4

3.3.1, 4.2.2, 4.2.7, ~~5.3~~, ~~5.3.1~~, ~~10.1~~, 10.2, 10.4

~~1.4.1.2~~, 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, ~~11.4.7~~, 12.1.2

Specifications, Definition of the

Specifications, The



6.2.1, 9.3.2, 10.2.1.2, ~~10.2.4~~10.2.4, 11.4.1.4

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 11.4.7, 11.4.8, 14.1, 14.2.1  
PAGE 8

6.1.1, 11.4.5, 11.3.7

3.4.2, ~~3.5~~3.5.1, 7.3.8

5.4.1.1, 11.4.9, 14

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, ~~11.4.1~~11.4.1.1, 12.2.1, **13.5**

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, ~~7.4~~7.4.1, **8.3**, 9.5.1, ~~9.7~~9.7.1, ~~10.3.2~~10.3.2, ~~10.4~~10.4.1, 14.3.2, 15.1.5, 15.2.5

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, ~~4.4~~4.5, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

9.10.5, 11.4.7, 13.4.2, 15.1.6

9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

6.1.1, 11.4.5, 11.3.7

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, ~~13.7~~13.7.1

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1  
PAGE 9

1.1.1, 2.3, 3.9, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2  
PAGE 10

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, Contractor's Assumptions and Clarifications, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the~~ 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 Assumptions and Clarifications on which the Guaranteed Maximum Price is based shall govern over any inconsistent term in any of the Contract Documents.

...

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

...

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

...

#### **§ 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 "GMP" as used herein, refers to the Guaranteed Maximum Price, if applicable to these 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~~ Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary and required of Contractor to produce the indicated results.

PAGE 11

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

...

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements. The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, as required by the Contractor, furnish to the Contractor evidence in a form and content satisfactory to the Contractor that financial arrangements have been made 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 Furnishing of such evidence shall be 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, Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor, to the Contractor and shall notify Contractor within 48 hours should such financial arrangements change or should Owner have reason to know that such arrangements are in jeopardy. Failure to provide such evidence shall permit Contractor to suspend the Work. Contractor shall resume the performance of the Work upon the Owner providing such evidence, with the Contract Sum, GMP and Contract Time being equitably adjusted by Change Order.

PAGE 12

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

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness, promptness and so as not to delay the progress of the Work. 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.

...

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the affected portion of 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.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, promptness or to provide a reasonable timetable for so doing, 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 Guaranteed Maximum Price or if the Guaranteed Maximum Price has been paid by the Owner, from the Contract Sum, the reasonable cost of correcting such deficiencies, including Owner's reasonable expenses and reasonable 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 neither the balance of the Guaranteed Maximum Price nor payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

...

§ 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. Contractor, except for such activities or duties assumed by Owner under the Contract Documents.

PAGE 13

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with ~~local conditions visually observable conditions of the site~~ under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor ~~shall, before starting~~ shall at a time appropriate to the performance of each portion of the Work, carefully study and compare review 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, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by ~~or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents, professional.~~

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, ~~codes, codes as required by current law,~~ rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by ~~or made known to the Contractor as a request for information in such form as the Architect may require.~~

§ 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, codes as required by current law, rules and regulations, and lawful orders of public authorities.~~ authorities and the Contractor shall be entitled to make Claims for any rework required pursuant to Article 15.

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best-reasonable skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating the construction operations of 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 Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, ~~Contractor~~ the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or ~~procedures, procedures, and shall provide the Contractor additional Contract Time, reimbursement of all costs and an increase in the Contract Sum and the GMP sufficient to provide relief for all attendant impacts and costs incurred.~~

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

§ 3.3.4 If the Work is being performed on a cost reimbursable basis, nothing in these General Conditions is intended to preclude or limit reimbursement where otherwise permitted in the Agreement. For example, if these General



Conditions state to the effect that a cost shall be "at Contractor's expense", such a provision shall not preclude reimbursement where otherwise permitted by the Agreement

PAGE 14

§ 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.

