



AIA[®]

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General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Central Falls Schools Renovations, Replacements and Repairs

THE OWNER:

(Name, legal status (Name and address)

Central Falls School Department

Administrative Offices

949 Dexter Street

Central Falls, RI 02863

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

THE ARCHITECT:

(Name, legal status (Name and address)

Torrado Architects

35 Greenwich Street

Providence, RI 02907

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements. As used herein, "Contractor" shall also mean "Construction Manager".

§ 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, except as set forth in Sections 5.3 and 5.4, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 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/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 The terms "knowledge", "recognize", "observe" and "discover", their respective derivatives and similar terms, as used in the Contract Documents referring to the Contractor, shall be interpreted to mean what the Contractor knows (or should reasonably know), recognizes (or should reasonably recognize), observes (or should observe) and discovers (or should discover) in exercising the care, skill and diligence required by the Contract Documents.

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Analogously, the expression "reasonably inferable" shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required by the Contract Documents.

§1.1.10 TERMINOLOGY

1. Unless otherwise indicated the term "provide" shall include furnishing and installing a product, materials, systems, and/or equipment complete in place, fully tested and approved.
2. The terms "approved" and/or "approval" shall mean approved and/or approval in writing unless otherwise indicated.
3. The term "Contractor" shall also mean "Construction Manager" for purposes of this Agreement.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation.

.1 On the Drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small scale drawings.

.2 Before requesting the ordering of any material or doing any Work, the Contractor and each Subcontractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charges or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings.

.3 If a minor change in the Work is found to be necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure to the Architect for approval before making the change.

.4 Contractor shall thoroughly acquaint itself with and comply with the terms, statutes, rules and regulations governing excavation in the area of underground utilities.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Contractor and all Subcontractors shall refer to all Contract Documents, including those not specifically showing the Work of their specialized trades, and shall perform all Work necessary to produce the results shown or reasonably inferable therefrom.

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

§ 1.2.4 Dimensions given on the Drawings govern scale measurements and large scale drawings govern small scale drawings. All documents are complementary and specific items of work are shown only where most appropriate for clarity. The Drawings are generally made to scale, but all working dimensions shall be taken from the figured dimensions, or by actual measurements taken at the job, and in no case by scaling. Whether or not an error is believed to exist, deviation from the Drawings and the dimensions given thereon shall be made only after approval in writing from the Architect.

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

§ 1.2.6 It shall be understood that the Architect's drawings are diagrammatic and the Contractor and subcontractors shall work in cooperation with each other in determining the running of pipe lines and locating equipment. Any necessary variation shall be made to conform to the intent of the diagrammatic drawings without additional costs.

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Where there are intersections involving various piping and equipment, etc., particular consideration shall be given to clearance.

§ 1.2.7 All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturers' written instructions unless specifically indicated otherwise in the Contract Documents.

§ 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, except as may be required under the Agreement with the Owner. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 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 CHARACTER AND INTENT OF DRAWINGS

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. During the bidding or negotiation period, questions or discrepancies called to the Architect's attention, in writing, will be answered by the Architect by means of an addendum. All addendums shall become part of the Contract Documents. If any item of Work is shown on the Drawings and not specified, or mentioned in the Specifications and not shown on the Drawings, the matter shall be brought to the attention of the Architect during the bidding period so an addendum can be issued correcting the omission. If such correction is not made, the Work in question shall be considered to be required as if it has been specified and shown on the Drawings.

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. The term "Owner's Representative" means the Owner's authorized representative.

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

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§2.1.3 The Owner shall not be responsible for construction means, methods, techniques, sequences and procedures or for site safety except as stated in Article 6.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

§ 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. 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.

§ 2.2.6 Unless otherwise provided in the Contract Documents the Owner will hire and pay for services including but not limited to independent materials testing and special inspections as determined necessary by the Architect and Owner to verify the compliance of materials and installations with the Contract Documents. These services provided by the Owner may include and are not limited to soils, cast in place concrete, masonry, steel and fireproofing inspections and testing. These services provided by the Owner do not relieve the Contractor of its obligations in Section 13.5.

§ 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 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.

§2.3.1 The Owner shall have the right to reject Work that it believes does not conform to the Contract Documents. However, neither this authority of the Owner nor a decision made to exercise or not exercise such authority shall give rise to a duty or responsibility of the Owner to the Contractor.

§ 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~~ seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies,

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including Owner's ~~expenses and expenses~~, including compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the ~~Owner~~ Owner upon demand.

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

§ 2.4.2 The rights stated in this Article and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (1) granted in the Contract Documents, (2) at law, or (3) in equity.

§ 2.5 OWNER'S RIGHT TO INSPECT THE WORK

§ 2.5.1 The Owner has the right to have full access to and inspect all portions of the Work for quality, progress and conformance to the Contract Documents.

§ 2.6 COMMISSIONING

§ 2.6.1 The Owner will perform inspections and tests of systems to validate the proper installation and performance of the Work as intended and required by the Contract Documents. These tests and inspections may be performed by the Owner's Representative or by independent contractors or consultants.

§ 2.6.2 The commissioning activities performed by the Owner in no way relieve or replace the obligations of the Architect or the Contractor in their fulfillment of Contract obligations.

§ 2.6.3 The commissioning agent of the Owner will utilize information provided by the Architect for design intent and the Contractor for actual installation conditions.

§ 2.6.4 Any commissioning activities are at the sole discretion of the Owner and not a requirement of this Agreement

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 Owner or the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract or any amendment thereto by the Contractor is a representation that the Contractor has ~~visited~~ investigated the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. The Owner shall not be required to make any adjustment in either the Contract Sum, Contract Time or any Milestone Date in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

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§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, Work and at frequent intervals during the progress thereof, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, 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. The Contractor shall promptly report to the Architect any errors, inconsistencies or omissions error, inconsistency or omission 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. However, if the Contractor proceeds with the Work without such notice to the Architect, after having discovered such error, inconsistency or omission, or if by reasonable study of the Contract Documents by the Contractor, the Contractor shall pay all costs arising therefrom.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, regulations unless they bear upon the performance of the Work, 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 any portion of the Contract Documents do not clearly define the Work, the Contractor shall immediately notify the Owner and Architect thereof, in writing, by utilizing a Request for Information (RFI) form, and shall request supplementary instructions before proceeding with such Work. If the Contractor proceeds with the Work without first obtaining such supplementary instructions, the Contractor shall make any repairs or corrections to the Work, as required by the Contract Documents, to complete the Work, at the Contractor's expense. If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, unless the Contractor recognized or should have recognized such error, inconsistency, omission or difference and failed to report it to the Architect or Owner. Nothing in this subparagraph 3.2.4 relieves the Contractor of the legal compliance requirements of subparagraph 3.7.2.

