

# AIA® Document A133™ – 2009

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

**AGREEMENT** made as of the 7 day of June in the year 2019  
(In words, indicate day, month and year.)

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

Town of Suffield 83 Mountain Road  
Suffield, CT, 06078

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

Gilbane Building Company  
208 New London Turnpike  
Glastonbury, Connecticut, 06033

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

Suffield Town Hall Renovation  
83 Mountain Road Suffield, CT, 06078

The Architect:  
(Name, legal status and address)

QA+M Architecture 195 Scott Swamp Road  
Farmington, CT, 06032

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

Chris Matejek  
Facilities Manager  
Town of Suffield 83 Mountain Road  
Suffield, CT, 06078

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

Eric Cushman  
Sr. Project Executive  
Gilbane Building Company  
208 New London Turnpike  
Glastonbury, Connecticut, 06033

The Architect's Designated Representative:

### **ADDITIONS AND DELETIONS:**

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

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

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

*(Name, address and other information)*

Angela CahillAssociate Architect  
QA+M Architecture  
195 Scott Swamp Road  
Farmington, CT, 06032

The Owner and Construction Manager agree as follows.

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### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

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

#### § 1.2 Relationship of the Parties

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

#### § 1.3 General Conditions

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

### ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction

Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project which designation shall not be changed without Owner's prior written approval..

## **§ 2.1 Preconstruction Phase**

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

## **§ 2.1.2 Consultation**

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

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

## **§ 2.1.4 Phased Construction**

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

## **§ 2.1.5 Preliminary Cost Estimates**

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

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

**§ 2.1.5.3** When the Construction Documents are 95% complete and approved by the Owner, the Construction Manager shall prepare a detailed estimate by trade or scope package, which will be broken down by phase of construction, with supporting data for review by the Architect and approval by the Owner. This budget will also have a comparison to the Construction Manager's historical cost data for similar size and project type. During the preparation of the Construction Documents, the Construction Manager shall update and revise this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

**§ 2.1.5.4** If any estimate submitted to the Owner exceeds previously approved estimates, a particular trade item, or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect. The

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Construction Manager agrees to work proactively with the Owner and Architect to provide and evaluate options, based on the Construction Manager's experience and industry knowledge, for the Owner's review and acceptance. These options shall include system, scope, products, and constructability recommendations. The Construction Manager will be responsible for maintaining a complete log of all value engineering and product proposals.

#### **§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall develop bidders' interest in the Project. The Construction Manager shall, with the assistance of the Architect, develop bid packages for the components of the Work and prepare a list of qualified bidders for each component of the Work. The Construction Manager shall obtain at least three bids for each trade package. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection

§ 2.1.6.1 The Construction Manager shall also provide to the Owner, as appropriate, Construction Manager's assessment of the subcontractors and suppliers under consideration, including their financial strength, past performance, and current workload, and a recommendation as to subcontractor and supplier selection. If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2. Upon receipt of such summary, the Owner shall have ten (10) days to review the summary and provide to the Construction Manager any subcontractor or supplier on the list to which the Owner has objection. If the Owner timely notifies the Construction Manager of an objection to any Subcontractor or supplier, the Construction Manager shall propose a substitute to the Owner for consideration. The Construction Manager shall not contract with any bidder to perform any component of the Work to which the Owner has made a timely objection. By virtue of the Owner's foregoing right to object to the selection of any Subcontractor or supplier, the Owner does not assume any duty or responsibility for the selection of Subcontractors or suppliers for the Work which duty and responsibility shall remain entirely with the Construction Manager.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 2.1.8 Extent of Responsibility**

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

#### **§ 2.1.9 Notices and Compliance with Laws**

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

§ 2.1.10 Without limitation of the generality of the foregoing provisions of Section 2.1, the Construction Manager's responsibilities during the Preconstruction Phase shall include the following.

- .1 Estimating: Verify the validity of budget assumptions. Provide full detailed estimates at the standard milestones of Schematic Development, Design Development and 50% CD documents.
- .2 Scheduling: Develop a detailed schedule that is tracked through the pre-construction phase to capture all of the anticipated Work activities. Continue to use the schedule through the construction phase to ensure on-scheduled

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- completion.
- 3 Value Engineering: Working with Owner's design professionals, develop value engineering at the appropriate milestones of design. Manage the Value engineering log as appropriate.
  - 4 Cost Trending: In addition to the milestone estimates, track the budget as designs, schematics and sketches are produced for review and approval. Maintain a cost trending log to document the significant scope changes from estimate to estimate.
  - 5 Constructability Review: Review the construction documents as they are developed and advise on issues of constructability both from an initial installation and a long-term servicing perspective.  
Constructability review will include review of high performance (or "green") design elements.
  - 6 Site Logistics Plan: Develop a graphic site logistics plan showing lay-down areas and access in and out of the building.
  - 7 Quality Plan: Develop a plan to describe how quality will be ensured in the execution of the design and communicated to the Subcontractors.
  - 8 Safety Plan: Develop a project specific safety plan

## § 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Contingency (As defined below), and the Construction Manager's Fee (as determined pursuant to Section 5.1.1 of this Agreement).

### § 2.2.1.1 Construction Contingency

- 1 The "Construction Contingency" is the amount specified as the construction contingency in the initial Guaranteed Maximum Price which amount is available to reimburse the Construction Manager for unanticipated costs provided such costs are of the type included in the definition of, and are properly reimbursable as, the Cost of the Work under Sections 6.1 through and including 6.7 hereafter but not the proper basis for a Change Order. Construction Manager shall submit a written request to the Owner for Owner's consent to the reimbursement of such cost together with an explanation of the reason such cost is to be incurred. The Construction Manager shall not be entitled to reimbursement of any such cost unless, prior to incurring such cost, the Owner provided such consent.
- 2 At final completion of the Work, One Hundred percent (100 %) of any unspent Construction Contingency shall inure to the benefit of the Owner
- 3 The amount of the Construction Contingency shall be an amount agreed by the Owner and the Construction Manager but shall not, in any event, exceed 15% of the Construction Manager's estimate of the Cost of the Work included in the initial Guaranteed Maximum Price net of General Conditions Costs and General Liability Insurance reimbursement.

### § 2.2.1.3. GENERAL LIABILITY INSURANCE REIMBURSEMENT

Included in the estimated Cost of the Work shall be the amount for which the Construction Manager shall be entitled to reimbursement for General Liability Insurance attributable to the Project. Such reimbursement amount shall be fixed at 0.865% of the Total Contract Amount between Construction Manager and Owner.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A period of time (of not less than forty-five (45) days after the Construction Manager's submission of the Guaranteed Maximum Price proposal in accordance with the terms and conditions of this agreement) during which such proposal may not be unilaterally modified or withdrawn by the Construction Manager (the "Proposal Period"); and
- .6 A statement sworn by the Construction manager listing the names and addresses of each subcontractor, supplier, and consultant to perform any part of the Work on behalf of the Construction Manager along with a description of that portion of the Work to be performed/provided by, and the compensation to be paid to, such subcontractor, supplier or consultant as applicable.