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 otherwise for a period of one (1) year following Substantial Completion, the Contractor further warrants that for such one year period 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 or instructions from Owner or Architect 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. Other than the foregoing warranty, Contractor makes no other warranty, representation or guaranty and assumes no other responsibility or liability for defective Work. Longer term warranties that may be required by the Contract Documents shall be provided directly by the relevant subcontractor, vendor or manufacturer directly to Owner and Contractor shall have no responsibility for such extended warranties. Contractor's rights to payment and reimbursement of Costs of the Work do not cease at any time and are expressly available to Contractor for Work performed under this Section.

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

§ 3.7.2 The Contractor shall comply with and give notices as required by current applicable laws, statutes, ordinances, codes, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. Work that pertain to construction means and methods as opposed to design.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, codes as required by current law, 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, subject to reimbursement, if any, as herein provided in the Contract Documents.

§ 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 physical conditions, that differ from those known to Contractor to exist and recognized by the Contractor as inherent in construction activities of the character provided for in the Contract Documents, Documents in the relevant location, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect 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-Sum. Guaranteed Maximum Price or Contract Time, or both, all of the foregoing. 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 writing within seven (7) days of Contractor's notification under this section, stating the reasons. If the Owner and Contractor cannot agree

on an adjustment in the Contract Sum, GMP or Contract Time, the adjustment shall be referred to the Initial Decision Maker for an initial determination, subject to further proceedings pursuant to Article 15. If either party disputes the Initial Decision Maker's determination or recommendation, that party may proceed as provided in Article 15.

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

~~§ 3.8.1 The Contractor has included or shall include in the Contract Sum the, GMP all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.~~ objection and shall not be required to proceed if Work subject to an allowance is not approved by Owner.

~~§ 3.8.2 Unless otherwise provided in the Contract Documents,~~ Documents:

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

3. Whenever whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order 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.~~ promptness so as not to delay the progress of the Work. If such selection causes delay, the Contract Time, Contract Sum and the GMP shall be increased to adjust for all impacts of such late selection.

PAGE 16

~~§ 3.10.1 The Contractor, promptly after being awarded the Contract, as a part of the GMP Amendment, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.~~

~~§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract approval of the GMP 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 shall not unreasonably be delayed so as not to delay the progress of the Work or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.~~ submittals that is shorter than seven (7) days. If the Architect delays or unreasonably withholds its approval, the Contract Sum, GMP and the Contract Time shall be adjusted.

~~§ 3.12.5 The Contractor shall review for general compliance with the Contract Documents, approve and approve and~~ submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract



Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor or its Subcontractor represents to the Owner and Architect that the Contractor or its Subcontractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

PAGE 17

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

§ 3.12.9 The Contractor or its Subcontractor 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 review or approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering ~~unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures.~~ engineering. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor or its Subcontractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. ~~The Owner-Owner, Contractor 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.~~ 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 Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, codes as required by current law, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by ~~excavation, excavation that is not consistent with the requirements of the Contract Documents.~~ 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; Owner;~~ 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.

§ 3.15.2 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; deduct the reasonable cost of so doing from the GMP.~~

PAGE 18

The Contractor shall pay all royalties and license fees. ~~fees specifically identified as required in the Contract Documents. The Contractor shall defend suits or claims for infringement of copyrights and patent rights for the failure to pay such royalty and license fees and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe knows that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the promptly advise the Owner or Architect.~~

§ 3.18.1 To the fullest extent permitted by law and to the extent not covered by the Owner's obligation to the Contractor under Sections 10.3 and 10.5 inclusive, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them ~~and its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, fees should Contractor not provide a defense of Owner, 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), (a) the Work itself and/or (b) the materials, furnishings, equipment and other items contained therein), 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. In no event shall the Architect or any other designer be deemed to be an Indemnitee under this paragraph.~~

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents or in the Agreement between Owner and Architect 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-Architect and whose responsibilities shall be those required of the Architect being replaced.~~

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

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed 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 submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents, unless such results from a directive of the Architect or a failure of Architect to perform its responsibilities under the Contract Documents. The Architect will not have control over or charge of ~~and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.~~

PAGE 19

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, ~~but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Samples.~~ The 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, ~~review but in no event later than 7 days.~~ 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. of equipment or systems unrelated to the design concept.~~ The Architect's review of the Contractor's submittals shall not relieve the Contractor or its Subcontractors of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.10 ~~If the Owner and Architect agree, the 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.