§ 3.2.5 RFIs shall be submitted in a timely manner so as to cause no delay in the progress of the Work, and to allow adequate time for review and response prior to the date on which the Contractor's current schedule of submittals requires a subsequent submittal which is dependent on the information requested. Unless another period of time is reasonably requested and agreed to at the time of submittal, the Architect shall respond to each RFI within not more than fourteen (14) days after receiving it. It is understood that larger, more complicated RFIs shall require more than fourteen (14) days to review and respond, but shall be a reasonable amount of time as mutually agreed at time of submission. RFIs shall be sequentially numbered and logged and tracked by the Contractor regardless if the source of the RFI was from the Contractor or Owner.

§ 3.2.6 The Contractor shall reimburse the Owner amounts charged to the Owner by the Architect for responding to an unreasonable number of Contractor's Requests for Information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared Coordination Drawings, or project correspondence or documentation. Such amounts may be deducted by the Owner from any payment otherwise due the Contractor.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, sequences, procedures, safety precautions, and for coordinating all portions of the Work

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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, sequences, procedures, and safety precautions,~~ 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 solely responsible for any loss or damage arising solely from these Owner-required means, methods, techniques, sequences or procedures.~~ Work. The Contractor shall then provide to the Owner and the Architect for review an alternative approach that satisfies the Contractor's concerns regarding the construction means, methods, techniques, sequences, or procedures and meets the intent of the Construction Documents. A resolution must be reached that is agreeable to the Architect, Owner, and Contractor before the disputed work proceeds.

§ 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~~ Subcontractors and for any damages, losses, costs and expenses, including, but not limited to, attorney's fees resulting from such acts or omissions.

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

§ 3.3.4 The Contractor shall be responsible for coordinating, scheduling, notifying and cooperating with the independent materials testing and special inspections services hired and paid for by the Owner as outlined in Section 2.2.6.

§ 3.3.5 The Contractor shall only use specifically assigned areas for parking, storage of materials, and construction operations unless other areas are authorized by the Owner. The Contractor shall comply with any and all local, municipal and state regulations regarding use of and parking on public streets.

§ 3.3.6 The Contractor shall arrange for and attend weekly job meetings with the Architect, the Owner's Project Manager, and such other persons as the Architect may from time to time wish to have present. The Contractor shall be represented by a principal, project manager, general superintendent, or other authorized main office representative, as well as by the Contractor's own superintendent. An authorized representative of any Subcontractor or Sub-Subcontractor shall attend such meetings if the representative's presence is requested by the Architect. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, Change Orders, time schedules, and manpower. Any notices required under the Contract may be served on such representatives. The recording of minutes for these job meetings and their timely distribution to the Owner and Architect shall be the responsibility of the Contractor unless agreed otherwise by the Owner, Architect and Contractor.

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

§ 3.3.8 The Contractor shall retain a competent Registered Professional Engineer or Registered Land Surveyor acceptable to the Architect who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the site and shall establish sufficient lines and grades for the construction of associated Work such as but not limited to roads utilities and site grading. The Engineer or Land Surveyor shall certify as to the actual location for the constructed facilities in relation to property lines, building lines, easements and other restrictive boundaries. Such information shall be turned over to the Owner as a part of Record Documents.

§ 3.3.9 The Contractor shall establish the building grade elevations, levels, columns, walls and partition lines required by the Contractor and Subcontractors in laying out their Work.

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§ 3.3.10 The Contractor shall coordinate and supervise the work performed by Subcontractors to ensure that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of their work and the storage of materials.

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

§ 3.4.4 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the project site. Protection of construction materials and equipment stored at the project site from weather, theft, damage, and other adversity is solely the responsibility of the Contractor.

§ 3.5 WARRANTY

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

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

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

§ 3.5.3 The Contractor expressly warrants its' Work for one year after the date of Substantial Completion. Contractor shall make any repair or replacement to the Work resulting from defective materials and/or workmanship. Contractor shall commence making the repairs or replacements required pursuant to this Warranty within ten days after the Owner gives written notice to the Contractor. In the event of Contractor's failure to make timely corrections, Owner shall have the right to make corrections and Contractor shall be responsible for immediate payment thereof. Any other specific or extended warranties are as identified in the Project Manual.

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

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§ 3.5.5 The Contractor shall procure and deliver to the Architect, no later than thirty (30) calendar days after the Date of Substantial Completion, all warranties required by the Contract Documents.

§ 3.5.6 This Warranty shall include the repair and/or replacement of all damaged materials resulting from the defective materials and/or workmanship. This shall include but not be limited to furniture, fixtures, equipment, finishes or any other affected materials or property.

§ 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. If the Owner is an institution exempt from sales tax, Bidders shall take this in consideration in calculating their bid. Tax Exemption Number will be furnished to the selected Contractor. In addition, the Contractor and subcontractors shall pay any and all compulsory taxes required or which may be imposed by any governmental agency, as applicable.

§ 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 required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work. The Contractor shall be responsible for scheduling all tests and inspections required by authorities having jurisdiction.

§ 3.7.2.1 It shall be the responsibility of all Contractors to confer with the various inspection offices of the local, state, or federal agency having jurisdiction over this construction project with the intent of verifying acceptability of materials and methods of construction indicated and specified herein. The respective Contractors and/or subcontractors shall visit the building inspector, plumbing inspector, electrical inspector, or any other inspection office having the authority for granting approvals or construction permits. The Contractor shall be responsible for scheduling all tests and inspections required by authorities having jurisdiction.

§ 3.7.2.2 All construction work shall conform to all prevailing codes.

§ 3.7.2.3 It is the responsibility of the Contractor to determine what local ordinances, if any, will affect its Work. It shall check for any county, city, borough, or township rules or regulations applicable to the area in which the project is being constructed, and in addition, for any rules or regulations of other organizations having jurisdiction, such as chamber-of-commerce, planning commissions, industries, or utilities companies who have jurisdiction over lands which the Contractor occupies.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction costs, damages and expenses attributable to correction, and shall indemnify the Owner therefore, including supervision, reasonable attorney and professional fees.