*(Paragraph deleted)*

§ 2.2.4 Contract Time

§ 2.2.4.1 Along with the Guaranteed Maximum Price proposal, the Construction Manager shall prepare and submit to the Owner, for review and approval, a schedule for completion of the Work (as approved by the Owner and as defined in Section 3.10 of the A201 General Conditions, the "Construction Schedule"). The Construction Schedule shall comply with the requirements of Section 3.10 of the A201 General Conditions.

§ 2.2.4.2 TIME IS OF THE ESSENCE in the completion of the Work

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

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

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

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications. The risk of loss due to inconsistencies or inaccuracies in the Guaranteed Maximum Price and/or in the Guaranteed Maximum Price Amendment executed pursuant to Section 2.2.6, shall be the Construction Manager's except to the extent such inconsistencies or inaccuracies are due to the fault of the Owner or Architect.

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

§ 2.2.10 If the Guaranteed Maximum Price proposal is unacceptable to the Owner, the Owner may, by written notice to the Construction Manager, terminate this Agreement and shall pay the Construction Manager the fee for Preconstruction Phase services to the extent earned as of the effective date of termination. In the event of termination under this subsection 2.2.10, the Owner shall not be obligated to reimburse the Construction Manager for any costs incurred by the Construction Manager as a result of the termination.

§ 2.2.11 In the event of termination of this Agreement in accordance with the provisions of subsection 2.2.10, upon payment by the Owner of the amount obligated under subsection 2.2.10, the Owner's obligations to the Construction Manager shall be fully satisfied, and the Construction Manager shall be deemed to have fully released the Owner from any claims or liabilities. Further, the Construction Manager shall, upon request of the Owner, assign to the Owner any subcontract, vendor contract, purchase order, letter of intent or other similar agreement that the Construction Manager has entered into in connection with the Work (any such assignment shall be subject to the terms and conditions of Section 5.4 of the A201 General Conditions).

§ 2.2.12 By executing the Guaranteed Maximum Price Amendment pursuant to Section 2.2.6 of this Agreement, the Construction Manager represents and warrants, which representation and warranty is hereby incorporated into such Guaranteed Maximum Price Amendment, that the Drawings and Specifications and other materials and information listed in Guaranteed Maximum Price Amendment describe the scope, construction requirements and design intent of the Work in detail sufficient to enable the Construction Manager to establish firmly the Guaranteed Maximum Price, subject to the agreed upon written assumptions and clarifications included in the Guaranteed Maximum Price Amendment. So long as the further drawings, clarifications, supplemental information, and other materials are consistent with the Contract Documents, the Construction Manager shall not be entitled to any adjustment in the Guaranteed Maximum Price or the Construction Schedule in connection with the completion of drawings, clarifications, supplemental information and other materials issued by the Architect or the Owner (collectively, "Supplemental Materials") after the date the Guaranteed Maximum Price Amendment is executed in regard to items of Work that are reasonably inferable from, and not excluded by, the Contract Documents

## § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase of the Work. Construction Phase of the Work shall commence upon the issuance by the Owner to the Construction Manager of a Notice to Proceed with the Construction Phase.

*(Paragraph deleted)*

### § 2.3.2 Administration

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

### § 2.3.2.2 Intentionally Omitted.

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

§ 2.3.2.4

Intentionally Omitted.

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

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

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

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

§ 2.4 Professional Services

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

§ 2.5 Hazardous Materials

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

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

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

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the

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Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

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

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

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

**3.1.5** The Owner shall only communicate with Subcontractors through the Construction Manager.

### **§ 3.2 Owner's Designated Representative**

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

**§ 3.2.1 Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project.

### **§ 3.3 Architect**

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

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## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

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

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

\$84,430 for Pre-Construction Services, with a discount of \$45,990 applied at the acceptance of the GMP.

§ 4.1.3 If the PreConstruction Phase services covered by this Agreement have not been completed within Nine (9) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

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

### § 4.2 Payments

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

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

(Insert rate of monthly or annual interest agreed upon.)

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

§ 5.1.1 The Construction Manager's Fee:

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

2.95% (Two and Nine and One Half Tenths of a Percentage) of the estimated Cost of the Work plus the Construction Manager's Contingency, which shall be converted to a Lump Sum when the Guaranteed Maximum Price is mutually agreed upon as provided herein. The Fee shall be paid in accordance with Section 7.1.7.

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

The Construction Manager's Fee shall be increased on account of Changes in the Work by an amount equal to 2.95% (Two and Nine and One Half Tenths of a Percentage) percent (2.95%) of the Cost of the Change determined in accordance with Subparagraph 7.3.3.3 of the General Conditions.

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

(i) Markup by any first tier Subcontractor for overhead and profit on Work performed pursuant to Change Orders and Construction Change Directives shall not exceed Fifteen Percent (15%) of the sum of the actual direct costs for labor including labor burden) and materials for such Work that is performed directly by such first tier Subcontractor;

(ii) Markup by any first tier Subcontractor for overhead and profit on Work performed by its Sub-subcontractor pursuant to Change Orders and Construction Change Directives shall not exceed Five Percent (5%) of the Sub-subcontractor's contract price for such Work that is

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performed directly by the Sub-subcontractor; and  
 (iii) Markup of first tier Subcontractor of Sub-subcontractor Work performed pursuant to Change Orders and Construction Change Directives shall not exceed Five Percent (5%) of the sum of direct cost for labor (including labor burden) and materials for Work performed directly by such Sub-subcontractor.

The Construction Manager shall include the markup limitations set forth in Section 5.1.3 in all Subcontracts and require in all Subcontracts that the Subcontractors include such limitations in all lower tier Subcontracts.

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

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

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

## **§ 5.2 Guaranteed Maximum Price**

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

**§ 5.2.2** The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and delays beyond the Construction Manager's control pursuant to Section 8.3.1 of A201-2007. The Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

## **§ 5.3 Changes in the Work**

**§ 5.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

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

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

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(Paragraph deleted)

## **ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 6.1 Costs to Be Reimbursed**

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

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost where approval shall not be unreasonably withheld. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.1.3 Reimbursement of costs described in Section 6.2 are included in the General Conditions Lump Sum Cost under Section 2.2.1.2 of this Agreement. These items will be subject to an equitable adjustment for Change Orders utilizing the rates from Gilbane's Proposal dated March 15<sup>th</sup>, 2019.

### **§ 6.2 Labor Costs**

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

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval. Wages or salaries of the Construction Manager's home office personnel performing the functions of Construction Supervisor (including Project Executive), Estimating, Scheduling, Purchasing, Accounting, Cost Control, Legal and Safety to compensate the Construction Manager for the items enumerated in Clause 6.2.4 below and the associated office overhead. Gilbane's General Conditions for personnel stationed at the site and the home office will be a lump sum value of \$439,452.

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

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

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

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

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

### **§ 6.3 Subcontract Costs**

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

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

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

§ 6.4.2 Intentionally omitted..