§ 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. Contractor so as not to delay the progress of~~ the Work. 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, from the information in,~~ 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 and information expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with ~~reasonable promptness, so as not to delay the progress of the Work.~~ If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

PAGE 20

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, ~~as soon as~~ when 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~~ shall 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.~~ entity. Failure of the Owner or Architect to reply within the ~~14-day~~ 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect 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 and timely 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 was, in the Contractor's view,~~ reasonably capable of performing the Work, the Contract ~~Sum-Sum,~~ GMP and Contract Time shall be increased or decreased by the difference, if any, occasioned by such ~~change, objection,~~ 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.~~ 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.~~ Owner. Each subcontract agreement shall preserve and protect the rights of the Owner ~~and Architect~~ together with such other terms and conditions as Contractor may deem appropriate 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.~~ rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. ~~The Upon written request the Contractor shall make available to each proposed Subcontractor, Subcontractor for review, 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.~~ bound.

PAGE 21

- .1 assignment is effective only after a proper and valid 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

...

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



subcontract..

...

§ 5.4.4 Upon such assignment, the Owner shall indemnify Contractor against any and all claims of Subcontractors whose Subcontracts have been assigned to the Owner.

...

§ 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" as applicable in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. Owner shall ensure that any such action by Owner shall not cause delay or disruption to Contractor. The Contractor shall participate in a meeting with other separate contractors and the Owner in reviewing their to review 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.

...

§ 6.2.1 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 specifically required by the Contract Documents and provided that such accommodations will not cause delay or disruption to Contractor's performance of the Work.

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

§ 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~~ construction, to the extent resulting from the willful misconduct by the Contractor for the sole purpose of causing harm to Owner or separate contractor. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, disruption to work, improperly timed activities, damage to the Work or defective construction.

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

PAGE 22

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

- ...
- .2 The amount of the adjustment, if any, in the Contract ~~Sum;~~ Sum, GMP and any component of the GMP; and

§ 7.3.1 A Construction Change Directive ("CCD") 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 GMP or Contract Time, or ~~both~~ all of them. 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~~ Sum, GMP and Contract Time being adjusted accordingly.

PAGE 23

- .3 Cost to be determined in a manner agreed upon by the parties in the Agreement and a mutually acceptable fixed or percentage fee; or

§ 7.3.5 Upon receipt of a Construction Change Directive, subject to Section 15.2.9, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided-stated in the Construction Change Directive for determining the proposed adjustment in the Contract ~~Sum or Contract Time~~ Sum, GMP or Contract Time, provided that such disagreement only pertains to the method of the proposed adjustment, and not Contractor's entitlement to any adjustment.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract ~~Sum~~ Sum, GMP 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, Sum or GMP~~, the Architect shall determine the ~~method and amount of the adjustment~~ on the basis of reasonable-actual expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for insurance, employee benefits expenses, overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall ~~keep and present, in such form as the Architect may prescribe, an itemized accounting~~ present an itemized summary of such costs and increases together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall ~~be limited to include~~ all Cost of the Work and include at rates provided herein as applicable, the following:

- .5 Additional costs of supervision and field office personnel directly-attributable-related 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~~ GMP shall be actual net cost as confirmed by ~~the Architect~~ the Architect, if the Contractor agrees with the amount of such net decrease. 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. If Contractor does not agree to the amount of such net increase or decrease, Contractor shall not be obligated to proceed with the deletion or change unless and until a mutually acceptable means of determining such amount is agreed upon by Owner and Contractor.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor ~~may request shall receive~~ payment for Work ~~completed-performed~~ 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 actual costs incurred by the Contractor or the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified, whichever is greater. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract ~~Sum~~ Sum, GMP 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. All determinations by Architect may be disputed by Contractor and addressed in accordance with Article 15.