§ 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 Bid and Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that

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the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- 1 Allowances ~~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~~ ~~whenever~~ costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.8.4 No allowances shall be included in the Bid Documents by the Architect unless specifically requested by the Architect and approved in writing by the Owner.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Project Manager, Assistant Project Manager and Superintendent may not be removed without the prior written consent of the Owner. Owner reserves the right to have any employee of Contractor removed from the Project.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through~~ and the Architect the name and qualifications of a proposed superintendent. The ~~Owner or 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 ~~or Owner~~ requires additional time to review. Failure of the Architect and Owner 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.

§ 3.9.4 The superintendent shall be in attendance at the project site at all times during the progress of the work until the date of substantial completion, and for such time thereafter necessary for the completion of the work.

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§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, Contract or as part of the Guaranteed Maximum Price (GMP) proposal, (if provided), shall prepare and submit for the Owner's and Architect's information approval, a Contractor's construction schedule for the Work-Work which will be considered the baseline schedule. 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. The baseline schedule shall be approved prior to submission of the first Pay Application.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The submittal schedule shall be approved prior to the first Pay Application. The submittal schedule shall be updated and reviewed at progress meetings.

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

§ 3.10.4 The construction schedule shall be in a detailed critical path method (CPM) type format satisfactory to the Owner and Architect which shall also (1) provide a graphic representation of all activities and events that will occur during performance of the Work, including but not limited to hazardous material remediation, demolition, furniture and equipment deliveries, Substantial Completion, move-in activities, commissioning, training, punch list, and final cleaning; (2) identify each phase of construction and occupancy; (3) identify float time associated with non-critical path activities and (4) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as Milestone Dates). Upon review and acceptance by the Architect and Owner, the construction schedule shall be deemed the Baseline Construction Schedule for the project and will be used to determine the validity of Claims for Additional Time as identified in Section 15.1.5. This Baseline Construction Schedule can only be modified with approved changes in Contract Time through the execution of a Change Order. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner and Architect of any delays or potential delays. The construction schedule shall be updated regularly to reflect actual conditions or if requested by the Owner or at least monthly. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

§ 3.10.5 At weekly or biweekly construction progress meetings, the Contractor shall submit detailed two (2) week look ahead schedules which depict specific activities to occur during that period.

§ 3.10.6 The Contractor shall schedule and conduct construction and progress meetings, on a frequency required to effect coordination, to discuss such matters as procedures, progress, problems and scheduling. The Contractor shall prepare and distribute minutes within three working days of such meetings.

§ 3.10.7 The Contractor shall record the progress of the Project. Submit written progress reports not less frequently than monthly to the Owner and the Architect, including information on each Subcontractor and each Subcontractor's Work, as well as the entire Project, showing percentages of completion and the number and amounts of Change Orders. The Contractor will keep a daily log containing a record of weather, Subcontractor's Work on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may require. Upon request, Contractor shall make the log available to the Owner and the Architect.

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§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, Orders, baseline schedule, current schedule, schedule of submittals, RFI log and other documents related to the Project as directed by the Architect, in good order and marked currently to indicate record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and Owner 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, the Work. A designated complete set of Contract Documents shall be maintained by the Contractor and kept onsite at all times with up-to-date red-line modifications that accurately record field conditions different than those shown on the original documents. These red-lined drawings shall be turned over to the Architect for record purposes no later than thirty (30) calendar days after the date of Substantial Completion. This set of "red-lined" drawings shall be maintained and kept current by the Contractor and their completeness shall be routinely inspected by the Architect and Owner. If these "red-lined" drawings are not maintained by the Contractor or kept current during construction, then the approval of Applications for Payment, as defined in Section 9.3, shall be denied.

§ 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. The Contractor's approval shall be noted on the submitted item or in its transmittal letter, together with written notice of any deviation in the submitted item from the requirements of the Work and of the Contract Documents. In collaboration with the Architect, Contractor shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Each Shop Drawing, Product Data, Sample and similar submittals shall have a cover sheet on them identifying the project name and address, contractor information, drawing and/or specification reference, submission date and contents of the submittal. Ample space shall be provided on this cover sheet to allow for the Contractor's and Architect's review stamps. The Contractor's approval shall be noted on the submitted item or in its transmittal letter, together with written notice of any deviation in the submitted item from the requirements of the Work and of the Contract Documents.

§ 3.12.6 By submitting and approving Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and so, (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents and, (4) coordinated with information on Shop Drawings, Product Data, Samples, or similar submittals previously approved by the Architect or submitted by the Contractor for approval but not yet acted upon by the Architect, and verification of compliance with all the requirements of the Contract Documents. The accuracy of all such information is the responsibility of the Contractor. In approving Shop Drawings, Product Data, Samples,

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and similar submittals, the Architect shall be entitled to rely upon the Contractor's representation that such information is accurate and in compliance with the Contract.

§ 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. If the Contractor procures, performs or installs portions of the Work without required approvals, the Contractor does so at its own risk and such Work may be removed or replaced with approved Work at no cost to the Owner.

§ 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. Any submittals forwarded to the Architect for review that includes a deviation from the requirements of the Contract Documents or is not the specific make, model or manufacturer that was listed in the Contract Documents, shall have a completed Substitution Request Form attached to the submittal. This Substitution Request Form shall be provided by the Owner. Unless such deviation is identified by utilizing the Substitution Request Form, the Contractor shall not be relieved of the responsibility for the specific requirements of the Contract Documents even though the subject submittal was approved by the Architect. The Contractor shall not be relieved of responsibility for the contractor's, subcontractor's or vendor's errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

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

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

§3.12.11 Services provided by the Architect to evaluate Contractor product substitution requests or to review shop drawings or other project submittals which are required to be submitted more than three (3) times shall be paid for by the Contractor to the Owner.

§ 3.13 USE OF SITE

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ §3.13.1 The Contractor shall confine operations at the site to areas

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permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

§3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner.

§3.13.4 The Contractor shall only use specifically assigned areas for parking, storage of materials, and construction operations unless other areas are authorized by the Owner. The Contractor shall comply with any and all local, municipal and state regulations regarding use of and parking on public streets. Access to the site/building will be through Owner approved paths.

§ 3.14 CUTTING AND PATCHING

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. 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. Immediately prior to the Architect's inspection for Substantial Completion, the Contractor shall completely clean the premises. Concrete and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, waxed, and buffed. Woodwork shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust marks, and smears shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense.

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

§3.15.3 All areas of new or existing construction which are damaged during the Project shall be restored to their original condition by the Contractor responsible for said damage or disturbance.