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

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

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

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

*(Paragraphs deleted)*

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

## **§ 6.6 Miscellaneous Costs**

**§ 6.6.1** In accordance with Section 2.2.3.1, The Construction Manager shall bill its Risk Management Liability Insurance at a rate of 0.865% of Contract Revenue.

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

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

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

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

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

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

**§ 6.6.8** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes solely between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work.

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

## **§ 6.7 Other Costs and Emergencies**

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

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

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

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

## **§ 6.8 Costs Not To Be Reimbursed**

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

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

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

**§ 6.9.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. The Construction Manager shall promptly notify the Owner of potential cash discounts of which the Construction Manager is aware to enable Owner to take advantage of same. The Construction Manager shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work prior to providing the Owner with seven (7) days prior written notice of the potential discount, rebate or refund and an opportunity to furnish funds necessary to obtain such discount rebate or refund.

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

## **§ 6.10 Related Party Transactions**

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

**§ 6.10.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is

consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.3 and 2.1.6.

#### **§ 6.11 Accounting Records**

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Notwithstanding the foregoing, any lump sum amounts and fixed rates shall not be subject to audit.

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

#### **§ 7.1 Progress Payments**

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

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

**§ 7.1.3** Provided that an Application for Payment is received by the Architect not later than the first day of a month, payment by the Owner to the Construction Manager of the statement amount less retainage, as hereinafter provided, shall be made by wire transfer to the Construction Manager's bank account within thirty (30) days after it is submitted. The Construction Manager shall provide to the Owner the appropriate bank routing and account information necessary to accomplish wire transfers.

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

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

**§ 7.1.4.1** Each Application for Payment shall also include a statement showing the status of all pending change orders, other pending change directives and approved changes to the Contract. Such statement shall identify the pending change orders and other pending change directives, and shall include the date such change orders and directives were initiated, the costs associated with their performance and a description of any work completed

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

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of N/A ( N/A ) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 Payments to Subcontractors shall be subject to retainage of five percent (5%). Upon fifty percent (50%) completion of a Subcontractor's work, no further retainage will be withheld provided the Subcontractor is performing satisfactorily in the Owner's and Construction Manager's opinions. The Construction Manager's fee and General Conditions costs shall not be subject to retainage.

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

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

§ 7.1.11 With the exception of the Construction Manager's Fee, the Construction Manager shall use payments made under this agreement solely for the purpose of performance of the Work pursuant to the Contract Documents. Construction Manager shall pay for all labor performed and materials supplied by others in connection with the performance of the Work in accordance with the Contract documents and as required by applicable laws and regulations.

§ 7.1.11 Construction Manager shall pay any amounts due a Subcontractor or supplier, whether for labor performed or materials furnished, not later than seven (7) days after the date the Construction Manager receives payment from the Owner which encompasses labor performed or materials furnished by such Subcontractor or supplier. The Construction Manager shall include in all of its Subcontracts with its Subcontractors and suppliers a requirement that the Subcontractors and suppliers pay any amounts due any sub-subcontractors or suppliers no later than seven (7) days after the Subcontractor or supplier receives a

payment from the Construction Manager which encompasses labor performed or materials furnished by such Subcontractor or supplier. Retainage withheld by the Construction Manager from Subcontractors and suppliers shall not exceed five percent (5%).

## **§ 7.2 Final Payment**

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

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

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows: If the Construction Manager is in default of payment to its subcontractors or suppliers, the Owner may make final payment to the Construction Manager by joint checks made payable in each case to the Construction Manager and the appropriate subcontractor or supplier. The Construction Manager acknowledges and agrees that such payment by joint check shall constitute payment by Owner to the Construction Manager.

Notwithstanding anything to the contrary set forth herein or in any other Contract Documents, Owner shall not be required to make final payment until the Construction Manager has submitted all documentation required by the Contract Documents to the Owner and the Owner has accepted the same (which acceptance shall not be unreasonably withheld), including without limitation, all warranties and guarantees associated with the Work and a minimum of 2 "as built" surveys in form acceptable to the Owner.

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

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

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

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## ARTICLE 8 INSURANCE AND BONDS

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

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

*(Table deleted)*

### § 8.2 Bonds

§ 8.2.1 The Construction Manager shall furnish, with sureties satisfactory to the Owner:

- .1 a bond covering the Construction Manager's faithful performance of the Work, which bond shall be equal to one hundred percent (100%) of the Guaranteed Maximum Price and on which the Owner shall be shown as the obligee; and
- .2 a Payment Bond equal to one hundred percent (100%) of the Guaranteed Maximum Price.

## ARTICLE 9 DISPUTE RESOLUTION

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

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

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

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

☒ Litigation in a court of competent jurisdiction

The Owner and the Construction Manager hereby agree to submit to the jurisdiction of the state and federal courts of the State of Connecticut in connection with any dispute arising out of this Agreement, and to waive any objection as to the propriety or convenience of venue in such courts. Any judgment rendered in such action may be executed in any jurisdiction in which a party resides or owns property without further defense or setoff.

☐ Other: *(Specify)*

TO THE EXTENT ALLOWED BY APPLICABLE LAW, THE OWNER AND CONSTRUCTION MANAGER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE OWNER OR CONSTRUCTION MANAGER MAY BE A PARTY ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT OR THE ENFORCEMENT THEREOF. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT A PARTY TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE OWNER AND CONSTRUCTION MANAGER AND EACH HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH PARTY FURTHER REPRESENTS THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH INDEPENDENT LEGAL COUNSEL.

### § 9.3 Initial Decision Maker

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

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

## **ARTICLE 10 TERMINATION OR SUSPENSION**

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

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

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

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

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

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

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

**§ 10.1.4** Upon payment by the Owner of the amounts required under this Section 10.1, the Owner's obligations to the Construction Manager shall be fully satisfied, and the Construction Manager shall be deemed to have fully released the Owner from any claims or liabilities.

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

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

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

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

### § 10.3 Suspension

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

## ARTICLE 11 MISCELLANEOUS PROVISIONS

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

### § 11.2 Ownership and Use of Documents

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

### § 11.3 Governing Law

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

### § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### § 11.5 Other provisions:

#### § 11.5.1 PREVAILING WAGE

To the extent required under Section 31-53 of the Connecticut General Statutes, the wages paid on a hourly basis to any mechanic, laborer or workman employed upon the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such employee to any employee welfare fund, as defined in subsection (h) of Section 31-53 of the General Statutes of Connecticut shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make such payment or contribution on behalf of such employees to any such employee welfare fund shall pay to each employee as part of their wages the amount of the payment of contribution for their classification on each pay

#### § 11.5.2 Safety Training

To the extent required pursuant to Connecticut General Statute Section 31-53b, the Construction Manager shall furnish proof, and shall cause its Subcontractors to furnish proof, with the weekly certified payroll form for the first week each employee begins work on such project that any person performing the work of a mechanic, laborer or worker pursuant to the classifications of labor under section 31-53 on such public works project, pursuant to such contract, has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration or, has completed a new miner training program approved by the Federal Mine Safety and Health Administration in accordance with 30 CFR 48 or, in the case of telecommunications employees, has completed at least ten hours of training in accordance with 29 CFR 1910.268. If the date of this Agreement is on or after July 1, 2012, the Construction Manager shall also furnish proof, and shall cause its Subcontractors to furnish proof, that any

plumber or electrician subject to the continuing education requirements of section 20-334d, who has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration five or more years prior to the date such electrician or plumber begins work on such public works project, has completed a supplemental refresher training course of at least four hours in duration in construction safety and health taught by a federal Occupational Safety and Health Administration authorized trainer.