PAGE 24

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

...

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

...

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

...

§ 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, war, terrorism, incidence of disease or other illness that reaches outbreak, epidemic, endemic and/or pandemic proportions or other causes affecting the area in which the Project is located and/or the Contractor's labor and/or supply chain, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's ~~control; reasonable control or responsibility hereunder;~~ or by delay authorized by the Contract Documents or by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Sum, GMP and Contract Time shall be extended by Change Order for such reasonable time as ~~the Architect may determine; and no less than for such reasonable time and amounts as arise out of or relate to such cause.~~

PAGE 25

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, 9.2., for completed portions of the Work. Such application shall be notarized, if required, and if the Contract between the Owner and Contractor is for other than a stipulated sum, supported by such data substantiating the Contractor's right to payment as the Owner or Architect may ~~require; have reasonably required;~~ such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

...

§ 9.3.1.2 If the Contract between the Owner and Contractor is for other than a stipulated sum, 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 Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with ~~procedures satisfactory to the Owner; any procedures set forth in the Contract Documents~~ 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; insurance~~ storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. ~~The Contractor further warrants that upon submittal of an Application for Payment payment in full. The Contractor shall, if requested by Owner as part of an Application for Payment warrant that all Work for which Certificates for Payment have been previously issued and payments received from the Owner that constitute payment in full, not subject to retention 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. Work, except for that which Contractor brings to Owner's attention in such application.~~

PAGE 26

§ 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 Owner from losses greater than amounts retained by Owner, for which Contractor is responsible under the Contract Documents, if the Architect's representations to the Owner required by Section 9.4.2 cannot be made, made for reasons related to the Contractor's performance of its obligations.~~ If the Architect is unable to so 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, which represents the percentage completion of the entire Work.~~ 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~~ 1 defective Work not ~~remedied~~; remedied following written notice from the Owner or Architect and a reasonable period of time and provided the amount of such claims exceeds the amount of retention held by the Owner;
- ~~2~~ 2 uninsured third party claims filed for which the Contractor is solely responsible pursuant to the Contract Documents and provided the amount of such claims exceeds the amount of retention held by the Owner or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- ~~3~~ 3 failure of the Contractor to make payments properly when due to Subcontractors or for labor, materials or equipment; equipment and provided the amount of such claims exceeds the amount of retention held by the Owner;
- ~~4~~ 4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; Sum where the extent of the overrun is an amount greater than the amount of any retention held by the Owner;
- ~~5~~ 5 damage to the Owner or a separate contractor;
- ~~6~~ 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; uninsured physical damage to the Owner's property for which the Contractor is solely responsible pursuant to the Contract Documents and provided the amount of such claims exceeds the amount of retention held by the Owner; or
- ~~7~~ 6 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When any of the above reasons for withholding certification are removed, certification will be made for restrictive 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.

§ 9.6.2 The Contractor shall pay each Subcontractor ~~no later than seven days~~ after receipt of payment from the Owner ~~in accordance with the terms of the Subcontract~~ the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 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~~ ten 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.  
PAGE 27

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

...  
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 on or before 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'~~ 7 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 and GMP, 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.  
...

§ 9.8.1 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.~~ intended use, as reflected in the Contract Documents.

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

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, as reflected in the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such ~~item upon notification by the Architect.~~ item. 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 that~~ the Owner is responsible 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.~~ Architect shall provide a list of all items that Contractor is to complete for final payment, which time period shall not be more than 10 days. 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. Documents as shown on the list to be provided pursuant to Section 9.8.4 by withholding no more than 150% of the reasonable cost of completing or correcting such Work.

PAGE 28

§ 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 Contractor has agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect. For any partial occupancy or use, the Owner shall reduce retainage proportionately to the Contractor at the time of partial occupancy or use.