§3.15.4 The Contractor shall be responsible for temporary site and building dust and dirt control through the use of temporary enclosures, partitions, site watering, calcium chloride or other approved means.

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular

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manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, its officers, directors, shareholders, trustees, affiliates, insurers, agents, Architect, Architect's consultants, and agents and employees of any of them from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that~~ which would otherwise exist as to a party or person described in this Section 3.18.

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

§ 3.18.3 The Contractor's indemnity obligations under this Section 3.18 shall, but not by way of limitation, specifically include, without limitations, all fines, penalties and punitive damages arising out of, or in connection with, any (i) violation of or failure to comply with any governmental requirements by the Contractor or Architect or any person or entity for whom the Contractor is responsible, (ii) method of execution of the Work, or (iii) failure to obtain, or violation of, any permit or other approval of a public authority applicable to the Work by the Contractor or any entity for whom the Contractor is responsible.

§ 3.18.4 In the event that the Contractor fails or refuses to indemnify any indemnitee hereunder, in addition to all other obligations and upon adjudication in favor of an indemnitee, Contractor shall be responsible for any and all costs associated with the Owner compelling the Contractor to comply with its obligations

§ 3.19 COMMISSIONING

§ 3.19.1 The Contractor will provide access to the Work as well as support and coordination to the Owner for the commissioning activities as described in Section 2.6.

§ 3.19.2 Any and all deficiencies identified during the commissioning process will be the responsibility of the Contractor to correct or complete in order to comply with and fulfill the requirements of the Contract Documents. These deficiencies must be corrected or completed as a condition for the issuance of the final Certificate for Payment.

§ 3.19.3 The requirements of the Contractor to support the Owner's commissioning process may include 1) balancing reports of mechanical systems approved by the Architect; 2) provision and coordination of training as required by the Contract Documents; 3) cooperation of Contractor's personnel with the Owner's commissioning personnel; 4) access to specific equipment or portions of the Work; 5) provision of systems and equipment documentation; and 6) provision of Operations and Maintenance Manuals.

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.

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

§ 4.2.2 The Architect and Owner will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, neither the Architect nor Owner will ~~not~~ be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect and Owner 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~~ Neither the Architect nor Owner will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect and Owner will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect Owner's Representative about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications between the Architect and Contractor shall be confirmed in writing to the Owner's Representative. Communications between Owner's Representative and Contractor shall be confirmed in writing to 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 and~~ Owner have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or Owner considers it necessary or advisable, the Architect and Owner 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 or Owner 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 or Owner to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept and intent expressed in the Contract Documents. The Architect's

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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 of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

§ 4.2.8.1 The architect will evaluate substitutions proposed by the contractor, whether as part of a cost reduction procedure or as otherwise, which are prepared and submitted in accordance with the requirements of subparagraphs 3.4.2. Such evaluation and any action taken by the architect with respect thereto shall be performed within 14 calendar days, or as requested in writing, as may, in the architect's professional judgment be required to permit adequate review. The Owner shall evaluate and approve or take other appropriate action upon contractor proposed substitutions and the architect's recommendations with respect thereto, which evaluation shall include, but not be limited to, a review of the total net change to project cost, taking into account the proposed change to the construction cost, the possible additional services costs of the architect, and the possible change in the contract sum, the contract time, or the requirements of the contract documents as a result of an Owner approved substitution shall be reflected in a change order.

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract 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. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Architect may, as the Architect judges desirable, issue additional drawings or instructions indicating in greater detail the construction or design of the various parts of the Work; such drawings or instructions may be affected by field order, or notice to the Contractor, and provided such drawings or instructions are reasonably consistent with the previously existing Contract Documents, the Work shall be executed in accordance with such additional drawings or instructions without additional cost or extension of Contract Time. If the Contractor claims additional cost or time on account of such additional drawings or instructions, it shall give notice provided in Section 15. Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith. The Architect shall not be required to render interpretations the sole or primary purpose of which is the resolution of jurisdictional disputes between Contractor and Subcontractor or between Subcontractor and Subcontractor.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. ~~When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.~~

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within ~~any time limits agreed upon~~ fourteen (14) calendar days or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. The issuance of additional Drawings or Specifications shall not, in itself, serve as a basis for adjustment of cost or time.

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, as soon as practicable after ~~but no later than~~ award of the Contract, shall furnish in writing to the Owner ~~through and the Architect concurrently~~ the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect ~~requires and Owner require~~ additional time for review. Failure of the Owner ~~or and~~ Architect to reply within the ~~44-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 objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§5.3.2 All subcontracts shall be in writing and shall specifically provide that the Owner is an intended third-party beneficiary.

§ 5.3 SUBCONTRACTUAL RELATIONS

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

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~~so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~ § 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Any entity other than the Contractor (i.e. subcontractors, vendors, suppliers, etc.) shall not have the right to require mediation, arbitration, or litigation of any dispute in those cases in which the Owner is a party or in which the outcome could affect the Contract Sum or the Contract Time, except at the sole discretion of the Owner.

§5.3.3 All subcontracts shall be in writing and shall specifically provide that the Owner is an intended third-party beneficiary.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 90 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Each subcontract shall specifically provide that the Owner shall only be responsible to the subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

§ 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.

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ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

§ 6.1.3 ~~The~~ Unless otherwise required in the Contract Documents, the Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 2, this Article 6 and Articles 10, 11 and 12 unless mutually agreed otherwise by Owner and Contractor.

§ 6.1.5 The Owner reserves the right of access to any part of the project at all times to inspect the same or to install other work either with its own forces or with separate contractors hired by the Owner. Such access is not to be construed to mean partial occupancy by the Owner and no claim for increase in the Contract Time or Sum will be considered unless such Owner's contractors have delayed or damaged the Contractor's Work. The Contractor shall permit the Owner to place and install as much furniture, equipment and other material during the progress of the Work as is possible before completion of the various parts of the Work and agrees that such placing and the installation of equipment shall not in any way evidence the completion or acceptance of the Work or any portion of it.

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

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§ 6.2.5.1 If a separate contractor sues or initiates a mediation, arbitration or litigation proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense, and if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees and court or arbitration costs which the Owner has incurred.

§6.2.6 The Contractor shall consult with its subcontractors and other Contractors as soon as possible after execution of the contract to coordinate all work phases in order that the Project as a whole can be completed in a professional and expeditious manner.