#### § 11.5.3 Local Labor

To the extent consistent with any provision regarding residence requirements contained in a collective bargaining agreement to which the Construction Manager is a party, in the employment of labor to perform the work specified herein preference shall be given to citizens of the United States, who are, and continuously for at least three months prior to the date hereof have been, residents of the labor market area, as established by the Labor Commissioner, in which such work is to be done, and if no such qualified person is available, then to citizens who have continuously resided in the county in which the work is to be performed for at least three months prior to the date hereof, and then to citizens of the state who have continuously resided in the state at least three months prior to the date hereof (C.G.S. Sec. 31-52).

§ 11.5.4 Tax Credit Program The Owner will, with the assistance, coordination and cooperation of the Architect and the Construction Manager, submit a Part 2 Application for a tax credit in connection with the Project under the Connecticut Historic Rehabilitation Tax Credit Program (the "Program"). The Architect will coordinate with State Historic Preservation Office ("SHPO") and develop a Rehabilitation Plan pursuant to the Program Guidelines

#### § 11.5.5 Non-Disclosure

Any information obtained by the Construction Manager from the Owner may not be used, published, distributed, sold or divulged by the Construction Manager or the Construction Manager's Subcontractors for such party's own purposes or for the benefit of any person, firm, corporation or other entity, without the prior written consent of the Owner. Any information obtained by the Construction Manager or the Construction Manager's Subcontractors that is designated by the Owner in accordance with applicable law as confidential shall not be disclosed to any other parties without the prior written consent of the Owner except to (1) Construction Manager's employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) Construction Manager's Subcontractors and consultants whose contracts include similar restrictions on the use of confidential information. The Construction Manager shall not name the Owner in its advertising, news releases, or promotional efforts without the Owner's prior written approval. The Construction Manager may list the Owner in a Statement of References or similar document required as part of its response to a public procurement provided however that the by permitting such listing the Owner is not making any statement about the quality of the Construction Manager's work or an endorsement of the Construction Manager.

§ 11.5.6 The invalidity of one or more of the phrases, sentences or clauses contained in the Contract shall not affect the remaining portions so long as the material purposes of this Agreement can be determined and effectuated

§ 11.5.7 Ethics Provisions The Construction Manager agrees that this Agreement and the actions of the Construction Manager, and its Subcontractors are subject to the provisions of the Suffield Code of Ethics as contained in the Town Ordinances. Should the Construction Manager or its Subcontractors be found by the Suffield Ethics Commission to have violated such Code, the Owner may terminate this Agreement and take such action as the Owner may have the right to exercise at law or in equity.

11.5.8 It is expressly understood that the Owner shall be directly retaining the services of an Architect/Engineer.

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§ 11.5.9 Notwithstanding anything contained herein, it is expressly understood that the Construction Manager's Project Control Systems, including without limitation - estimating, scheduling, purchasing, cost reporting and project engineering systems, and all modifications, additions, or alterations thereto, are and shall remain the sole property of the Construction Manager.

§ 11.5.10 It is expressly understood that in the event the Construction Manager incurs legal or other professional fees in the process of pursuing or defending a claim, suit or dispute with a Trade Contractor directly relating to the Project, then such fees shall be reimbursable to the Construction Manager as a Cost of the Work pursuant to Article 6, subject, however, to the Guaranteed Maximum Price, if one is established.

§ 11.5.11 Notwithstanding the event of any claim, or other matter in question arising out of or relating to this Agreement or the breach thereof, the Construction Manager shall carry on the Work and the Owner shall continue to make payments in accordance with this Agreement,

§ 11.5.15 Environmental Limitation of Liability: The Construction Manager shall not be liable for environmental matters on, under or about the premises which constitute the Project, including without limitation, those relating to fines, orders, injunctions, penalties, damages, contribution, cost recovery compensation, losses or injuries resulting from the release or threatened release of hazardous materials, special wastes or other contaminants into the environment, the development or growth of mold within or on any structures, air quality levels, and to the generation, use, storage, transportation or illegal disposal of solid wastes, hazardous materials, special wastes or other contaminants. This disclaimer of liability shall apply to all such claims against the Construction Manager, whether direct or indirect, including without limitation, third party claims for which the Owner is seeking indemnification from the Construction Manager.

## ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified.
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction, as modified.
- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:

*(List other documents, if any, forming part of the Agreement.)*

Init.

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

TOWN OF SUFFIELD

Melissa M. Mack  
OWNER (Signature)

MELISSA M. MACK  
(Printed name and title)

FIRST SELECTMAN  
Duly Authorized

GILBANE BUILDING COMPANY

John P. Hawley  
CONSTRUCTION MANAGER (Signature)

John P. Hawley, Vice President  
(Printed name and title)

Init.

# **AIA® Document A201™ – 2007**

## **General Conditions of the Contract for Construction**

### **for the following PROJECT:**

*(Paragraph Deleted)*

Suffield Town Hall Renovation  
83 Mountain Road  
Suffield, CT, 06078

### **THE OWNER:**

*(Paragraph Deleted)*

Town of Suffield  
83 Mountain Road  
Suffield, CT, 06078

### **THE ARCHITECT:**

*(Name and address)*

QA+M Architecture  
195 Scott Swamp Road  
Farmington, CT, 06032

### **ADDITIONS AND DELETIONS:**

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

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

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**13 MISCELLANEOUS PROVISIONS**

**14 TERMINATION OR SUSPENSION OF THE CONTRACT**

**15 CLAIMS AND DISPUTES**

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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.

#### **§ 1.1.2 THE CONTRACT**

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

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

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

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

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

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

### **§ 1.3 CAPITALIZATION**

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

### **§ 1.4 INTERPRETATION**

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

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

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

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

### **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

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

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner's representative shall be the person designated as such in the Agreement, or any successor to such person designated by the Owner in writing from time to time, which person shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization, subject to such limitations (if any) as Owner may specify in writing to Contractor from time to time. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

*(Paragraph Deleted)*

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

**§ 2.2.1** 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.

**§ 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, soil reports and subsurface investigations, 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 and the Contractor shall be entitled to rely upon the accuracy and completeness thereof.