§ 9.10.1 Upon completion of the items on the list provided in accordance with Section 9.8.4 or, if no list, upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable required of Contractor 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 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 or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, or will be paid upon final payment by Owner, (2) a certificate evidencing that insurance if required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, payment, is currently in effect, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, in writing delivered prior to Substantial Completion other data establishing payment or satisfaction of mechanic's liens filed by Subcontractors or suppliers to Contractor's obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, the Contract and the Work paid for by Owner, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in



~~discharging such lien, including all costs and reasonable attorneys' fees; such lien in exchange for which the Owner shall make final payment, or, if no such bond is provided, Owner may withhold the amount of the final payment to the relevant Subcontractor or supplier until such lien is no longer a viable encumbrance.~~

§ 9.10.3 On a monthly basis, after Substantial Completion of the Work, Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted in that month. If the 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 progress payments.

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

PAGE 29

- 2 failure of the Work to comply with the requirements of the Contract Documents; Documents then unknown to the Owner; or

~~§ 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. Payment and any amount withheld.~~

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, codes as required by current law, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

PAGE 30



§ 10.2.9 In the event the Contractor identifies activities or conditions during performance of the Work or at the Project, which, in the Contractor's good faith opinion, pose an unreasonable risk of bodily injury or property damage, whether immediate or in the future, the Contractor shall have the right to immediately take steps to protect its personnel and Subcontractors and stop Work and remove its personnel from the affected area. However, it is understood that the Contractor shall not be deemed to have assumed any obligation to identify such risks. In taking action as provided under this paragraph, the Contractor shall be entitled to an increase in the Contract Time and an equitable adjustment to the Contract Sum and Guaranteed Maximum Price for any additional costs and/or time lost as a consequence thereof.

§ 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.

§ 10.3.3 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 and provided that such damage, loss or expense is not due to the fault or sole negligence of the a 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 Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's sole 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. If, in bringing a hazardous material onto the Site, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.3.6 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.

PAGE 31

§ 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 required by the Contract Documents as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .5 Claims for damages, other than to the Work itself, itself and contents of the Project, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

§ 11.1.3 Certificates of insurance acceptable to the Owner on generally acceptable forms 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. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required by Section 11.1. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of the cancellation or expiration.

§ 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.

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance insurance together with any additional insurance or coverages as follows:

§ 11.3.1 Unless otherwise provided, the 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 an amount not less than the greater of the initial Contract Sum or the full cost of replacement including subsequent Contract Modifications, professional fees, costs related to delay or interruption due to a covered cause of loss to the Work and cost of materials supplied or installed by others, others the contents of the Project during construction and when completed and occupied, existing buildings, facilities and contents, 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. earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Contractor and Subcontractors of all tiers in the Project and the Contractor and Subcontractors of all tiers shall be named as additional insureds under such policies. The Owner shall notify the Contractor in writing if the property insurance contains "Protective Safeguard" language and Contractor shall be reimbursed any and all costs associated with enforcing these criteria as an increase to the Contract Sum and GMP.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, terrorism coverage, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, glass breakage, 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: loss as well as all increased costs of the Work (including General Conditions) resulting from any related delay or disruption of the Work. The property insurance shall not include a Water Infiltration Exclusion.

§ 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~~ Contractor and Subcontractors of all tiers 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. Notwithstanding any other provision in the Contract Documents to the contrary, including, without limitation, Section 3.18.1 above, the Owner shall not have any rights against the Contractor for any matter that is to be insured by the Owner hereunder.

§ 11.3.1.3 If the property insurance requires deductibles, or contains coverage gaps, sublimits or exclusions, the Owner shall pay costs not covered because of such ~~deductibles, deductibles or coverage gaps, sublimits or exclusions~~ as an increase to the Contract Sum and GMP.