§6.2.7 If a separate contractor sues or initiates a dispute resolution proceeding against the Owner on account of any damage or delay alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall indemnify, defend and hold the Owner harmless from any damages, costs or expenses.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

§ 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.

§7.1.4 The Contractor's itemized accounts for all expenditures or savings for additions to, or deductions from, the Work in the Contract Documents shall at all times be open to inspection by the Owner and Architect.

§7.1.5 Proposed changes in the Work requested during the construction period shall be priced by the Contractor and submitted to the Architect and Owner for review, in such form as the Architect and Owner may require, within ten (10) calendar days following the Contractor's receipt of the request. The Contractor shall promptly revise and resubmit such proposal if the Architect and Owner determine that it is not in compliance with the requirements of this Article, or that it contains errors of fact or mathematical errors. If required by the Architect or Owner, in order to establish the exact cost of new Work added or previously required Work omitted, the Contractor shall obtain and furnish to the Architect and Owner bona fide proposals from recognized suppliers for furnishing and material included in such Work. Such proposals shall be furnished at the Contractor's expense.

§7.1.6 The Contractor's proposal for a change in the Work, (Change Order Request), shall be itemized completely and shall include: Specific number of calendar days for additional time (if applicable); all material costs and quantities accompanied by the original manufacturer invoices; labor wages; unit prices; subcontractor costs; mark

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ups, equipment costs, profit, overhead, general conditions, fees, bond costs and approved daily time sheet tickets for work performed under the utilization of labor rates. The Architect's and Owner's refusal to approve a change order or change order request due to the Contractor's lack of itemized backup information shall not be used to substantiate a claim for additional time.

§7.1.7 The methods used in determining the adjustment to the Contract Sum due to the Change in the Work may include those listed in Section 7.3.3 and are at the discretion of the Owner.

§7.1.8 If the method utilized to execute the Change in the Work is based on the labor rates, unit prices and material costs, then actual daily time sheets / tickets, approved by the Superintendent and the Owner, must accompany the Change Order, Construction Change Directive, or minor change in the Work. Not including these actual daily time sheets / tickets, approved by the Superintendent and the Owner, with the Change Order, Construction Change Directive, or minor change in the Work may be cause for their rejection.

§ 7.2 CHANGE ORDERS

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

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

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

§7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3 and are at the discretion of the Owner.

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. The Owner may also by Construction Change Directive order work to be performed that has been interpreted by the Owner or Architect to be part of the Work but is disputed by the Contractor through submission of a Claim.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order- Order or work interpreted by the Owner or Architect to be part of the Contract.

§ 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 and rates stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect and Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, ~~or if no such amount is set forth in the Agreement, a reasonable amount as determined per Sections 3.5, 3.6 and 3.7 of the modified AIA A701, Instructions to Bidders and the Bid Form . . .~~ In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to 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 directly attributable to the change.

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect and Owner will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect and Owner determines, in the Architect's and Owner's professional judgment, to be reasonably justified. The Architect's and Owner'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 Contractor agrees with a determination made by the Owner and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

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

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ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, 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. The Contractor shall not commence operations on the site prior to the authorized date of commencement unless mutually agreed otherwise by Owner and Contractor.

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

§8.2.4 If in any Application for Payment the total value of the completed Work in place, as certified by the Architect, is less than 90% of the total value of the Work in place estimated in the Progress Schedule, the Owner may, at the Owner's option, require the Contractor to accelerate the progress of the Work without cost to the Owner by increasing the work force or hours of work, or by other reasonable means approved by the Owner and Architect.

§8.2.5 If each of three successive Applications for Payments, as certified by the Architect, indicates that the actual Work completed is less than 90% of the values estimated in the Progress Schedule to be completed by the respective dates, the Owner may, at the Owner's option, treat the Contractor's delinquency as a default justifying the action permitted under Section 14.2.

§ 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, unusual delay in deliveries, fire~~; unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect and Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect and Owner may determine.

§ 8.3.2 Claims relating to time shall be invalid unless made in strict 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. Notwithstanding anything to the contrary in the Contract Documents, the Contractor's remedy for any (i) delay in the commencement, prosecution or completion of the Work, (ii) hindrance or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (collectively referred to as "Delays") whether or not such Delays are foreseeable, shall be an extension of time in which to complete the Work if permitted under Section 8.3.1. In the event of a concurrent delay by the Owner, the parties agree to share in proportion to their fault, the direct cost and time associated with said delay. In no event shall the Contractor be entitled to any other remedy or compensation or recovery or any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration.

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§8.3.4 The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the Owner or the Architect on account of any delay in the commencement of the Work and/or delay or suspension of any portion of the Work, whether such delay is caused by the Owner, the Architect, or otherwise, other than as set forth in this Section. In the event of a delay, the Contractor may submit a claim pursuant to Section 4.3 to recover from the Owner the Contractor's general conditions costs, equipment storage costs, increased direct costs of performance, demobilization and remobilization costs and other direct and unavoidable costs incurred during the period of such delay, but only to the extent delay is not caused by the Contractor. Contractor shall not be entitled to recover any consequential damages including, by way of example, interest on working capital, unabsorbed home office overhead or lost opportunity costs.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the ~~Architect, Architect and Owner~~, 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 ~~and Owner~~ may require. This schedule, unless objected to by the ~~Architect, Architect or Owner~~, shall be used as a basis for reviewing the Contractor's Applications for Payment. The description of the Work shall be sufficiently broken down to indicate labor and material costs associated with each area of Work. Any breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work, will be rejected. The Schedule of Values shall be revised if later determined by the Owner or Architect to be inaccurate.

§ 9.3 APPLICATIONS FOR PAYMENT

~~§ 9.3.1 At least ten days before the date established for each progress payment, in order to expedite monthly payments during the course of the Project, the Contractor shall prepare for the Architect's and Owner's review a preliminary draft of the Application for Payment (pencil copy), approximately ten (10) days before the end of each month. The payment period shall conclude on the last of that month. Then, five (5) days before the end of each month the Contractor shall have made mutually agreed modifications of the pencil copy and the Contractor shall submit to the Architect and Owner for approval an itemized Proposed Final 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, notarized. The Contractor shall utilize and submit AIA G702 and G703, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.~~

~~§ 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. Payments for changes in the Work which have not been formally approved in a Change Order, shall not be included.~~

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

~~§ 9.3.1.3 The Application for Payment will reflect the amount due to the Contractor for the cost of the Work less retainage as determined in the Owner-Contractor Agreement.~~

~~§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such~~

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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.