**§ 2.2.5** Any data by the Owner to the Contractor concerning the physical characteristics or measurements of the components that comprise the Project site; access to the Project site or staging and storing at the Project site; present obstructions and conditions of structures on or near the Project site; locations and depths of sewers, conduits, pipes, and gas lines on or near the Project site; positions of sidewalks, curbs and pavements on or near the Project side and other data concerning the conditions of the Project site and its surroundings (collectively, "Site Data"), have been obtained from sources the Owner believes to be reliable. Contractor is entitled to rely on the accuracy and completeness of such information provided by the owner as required under section 2.2.4 above, Contractor will request a Change Order pursuant to the Contract Documents should the information be inaccurate or incomplete.

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

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

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

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The right of the Owner to so carry out such Work pursuant to this Section 2.4 shall not give rise to any duties on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. In performing any work pursuant to this Section 2.4, the Owner shall have the right to take possession of the Project site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor or subcontractor.

### **§ 2.5 ADDITIONAL RIGHTS**

**§ 2.5.1** The rights stated in this Article 2 shall be in addition to and not in limitation of any other rights the Owner provided in the Contract Documents, or as may be available to the Owner at law or in equity.

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## 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.

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

### § 3.1.3 CONTRACTOR'S STANDARD OF CARE

§ 3.1.3.1 The Contractor shall be responsible for the performance of the Work (i) in a good and workmanlike manner; (ii) in accordance with the Contract Documents, (iii) in accordance with the instructions, guidance and direction of the Owner and Architect; (iv) in accordance and consistent with the prevailing applicable professional or industry standards; (v) consistent with sound practices; and (vi) as expeditiously as is consistent with all the foregoing (the standards of this Section 3.1.3.1 shall be referred to herein as the "Contractor's Standard of Care").

§ 3.1.3.2 The Contractor shall exercise the Contractor's Standard of Care in performing all aspects of the Work and its obligations under the Contract Documents. All references in the Contract Documents to the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or discovery of the Contractor or reference to any similar term shall include the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or discovery of the Contractor or reference to any similar term shall include the knowledge, inference, reliance, awareness, determination, belief, observation, recognition the Contractor would have obtained or achieved upon the exercise of the Contractor's Standard of Care.

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

§ 3.1.5 The Contractor shall comply, and shall cause Subcontractors of every tier to comply, with all accounting procedures and record retention policies reasonably requested by the Owner.

§ 3.1.6 If the Contractor is a "nonresident contractor" as defined in Section 12-430(7)(A) of the Connecticut General Statutes, as revised, the Contractor shall provide evidence to the Owner prior to commencement of the Work that Contractor has complied fully with the provisions of Section 12-430(7). The Contractor is hereby notified that, if any subcontractor or supplier performing any part of the Work under the Contract Documents is a nonresident unverified contractor, **the Contractor will withhold 5% of all payments to such subcontractor or supplier unless and until such subcontractor or supplier provides to the Contractor a Certificate of Compliance** issued by the Connecticut Department of Revenue Services as defined in the Connecticut General Statutes 12-430(7). A nonresident unverified contractor is a contractor without an office in the State of Connecticut that is continuously maintained, occupied and used by the contractor's regular employees regularly in attendance to carry on the contractor's business in the contractor's own name and which contractor has not been verified pursuant to the requirements of the Connecticut Department of Revenue Services. The amount withheld pursuant to CGS 12-430(7) shall be in addition to, and not in lieu of, the retainage held by the Contractor under its subcontract with the subcontractor or supplier pursuant to paragraph (d) above.

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

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

**§ 3.2.1** Execution of the GMP Amendment by the Contractor is a representation that the Contractor has evaluated and satisfied itself or will cause its Subcontractors to 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 physical conditions of the Project site and surrounding areas. (2) generally prevailing climatic conditions. (3) anticipated labor supply and costs. (4) anticipated availability and costs of materials, tools and equipment, and (5) except as provided in section 10.3. and subject to the provisions of Section 3.7.4 anticipated soil and subsurface conditions of the Project site based upon the information provided by the Owner pursuant to Section 2.2.3.

The Owner shall not be required to pay any increase in the Contract Sum or make any adjustment in the Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section. The provisions of this Section 3.2.1 shall not be construed to the limit the investigative and review responsibilities of the Contractor under any other provisions of the Contract Documents.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.3.1** Execution by the Contractor of the Guaranteed Maximum Price Amendment, shall constitute a representation by the Contractor that the Contractor has carefully reviewed the Contract Documents, and that the Contract Documents are sufficiently detailed and complete to permit the Contractor, (i) to complete the Project for an amount not in excess of the Guaranteed Maximum Price; (ii), complete the Work within the Contract Time and in accordance with the Contract Documents and all applicable Legal Requirements (as defined in Section 3.7.2 of these General Conditions). The Contractor is not required to ascertain that the Contract Documents are in accordance with all applicable Legal Requirements, but the Contractor shall promptly report to the Owner and 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; and

**§ 3.2.3.2** A certification by the Contractor that it has taken all steps necessary to ascertain the nature and location of the Work, and the general and reasonably observable conditions which can or may affect the Work and/or the cost thereof. Failure by the Contractor to fully acquaint itself with conditions which may affect the Work and/or the cost thereof, including, but not limited to, conditions relating to transportation, handling, storage of materials, availability of labor, water, other known projects in the region, applicable provisions of law, and the character and availability of equipment and facilities needed preliminary to and during the prosecution of the Work, shall not relieve the Contractor of its responsibilities under the Contract Documents and shall not constitute a basis for extension of time or any increase in the Contract Sum (or the Guaranteed Maximum Price, as applicable). Owner assumes no responsibility for any representations concerning conditions made by any of its officers, or employees or representatives, prior to the execution of the Guaranteed Maximum Price Amendment, unless such representations are expressly stated in the Contract Documents. The Contractor shall not perform any construction activity it knows constitutes a recognized error, inconsistency or omission in the Contract documents. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without reporting the error, inconsistency or omission to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the costs of correction.

**§ 3.2.3.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor

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shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 If the Contractor fails to fulfill its obligations to report to the Architect or Owner under this Article 3 such failure shall preclude the Contractor from any subsequent Claim arising from, or relating to the factors giving rise to the Contractor's obligation to make such report.

§ 3.2.6 The Contractor is not responsible for the sufficiency of the Contract Documents for their intended purpose.

§ 3.2.7 If the Contractor fails to fulfill its obligations to report to the Architect or Owner under this Article 3, such failure shall preclude the Contractor from any subsequent Claim arising from or relating to the factors giving rise to the Contractor's obligation to make such report.

§ 3.2.8 The Owner assumes no contractual liability or responsibility for the physical condition except as otherwise expressly provided in the Contract Documents or safety of the Project site or of any improvements thereon. Except as set forth in Section 10.0, the Contractor shall be solely responsible for providing safe conditions for the performance of the Work.

§ 3.2.9 The Contractor shall give the Architect notice of any additional Drawings, Specifications or instructions required to define the Work in greater detail, or to permit the proper progress of the Work. Requests for such information shall be made by the Contractor sufficiently in advance of the time such is needed by the Contractor so as to permit the Architect a reasonable time for responding to such requests without affecting the progress of the Work.