PAGE 32

§ 11.3.1.6 Should Owner elect to procure Builder's Risk Insurance without terrorism coverage, Owner acknowledges that it is accepting the risk of all terrorist related events, and Owner waives all rights as against Contractor and the other parties to be insured under the Owner's Builder's Risk policy for terrorist related events and agrees to indemnify, hold harmless and defend Contractor from all costs, expenses (including legal fees and disbursements), claims, suits, liabilities and judgments arising out of any terrorist act or acts, to the fullest extent permitted by law.

The Owner shall include within the Project insurance or otherwise purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, insurance, 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~~ Contractor and Subcontractors of all tiers in the Work, and the Owner and Contractor and Subcontractors of all tiers shall be named insureds.

...

§ 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 insurance.

PAGE 33

§ 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.

The Owner shall provide written notification to the Contractor of the cancellation or expiration of any insurance required by Sections 11.2 and 11.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration.

...

The Owner and Contractor waive all rights against (1) each other and any of their ~~subcontractors, sub-subcontractors,~~ subcontractors of all tiers, 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.

...

§ 11.4.1 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. If Performance and Payment bonds are required, they shall be included in the GMP Amendment.

§ 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.

PAGE 34

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be ~~at the Contractor's expense by Contractor~~ without adjustment to the GMP 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 and to increase the GMP and to extend the Contract Time. The Contract Time shall also be adjusted.

...

The Contractor shall promptly correct Work properly rejected by the Architect ~~or as~~ failing to conform to the requirements of the Contract Documents, whether discovered before or as provided in Section 12.2.2.1 after Substantial Completion until expiration of the one year period referred to in Section 12.2.2.1 below. 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~~ reimbursable to the extent permitted by the Agreement.

...

§ 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, warranty or contract.~~ 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.~~ not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

~~§ 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.~~



~~§ 12.2.4~~ The Contractor shall ~~bear the cost of correcting, unless covered by insurance, without increase to the GMP,~~ correct destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

~~§ 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.

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the ~~Contract Sum~~ GMP will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.  
PAGE 35

~~§ 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-law, except where inconsistent with the Contract Documents, in which case the Contract Documents shall prevail.

~~§ 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, as required by current law, 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 as Cost of the Work pay~~ all related costs of tests, inspections and approvals provided for in the Contract Documents. 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 all other 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~~ expense, in addition to the GMP.

~~§ 13.5.3~~ If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by the correction of such failure including those of repeated procedures thereafter and compensation for the Architect's services and expenses shall be at the Contractor's expense without increase to the GMP.

PAGE 36

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 ~~10-3~~ 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.



- ...  
3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or  
4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section ~~2.2.1~~ 2.2.1; or

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 or for which Contractor is entitled to an extension of time constitute in the aggregate more than ~~400-30~~ percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and ~~damages;~~ damages, together with fee on Work not executed calculated as provided in Section 14.4.4.

...  
§ 14.2.1 The Owner may terminate the Contract in accordance with Section 14.2.2 if the Contractor  
PAGE 37

- 2 persistently fails to make payment to Subcontractors for materials or labor when due in accordance with the respective agreements between the Contractor and the Subcontractors;  
3 repeatedly disregards applicable laws, statutes, ordinances, codes, codes as required by current law, rules and regulations, or lawful orders of a public authority; or

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

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

...  
§ 14.3.2 The Contract Sum and Contract Time shall be adjusted 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.

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. In the event the Owner terminates for its convenience whether (i) pursuant to this Section 14.4 or (ii) pursuant to any other provision of the Contract Documents, the provisions of Section 14.4.4, will also apply to the termination and shall also survive the termination.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment including profit or fee for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

PAGE 38

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 arising after final payment 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-later or same shall be deemed waived.

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 Work provided 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.

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

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

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

PAGE 39

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, the appropriate resolution 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.

...

§ 15.2.4 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 or suggest the appropriate 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, time.

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

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PAGE 40

§ 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. Arbitration shall be utilized 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 earlier of the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations, limitations or the Contract Documents. 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.

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

**AIA® Document D401™ – 2003**

I, Karen M. Hogan, 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 16:49:05 ET on 10/21/2020 under Order No. 0117631254 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)*