§ 9.3.2.1 In addition, for consideration of payment for stored products:

- (a) Storage shall be agreed upon in advance prior to shipment;
- (b) Location of storage shall be agreed upon in advance;
- (c) Contractor shall be responsible for, and pay costs of, the verification and inspection of storage;
- (d) Insurance certificate required for stored items; and
- (e) Bill of sale from supplier to verify transfer of goods to the Owner.

§ 9.3.2.2 Schedule of Values and Construction Schedule will be considered in decision on any specific request for payment for storage.

§ 9.3.2.3 Payment for material and equipment delivered and stored shall not relieve Contractor of responsibility for furnishing equipment and material required for the Work in the same manner as if such payment were not made

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

§ 9.3.4 To the extent payment has been made by the Owner for amount due, Contractor hereby expressly waives, releases and relinquishes any and all right to maintain, or have filed or maintained, any mechanic's lien or claim against the aforesaid premises, or any part thereof, or any building or buildings thereon, for or on account of any work, labor and materials performed or furnished under this Agreement, and agrees that no such lien or claim shall be so filed or maintained by or on behalf of Contractor; and Contractor further agrees to save the Owner harmless from the lien or claim of liens against the aforesaid premises or any part thereof, or any buildings thereon, of any subcontractor, or any persons acting through or under the Contractor and agrees, that if at any time there shall be any evidence of the filing or maintenance of any such lien or claim for liens, the Owner shall have the right to deduct from the amount otherwise due to the Contractor hereunder, an amount sufficient to indemnify it for any or all loss or damages which may result from such lien or claim; and the Contractor further agrees that this waiver shall be an independent covenant, and shall operate and be effective, not only with respect to materials furnished or labor performed under any Agreement supplemental to this principal Agreement and under any Agreement for extra labor or materials for the above described premises and buildings.

§ 9.3.4.1 Each Application for Payment or periodic estimate requesting payment shall be accompanied by a waiver of lien on account of prior payments from each Subcontractor. This waiver of lien shall include the dollar amount that the Subcontractor has been paid to date.

§ 9.3.4.2 Each Application for Payment or periodic estimate requesting payment shall be accompanied by a statement from each Contractor and Subcontractor certifying that there are no delay claims for the period being paid.

§ 9.3.5 To the extent payment has been made by the Owner for amounts due, Owner shall be entitled to withhold payment to Contractor upon receipt of notice of any intent to file a lien in an amount sufficient to protect the interests of the Owner. Owner shall allow Contractor a reasonable opportunity to bond off a lien. Owner shall have the right, on its own and without the Contractor's consent, to resolve any lien claims and deduct the costs thereof from any amounts due Contractor. In the event sufficient funds are not due Contractor, Contractor shall immediately pay to Owner any sums paid by Owner to resolve lien claim(s) upon demand.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven-five days after receipt of the Contractor's Final Monthly Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect and Owner 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.

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 failure to maintain specified record documents relating to the Work;
- .9 failure to provide lien waivers as required herein; or
- .10 failure to provide response to on-going construction commissioning reports.

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment. In no event shall joint payment create any obligations or contracts between Owner and a Subcontractor or supplier or create any rights in such Subcontractor or supplier against the Owner.

§ 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 no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to

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the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and 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 days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

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

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

§ 9.6.7 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.

§ 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 within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in §9.7.1. If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon fourteen (14) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.~~

§9.7.2 Notwithstanding anything to the contrary, in no event shall the Contractor stop the Work in connection with any withholding or payment for an item or failure to make payment relating to an item made in connection with a good faith dispute

§ 9.7.3 LIENS

(a) If any subcontractor, vendor, or any other party for whom the Contractor is responsible files any lien against the Project and/or the Project site, the Contractor shall discharge such lien within fifteen (15) calendar days of the Contractor's learning of such lien, unless the Owner requests that the Contractor obtain a lien discharge bond in which case the Contractor shall obtain within the same fifteen (15) calendar day period, at no cost to the Owner, a lien discharge bond for which both the surety and the form of bond are acceptable to the Owner. (b) If the Contractor fails to discharge such lien (or, if requested by the Owner, fails to obtain a lien discharge bond acceptable to the Owner) within such fifteen (15) calendar day period, the Owner shall have the right to withhold from the next

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progress payment or any other sum payable to the Contractor an amount equal to one hundred and fifty percent (150%) of the total of (i) the amount of such lien plus (ii) reasonable costs and expenses the Owner may incur related to such lien. The Owner may either: (1) apply amounts so withheld to discharging such lien and paying the costs and expenses for such discharge; or (2) retain such amounts (including amounts for costs and expenses) until such liens are discharged by the Contractor, thereafter crediting to the Contractor any amounts remaining after payment of the costs and expenses the Owner incurs related to such lien. (c) The Contractor shall defend, indemnify, and hold harmless the Owner from all costs and expenses incurred by the Owner in connection with such liens, unless and to the extent that such liens are the result of the Owner's failure to make timely payment of amounts due to the Contractor in accordance with the requirements of the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when (1) the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that Documents; (2) the Owner can occupy or utilize the Work for its intended use; (3) the issuance of a formal Certificate of Occupancy by the authority having jurisdiction; (4) the premises have been cleaned as per Section 3.15; and (5) only minor items remain to be corrected or completed that have no significant interference with the Owner's use of the Work.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof designated in the Contract Documents for separate completion which the Owner agrees to accept separately, is substantially complete, as defined in Section 9.8.1 above, the Contractor shall notify the Architect and Owner in writing and shall prepare and submit to the Architect (1) a comprehensive list of items to be completed or corrected prior to final payment, payment, and 2) all Certificates of Occupancy and applicable permits required by the Contract Documents, endorsed by the Contractor and in a form reasonably acceptable to the Architect and Owner. Promptly after receiving such notice, the Architect will conduct a preliminary review to determine whether or not the Documents are generally complete and correct. If the Architect finds on the basis of this review that the Contractor's notice and supporting documents are not generally complete or correct, the Architect will return them to the Contractor for revision and resubmittal, describing in general the additions or corrections required. If the Architect finds on one preliminary review of the Contractor's resubmittal that the resubmitted notice and supporting documents are still not generally complete and correct, the Contractor shall again correct and resubmit them, and shall, in addition, reimburse the Owner for the cost of any change in the Architect's services resulting from such a second and any subsequent preliminary reviews. When the Architect finds on the basis of a preliminary review that the Contractor's notice and supporting documents are substantially complete, the Architect will proceed as stated in Section 9.8.3 below. 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 and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's or Owner's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect or Owner to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. This list will be comprised of all items identified by the Contractor, Architect and Owner. 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 retainer applying to such Work or designated portion thereof. Thereof in accordance with Section 9.8.6. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

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§ 9.8.6 The retainage, as determined by the Owner-Contractor Agreement, will continue to be withheld in full, and the Owner will release such retainage within thirty (30) days after the date of the issuance of a Certificate of Substantial Completion by the Architect. The Owner will continue to hold retainage in an amount of one hundred fifty percent (150%) of the estimated cost of incomplete or unsatisfactory work. Further, the Owner will consider a reduction of retainage on a trade-by-trade (subcontractor-by-subcontractor) basis based upon their satisfactory progress and/or substantial completion of their Work prior to project Substantial Completion.