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures. In no event shall the Contractor employ construction means, methods, techniques, sequences or procedures that violate (1) requirements of any warranties applicable to the Work; or (2) any Legal Requirements.

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

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

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§ 3.3.4 The Contractor shall furnish sufficient forces, plant and equipment as may be necessary to insure the progress of the Work in accordance with the Construction Schedule. If, in the opinion of the Owner, the Contractor has fallen behind the Construction Schedule, the Contractor shall submit his proposal demonstrating the manner in which the desired rate of progress may be increased and shall take such steps, at the Contractor's own cost (provided the Contractor has fallen behind schedule due to delays which do not entitle Contractor to an adjustment in the Contract Time pursuant to the Contract Documents), as may be necessary to meet the Construction Schedule. It shall be the responsibility of the Contractor to maintain his schedule so as not to delay the progress of the Work or the scheduled work of separate contractors.

§ 3.3.5 Coordination of all Work shall include, without limitation, review of all shop drawings (including, without limitation, architectural, civil, structural, mechanical, and electrical shop drawings) submitted by Subcontractors for various trades or subdivisions of work, as indicated by Contractor's approval with Section 3.12.

§ 3.3.6 The Contractor shall be solely responsible for the properly laying of the Work, and for all lines elevations and measurements for all the Work. Contractor shall verify the figures shown on the Drawings before laying out the Work and will be responsible for any errors or inaccuracies resulting from Contractor's failure to do so. In the event that the Contractor shall, while laying to the Work, become aware of: (1) any conflicts between (a) the Drawings, the Specifications or any Modification to the Drawings or the Specifications and (b) the actual layout of the Work, or (2) any conflicts or inconsistencies in the Drawings, the Specifications or any Modification to the Drawings or the Specifications themselves. Contractor shall promptly notify the Architect, without whose instructions the Contractor shall not adjust the matter except at Contractor's own risk.

#### § 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. All labor shall be performed by workmen skilled in their respective trades, and workmanship shall be of good quality so that first class work in accordance with the standards of construction set forth in the Contract Documents and the Contractor's Standard of Care will result.

§ 3.4.4.4 If the Contractor desires to substitute a product or method in lieu of what has been specified or shown in the Contract Documents, the Contractor may propose to do so in a written request delivered to the Architect and the Owner setting forth the following:

- .1 Full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution and relevant materials prepared as part of pre-construction services.
- .2 Reasons why the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable.
- .3 The adjustment, if any, in the Contract Sum or the Guaranteed Maximum Price, as applicable, in the event the substitution is acceptable.
- .4 The adjustment, if any, in the Contract Time and any milestone dates in the event the substitution is acceptable.
- .5 The Contractor shall submit a written request for any substitution, together with complete substantiating data and information, to the Architect and the Owner not later than thirty (30) days prior to the time that such substitute product or method would be incorporated into the Work. No substitution shall be made by the Contractor, or considered or approved by the Architect or the Owner, without the

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Contractor's submittal of a written request with respect to such substitution as provided above. The Contractor may make a substitution only: (1) upon the written approval of the Architect and the Owner of such written request therefor after evaluation by them of such request and all accompanying data and information; and (2) in accordance with a Change Order.

.6 Any written request for a substitution by the Contractor shall be a representation by the Contractor to the Owner that: (1) the Contractor has investigated the product or method proposed to be substituted and found it to be equivalent to or better than the product or method specified in the Contract Documents, (2) except to the extent otherwise expressly stated in such request, the Contractor is waiving any Claim for additional costs related to such substitution; (3) the Contractor will provide the same warranty for the substitution that the Contractor would for the specified; (4) the substitution will not entail changes in detail and construction of related Work; and (5) the Contractor shall coordinate the installation of the accepted substitution, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.4.5 Notwithstanding the fact that the Contract Documents may specify a particular brand or make of material or equipment "or equal", if the Contractor elects to utilize "equal" materials or equipment rather than the specified materials or equipment, the "equal" materials or equipment will be subject to the prior written approval of the Owner.

### § 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 to be incorporated in the Work.

§ 3.5.2 The Contractor shall procure and assign to the Owner at the time of Substantial Completion of the Work any and all Subcontractor, manufacturer and supplier warranties relating to any materials and labor used in the work. Such warranties shall supplement the warranties provided by the Contractor in Section 3.5.1.

§ 3.5.3 Substitutions not properly approved and authorized and work, materials or equipment which fail to perform under the proper use and normal wear for intended purposes shall be considered defective. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment to be incorporated in the Work.

§ 3.5.4 The Contractor hereby represents and warrants (in addition to other representations and warranties contained above and otherwise in the Contract Documents), as an inducement to the Owner to enter into the Contract, which representations and warranties shall survive the final completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 that it, through its Subcontractors or otherwise, is able to furnish the tools, materials, supplies, equipment, machinery, labor and services required to complete the Work and perform its obligations hereunder in a timely manner and has sufficient experience and competence to do so; and
- .3 the Contractor is authorized to do business in the State in which the Project is located and is properly licensed by all necessary governmental authorities having jurisdiction over Contractor and the Project.

§ 3.5.5 The Contractor further agrees that each Subcontract shall contain a warranty of the portion of the Work performed thereunder in the same form as the above stated warranty of Contractor in Section 3.5.1. Included in said warranty shall be the statement that such warranty shall be enforceable directly by the Owner, if the Owner so elects. The warranty of any Subcontractor shall not relieve the Contractor of its warranty as set forth above the Owner may look to the Contractor, directly, and in the first instance to correct any defects in the Work.

§ 3.5.6 The representations and warranties under this Section 3.5 shall be in addition to, and not substitute for, any other rights of the Owner under the Contract Documents or existing in law or equity.

§ 3.5.7 The representations and warranties set forth in the Section 3.5 shall survive final payment and termination of the Contract.

### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted at the time the GMP is established, whether or not yet effective or merely scheduled to go into effect.

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

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, certifications and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and required by applicable Legal Requirements as of the effective date of the Guaranteed Maximum Price Amendment to the Contract. The Contractor shall provide the Owner and Architect with reproductions of all permits, licenses, permissions, certifications and receipts for payments and, upon submission of the final Application for Payment, shall deliver all originals of such documents to the Owner<sup>4</sup> with copies to the Architect.

§ 3.7.2 The Contractor shall comply with, give notices required by and be responsible for the performance of the Work in accordance with, all local state and federal laws, statutes, ordinances, codes, building codes, rules, regulations, permits, and orders enacted, promulgated, issued or ordered by any governmental body or public or quasi-public authority having jurisdiction over the Work, the Contractor and/or the site of the Project (collectively, the "Legal Requirements")> Legal Requirements shall include, without limitation, those relating to equal opportunity, labor, wages and employment.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable Legal Requirements, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Guaranteed Maximum Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the

Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed upon written request in each case.