§ 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's 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 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, professional judgment, 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. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Owner prior to submission of the final Application for Payment. The final payment will not be made by the Owner until all close-out documents including as-built documents, operation and maintenance manuals, training and any other requirements identified in the Contract Documents have been received and accepted by the Owner and provided in the media and format requested by the Owner.

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

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

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

§9.10.3.1 If after one hundred-twenty (120) calendar days after Substantial Completion of the Work, or as otherwise stated in the Owner-Contractor Agreement, Final Completion thereof is not achieved due to actions or inaction of the Contractor, the Contractor shall reimburse the Owner for any and all costs incurred by the Owner for professional fees, including those of the Architect and Owner's Representative.

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

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

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

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. The Owner assumes no responsibility or liability for the safety of the Project site. Contractor shall be solely responsible for providing a safe place for the performance of the Work.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

§ 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.

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

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

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The Contractor shall, within five (5) business days, report in writing to the Owner and Architect all accidents out of or in connection with the Work that caused death, personal injury or property damage, giving names of those involved and any witnesses.

§10.2.10 The Contractor shall be responsible for the adequate strength and safety of all scaffolding, staging and hoisting equipment and for temporary shoring, bracing and tying.

§10.2.11 The Contractor shall, at all times, be responsible for maintaining fire safety on the site, including prompt removal of all combustible rubbish, provision of fire extinguishing apparatus, and other measures, and/or services specified herein or required by the State Fire Marshal or other authority having jurisdiction. If such authority determines that the Contractor has failed to provide or maintain adequate fire safety, the Contractor shall, at its own expense, provide any compensatory services, equipment or devices required by the authority having jurisdiction, including but not limited to maintaining a continuous fire watch.

§10.2.12 Cutting and welding to be performed in or immediately adjacent to existing spaces shall not be performed without written approval of the Owner for each instance.

§10.2.13 The Contractor shall comply with the requirements of the Occupational Safety and Health Act and the Construction Safety Act of 1969, including all standards and regulations which have been promulgated by the governmental authorities which administer such Acts and said requirements, standards and regulations are incorporated herein by reference. The Contractor shall be directly responsible for compliance therewith on the part of its agents, employees, subcontractors, and material suppliers and shall directly receive and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its agents, employees, material suppliers or subcontractors, to so comply.

§10.2.14 The Contractor shall at all times protect excavations, trenches, buildings, and materials from rain water, ground water, ice, snow, back-up or leakage of sewers, drains, or other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Contractor shall provide and operate all pumps, piping and other equipment necessary to this end.

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§10.2.15 The Contractor shall remove snow or ice within the limits of the Work indicated in the Contract Documents which might result in damage or delay.

§10.2.16 During the progress of the Work and at all times prior to the Date of Substantial Completion or occupancy of the Work by the Owner, whichever is earlier, the Contractor shall provide temporary heat, ventilation, and enclosure adequate to permit the Work to proceed in a timely fashion, and to prevent damage to completed Work or work in progress, or to materials stored on the premises. The permanent heating and ventilation systems may be used for these purposes when available unless otherwise provided in the Contract Documents. The use of the permanent heating system for temporary heat shall be subject to the prior written approval of the Owner and Architect.

§10.2.17 The Contractor shall be responsible for protecting the Work, materials and equipment at all times from commencement of Work until completion of its Work. It may, if it wishes, employ watchmen to assure such protection.

§10.2.18 In case of an emergency involving danger to life or property, the Contractor may act at its discretion to prevent injury or damage to the threatened life or property.

§10.2.19 The Contractor shall maintain its hand tools, machinery, personnel protective equipment, etc. in safe operating condition and shall require its subcontractors and individual mechanics to maintain their equipment in the same condition.

§ 10.3 HAZARDOUS MATERIALS

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

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. ~~Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall may be extended appropriately if appropriate and the Contract Sum shall may be increased in the amount of the Contractor's reasonable additional ~~costs of shut-down, delay and start-up costs, if any, of shut-down, delay and start-up.~~~~

§10.3.2.1 If Hazardous Material is determined to be present on the site, the Contractor will cooperate with the Owner and the Owner's consultants and contractors to coordinate the Work in conjunction with the abatement, handling, disposal, or other procedures related to the presence of the Hazardous Material to maintain a safe working environment and to progress with the execution of the Work to avoid delay.

§ 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 reasonable attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

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§ 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 fault or negligence in the use and handling of such materials or substances.

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

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

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. 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 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~~ employees or persons or entities excluded by law from the requirements of Article 11.1.1.1, but required by the Contract Documents to be insured;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

Such coverage shall be maintained for no less than four (4) years following final payment. The Owner shall be named additional insureds. Contractor shall provide a Blanket Additional Insured Endorsement. Contractor shall provide Owner with evidence of workers' compensation coverage.

§ 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. Documents, but under no circumstances for less than two years from the date of final payment.

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§ 11.1.2.1 Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

1. Premises Operations (including X-C/U as applicable),
2. Independent Contractors' Protective,
3. Products and Completed Operations,
4. Personal Injury Liability with Employment Exclusion deleted,
5. Contractual - including specified provision for Contractor's obligation under Section 3.18,
6. Owned, non-owned and hired motor vehicles,
7. Broad Form Property Damage including Completed Operations,
8. Umbrella Excess Liability.
9. If the General Liability coverages are provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment, certified in accordance with Section 9.10.2.

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

§ 11.1.4 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 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 operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 The limits specified in the contract documents are minimum requirements and shall not be construed in any way as limits of liability or as constituting acceptance by Owner of responsibility for losses in excess of such limits. The Contractor shall be responsible for all deductibles applicable to any insurance. No acceptance and/or approval of any insurance by Owner shall be construed as relieving or excusing Contractor from any liability or obligation imposed by the provisions of the Contract Documents.

The contractor shall provide a Blanket Additional Insured Endorsement and shall provide Owner with evidence of worker's compensation coverage.

§ 11.1.6 The Contractor shall not commence the Work under the Contract nor permit any subcontractor to commence work on a subcontract until all the insurance required is obtained. The Contractor may carry, at its own expense, such additional coverage as it may deem necessary. The Contractor shall not be deemed to be relieved of any responsibility by the fact it carries insurance. Should the Contractor at any time neglect or refuse to provide the insurance required herein or should such insurance be cancelled, or should the full annual aggregate or any policy not be available to satisfy the requirements of the Contract, the Owner shall have the right to procure such insurance and the cost thereof shall be deducted from monies then due or thereafter to become due the Contractor.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract

Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost ~~basis without optional deductibles~~ basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

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

§ 11.3.1.3 If the property insurance requires deductibles, the ~~Owner party initiating the claim~~ shall pay costs not covered because of such deductibles. Notwithstanding, if the cause of any loss payment under such insurance is the fault of the Contractor, then Contractor shall pay such deductible.

§ 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 Time Limits on Claims. Claims made by any party must be initiated within 30 calendar days after occurrence of the event giving rise to such Claim or within 30 calendar days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Owner's Representative and the Surety.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 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, ~~caused to the extent of actual recovery of any insurance proceeds obtained pursuant to this Section.~~

§ 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.

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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 coverage. If requested by the Contractor, the Owner shall provide proof of insurance coverage required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by 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. The surety, form and substance of the bond shall be satisfactory to the Owner. Surety companies executing bonds must appear on the Treasury

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Department's most current list (Circular 570, as amended) and be authorized to transact business in the state in which the Project is located.

§ 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.

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 or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the ~~Architect~~ Architect or Owner, be uncovered for the Architect's or Owner's examination and be replaced at the Contractor's expense without change in the Contract Time.

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or Owner, or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, and any cost, loss or damage to the Owner resulting therefrom, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period thirty (30) calendar days after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.~~

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

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

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

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

§ 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.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. ~~Such equitable, even if such Work was installed as submitted and approved in shop drawings, 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, located,

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole ~~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.

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity ~~acceptable to~~ engaged by the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals ~~authority. The Owner will hire and pay for services as outlined in Section 2.2.6, from which reports will be forwarded to the Contractor.~~ The Contractor shall give the Architect and Owner timely notice of when and where tests and inspections are to be

made so that the Architect ~~may be present for and~~ Owner may observe such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

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

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

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

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

§ 13.5.7 The Owner shall have the right to conduct testing and inspections related to, but not limited to, commissioning as outlined in Section 2.6 and 3.19.

§ 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 10 years after the date of Substantial Completion of the ~~Work-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; 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.

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§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 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, direct costs incurred by reason of such termination, and damages.

§ 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 if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

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

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

§ 14.3.2 The Contract Sum and Contract Time ~~shall~~ may 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~~ extent:

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

~~§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed. Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, overhead anticipated and/or unearned profits, consequential or indirect damages.~~

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 Architect. Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or Claim. Claims by the Owner must be initiated within 21 days after the claimant Owner first recognizes the condition giving rise to the Claim, whichever is later. Claim. After a Change Order Request or a formal Change Order has been executed, no additional Claim based on the same scope of work will be considered.~~

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

~~Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make 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. Owner shall have no obligation to make payments to the Contractor on or against such claims, disputes, or other matters in question during the pendency of any mediation, arbitration, or other proceedings to resolve such matters. Owner shall continue to make payments of undisputed amounts.~~

~~§ 15.1.3.1 If the Contractor submits a claim that is interpreted by the Architect or Owner as being part of the Work and the Contractor disputes this interpretation, a Construction Directive will be issued per Article 7. The Contractor shall immediately proceed with the execution of the disputed Work.~~

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§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 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, by~~ as per Article 8.3.

§ 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 had an adverse effect on the scheduled construction.~~ as per Article 8.3.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

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

§ 15.2 INITIAL DECISION/INITIAL INTERPRETATION

§ 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 Architect for~~ initial interpretation. An initial interpretation shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, ~~unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker Architect and all affected parties agree, the Initial Decision Maker Architect will not decide disputes between the Contractor and persons or entities other than the Owner.~~

§ 15.2.2 The ~~Initial Decision Maker Architect~~ 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/recommend approval of~~ the Claim, (4) suggest a compromise, or (5) advise the parties that the ~~Initial Decision Maker Architect~~ is unable to ~~resolve/interpret~~ the Claim if the ~~Initial Decision Maker Architect~~ lacks sufficient information to evaluate the merits of the Claim or if the ~~Initial Decision Maker Architect~~ concludes that, in the ~~Initial Decision Maker's Architect's~~ sole discretion, it would be inappropriate for the ~~Initial Decision Maker to resolve the Claim. Architect to interpret~~ the Claim.

§ 15.2.3 In evaluating Claims, the ~~Initial Decision Maker Architect~~ 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 Architect in rendering an initial interpretation. The Architect~~ may request the Owner to authorize retention of such persons at the Owner's expense.

Handwritten initials and signature in blue ink, including "AJD" and "MT/JD".

~~§ 15.2.4 If the Initial Decision Maker Architect 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 Architect when the response or supporting data will be furnished or (3) advise the Initial Decision Maker Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker Architect will either reject or approve/recommend approval of the Claim in whole or in part.~~

~~§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision Architect will render an initial interpretation or indicate that the Architect is unable to interpret the Claim. This initial interpretation 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 interpretation shall be considered by 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 interpretation at any time, subject to the terms of Section 15.2.6.1.~~

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

~~§ 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 9.40.4, 9.40.5, and 9.104, 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 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, 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~~

~~§ 15.4.1 If the parties have selected arbitration as mutually agree that arbitration is the method for binding dispute resolution in the Agreement, resolution, 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~~

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demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

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

~~§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent. Any unresolved claims between Owner and Contractor, Owner and Architect, Contractor and Architect, Contractor and its Surety, or Contractor and its Subcontractors or Suppliers may be submitted for arbitration as provided in this Section 15 and any or all of the parties named above shall, at the Owner's request, be joined or consolidated therein.~~

§ 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.

Reviewed per F.S.A.

Leonard Morganis
Administration & Finance Officer

As to form and correctness

James A. Diossa, Mayor