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

§ 3.9.3 The Contractor shall not employ a proposed superintendent or project manager to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent or project manager without the Owner's prior written consent, which shall not unreasonably be withheld or delayed. The list of all supervisory personnel, including the project manager and superintendent that the Contractor intends to use on the Project and an organizational chart reflecting the chain of command among such personnel, shall be submitted to the Owner for approval prior to the commencement of the Work. The Contractor shall not engage supervisory personnel or utilize an organizational chain of command other than as approved by Owner in writing and shall not change such personnel or form of organization without the prior written approval of the Owner.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor shall, pursuant to Section 2.2.4.1 of the Agreement, prepare and submit for the Owner's and Architect's approval, a proposed construction schedule for the Work. The proposed construction schedule (i) shall comply with all the applicable requirements of, and shall not exceed time limits current under, the Contract Documents, (ii) shall be in such form and detail and include such content as required by the Owner, (iii) shall be related to the entire Project to the extent required by the Contract Documents, and (iv) shall provide for expeditious and practicable execution of the Work. If the Owner requires a precedence-style critical path method (CPM), the proposed construction schedule shall also: (a) provide a graphic representation of all activities and events that will occur during performance of the Work; (b) identify each phase of construction and occupancy (if applicable); and (c) set forth dates that are critical in ensuring the timely and orderly completion of the Work (hereinafter referred to as "Milestone Dates"). If the proposed construction schedule is not accepted by the Owner, the Contractor shall promptly and appropriately modify the proposed construction schedule in accordance with the recommendations of the Owner and the Architect and resubmit the revised schedules for acceptance.

§ 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

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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.

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

**§ 3.10.4** The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delays or potential delays. The Construction Schedule shall be updated to reflect actual conditions ("Progress Reports") (which updated schedule shall be subject to the approval of the Owner and the Architect) at appropriate intervals as determined by the Contractor and as required by the conditions of the Work and the Project (but in no event less frequently than monthly) or as otherwise requested by the Owner. 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 the submission of any Progress Report constitute an adjustment in the Contract Time, any Milestone Date, the Contract Sum, or the Guaranteed Maximum Price, as applicable, unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

**§ 3.10.5** Except as provided in Section 8.3, the Contractor shall not be entitled to an adjustment in the Contract Sum or the Guaranteed Maximum Price, as applicable, in connection with Extraordinary Measures required by the Owner pursuant to this Section 3.10.5. The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that that Contractor's performance of the Work will comply with any Milestone Date or the Substantial Completion Date, as the same may be extended by Change Order.

**§ 3.10.6** The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the Owner's operations. Any postponement, rescheduling or performance of the Work under this Section 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Section 8.3 and an equitable adjustment in the Contract Sum (or the Guaranteed Maximum Price, as applicable) if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents and (2) such rescheduling or postponement is requested by or required for the convenience of the Owner. Without limiting the foregoing, the Contractor will not be entitled to an extension of the Contract Time or an adjustment of the Contract Sum (or the Guaranteed Maximum Price, as applicable) to the extent the interfering Work so interferes as a result of the negligent act or omission of the Contractor or its subcontractors of any tier or the failure of any of the same to perform the Work in a manner consistent with the Contract Documents, including Section 3.10.3 hereof.

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

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

**§ 3.11.2** If and to the extent applicable given the Work to be performed under the Contract Documents, the Contractor shall prepare and deliver to the Architect four copies of an operating and maintenance manual for the Project, which shall contain, if and to the extent applicable given the Work to be performed under the Contract Documents, (1) full information for each item of mechanical, electrical, or other operating equipment, copies of warranties therefor, schematic diagrams of control systems, circuit directories for each electric and communications panel board, and charts showing the tagging of all valves; and (2) complete keying schedules, paint color schedules, and paint color samples. Each volume of the manual shall be clearly indexed, and shall include a directory of all Subcontractors and maintenance contractors, indicating the area of responsibility of each, and the name and telephone number of the responsible member of each organization. The volumes shall be bound in book form.

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

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the 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 Submittals which are not marked as reviewed by the Contractor for compliance with the Contract Documents and approved by the Contractors may be returned by the Architect without action. The Contractor shall meet with the Architect in a timely fashion to discuss the schedule of submittals required under Section 3.10.2 and shall thereafter timely prepare and submit for approval by the Architect a schedule of submittals for the Work.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them for the limited purpose of, (2) determining and verifying materials, field measurements and field construction criteria related thereto, or will do so and (3) checking and coordinating the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

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

§ 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

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

### **§ 3.13 USE OF SITE**

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable legal requirements and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.13.2** The Contractor shall locate, protect and save from damage or disruption utilities and utility services lines of all kinds, either above or below grade found in the areas affected by the Work. The contractor shall be responsible for all damages caused by such utilities by the operation of equipment and machinery, the delivery of materials, or as the direct or indirect result of any of the Work and shall repair all such damage at its expense and as part of the Work included in the Contract Documents.

### **§ 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.

**§ 3.14.3** Unless authorized in writing by the Owner and the Architect, structural elements of the Work shall not be cut, patched, or otherwise altered or repaired. Existing work that is cut, damaged, disturbed or otherwise interfered with by the Contractor, a Subcontractor, or anyone for whom they are responsible shall be fully, properly and carefully repaired by the responsible Contractor or Subcontractor. All such repairs shall be completed to the satisfaction of the Architect and shall match similar existing adjoining 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 and shall clean and/or remove all stains, spots, marks, blemishes, foreign matter and dirt from surfaces of the work and from other surfaces not a part of the Work but only where such condition as to such other surfaces resulted from the operations of or for the Contractor.

**§ 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 for the Owner's cost in doing so

### **§ 3.16 ACCESS TO WORK**

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

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### § 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 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, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, 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 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** To the fullest extent permitted by law, the Contractor shall further indemnify, defend and hold harmless each Indemnitee from and against any and all actions, lawsuits, claims and proceedings brought against the Indemnitee as a result of liens filed against the Work, the Project site or any improvements thereon (referred to collectively as "Liens") by the Contractor, any Subcontractor, Sub-subcontractor or anyone claiming by, through or under them. The Contractor shall pay any judgment or Lien resulting from any such actions, lawsuits or proceedings. The Contractor's obligations under this Section 3.18.3 are conditioned upon Owner having fulfilled its payment obligations to the Contractor with respect to the Work that is the subject of the Lien or claim and for which indemnification is sought.

**§ 3.18.4** The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

### § 3.19 MEETINGS

**§ 3.19.1** A qualified representative of the Contractor shall attend periodic progress meetings held at such time and as such place as the Architect or the Owner shall designate.

**§ 3.19.2** The Contractor shall schedule and conduct progress meetings at the site on a bi-weekly basis (or interval appropriate for the level of jobsite activity). Attendance is required of each Subcontractor, supplier or other entity whose portion of the Work is currently the subject of concern or discussion or planning of future construction activities. Contractor shall provide the Owner and Architect with forty-eight (48) hour prior notice of each such progress meetings and be permitted to attend and participate in the meetings, either to exercise or not to exercise such authority shall give rise to the duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, to other persons or entities performing portions of the Work

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## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

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

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

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

§ 4.1.4 Nothing in the Contract Documents shall be construed to alter, modify or otherwise effect the obligations of the Architect to the Owner pursuant to the agreement between the Owner and the Architect.

### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative . (i) during construction; (ii) until the date that the final payment under the Contract is due and payable; and (iii) at the request of the Owner, during the one year period described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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

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

### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

The Owner and Contractor shall endeavor (but shall in no event be required) to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

§ 4.2.6 The Architect and the Owner each have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the

Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to 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.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; with prior consent of the Owner, 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.

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor as soon as practicable after award of the Contract, shall furnish in writing to the Owner and the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work plus such other information as required under the Contract Documents. The Owner shall have the right to reject a proposed subcontractor or supplier as provided in the Agreement,

**§ 5.2.1.1** If requested by the Owner, the Contractor shall provide to the Owner copies of all subcontracts and supply agreements entered into by the Contractor for the Work.

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

**§ 5.2.2** 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. If the Contractor wishes to substitute a different person or entity for a person or entity previously selected and approved as a Subcontractor pursuant to this Section 5.2, the procedure set forth in Section 5.2.1 shall be followed.

**§ 5.2.5** In the case where the Contractor is a Construction Manager at Risk and the Contract Sum is based on the Cost of the Work, the process the Contractor intends to utilize for the selection of Subcontractors for the Project shall be as provided under the Agreement or as otherwise approved by the Owner.

## **§ 5.3 SUBCONTRACTUAL RELATIONS**

*(Paragraph Deleted)*

**§ 5.3.1** Any part of the Work performed by a Subcontractor shall be pursuant to a written Subcontract between the Contractor and Subcontractor, which form of Subcontract shall be reasonably satisfactory to the Owner in all respects. Copies of all Subcontractor bids or proposals shall be submitted to the Owner and Architect. All subcontract agreements shall provide that Subcontractor, to the extent of the Work to be performed by the Subcontractor, shall be bound to the Contractor by terms of the Contract Documents, and shall assume toward the Contractor all the obligations and responsibilities, including, without limitation, 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

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the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** The Contractor shall be fully responsible for coordinating and expediting the work of all Subcontractors, and suppliers and shall employ the necessary and qualified personnel to produce the required quality of labor and materials and to prevent delays in the progress of the Project. The Contractor shall afford each trade with all reasonable opportunities for the installation of its work and for the storage and handling of its materials.

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

**§ 5.4.1** Each subcontract and supply 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 and in accordance with 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 to the extent such rights and obligations arise subsequent to Owner's acceptance of the assignment. The Contractor agrees to execute any and all other documents required to effect this assignment upon payment in full on the account of the subcontract subject the assignment.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 60 days, the Subcontractor's or supplier's compensation shall be equitably adjusted for reasonable increases in cost resulting from the suspension.

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

#### **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 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 or separate Contractors, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

## **§ 6.2 MUTUAL RESPONSIBILITY**

**§ 6.2.1** The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract 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, disruption of the work of such separate contractor, 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 provided that the Contractor timely notifies the Owner of its claim based upon the fault of such separate contractor. All such costs shall be paid by Change Order, as applicable.

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

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

**§ 6.2.6** Upon the Owner's request, the Contractor shall defend any proceedings brought against the Owner by any separate contractor on account of any damage alleged to have been caused by the Contractor which arises from the Contractor's failure to comply with the terms and conditions of this Section 6.2.

## **§ 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 as the Architect deems appropriate in its discretion.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 GENERAL**

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

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

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

**§ 7.1.4** Upon the request of the Owner or the Architect (with the Owner's approval). The Contractor shall submit to the Architect in such form as the Architect may require, an accurate written estimate of the cost of any proposed extra Work or change in the Work. Such estimates shall be provided without cost to the Owner provided that the number of estimates requested is reasonable in the context of the Project as a whole. The Contractor's estimate shall indicate the description, quantity and unit cost of each item of material, and the number of hours of work and hourly rate for each class of labor, as well as all other costs chargeable under the terms of this Article. Unit labor costs for the installation of each item of materials shall be shown if required by the Architect. The Contractor shall promptly revise and resubmit such estimate if the Architect determines that it is not in compliance with the requirements of

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this Section, or that it contains errors of the fact or mathematical errors. If required by the Architect, 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 bona fide proposals from recognized suppliers for furnishing any material included in such Work. Such estimates shall be furnished promptly so as to occasion no delay in the Work. The contractor shall also state in the estimate any change in the Contract Time that would result from the change or extra work.

## **§ 7.2 CHANGE ORDERS**

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

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

**§ 7.2.2** A Change Order executed by the Owner and the Contractor shall constitute a final settlement of all matters relating to the subject matter of the Change Order including, without limitation, compensation to be paid to the Contractor in connection with any change in the Work required by the Change Order (provided that the Work that is the subject of such change is performed in a manner consistent with the provisions of the Contract Documents and the applicable Change Order), including but not limited to all direct and indirect costs, profit, overhead, extended overhead loss of productivity and general conditions associated with such change, and any and all adjustments to the Contract Sum (and/or the Guaranteed Maximum Price, as applicable) the Construction Schedule, and to the Contract Time. In the event a Change Order affects an increase in the Contract Sum (or the Guaranteed Maximum Price, as applicable) Contractor shall include the work covered by such the Change Order in Applications for Payment for such work as if the work were originally part of the Work as set forth in the Contract Documents.

**§ 7.2.3** Notwithstanding anything to the contrary set forth in these General Conditions, if the Agreement sets forth the methodology for calculating adjustments in the Contract Sum (or Guaranteed Maximum Price, as applicable) associated with a change in the Work, and if, under the terms of the Contract Documents, and adjustment in the Contract Sum (or Guaranteed Maximum Price, as applicable) would be required, then the adjustment will be based on such methodology unless otherwise mutually agreed by the parties. This paragraph shall be applicable in the case of a change in the Work effected by a Change Order as well as a Construction Change Directive.

**§ 7.2.4** Unless otherwise instructed by the Owner, Change Orders shall be prepared on the form A1A G-701.

## **§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

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

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

**§ 7.3.3** If the Construction Change Authorization provides for an adjustment to the Contract Sum, the adjustment shall be based on the total sum of the following:

- .1 the Cost of the Work as defined in Article 6 of the Owner/Contractor Agreement for the Change in the Work;
- .2 a General Conditions factor of ten percent (10%) for Change Orders which do not impact the Substantial Completion Date. For Change Orders which do impact the Substantial Completion Date, the General Conditions shall be subject to an equitable adjustment, and;
- .3 the Contractor's Fee as described in Subparagraph 5.1.2 of the Owner/Contractor Agreement

*(Paragraph Deleted)*

**§ 7.3.4** Intentional Omitted.

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§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and, prior to proceeding with such Work, advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum (or the Guaranteed Maximum Price, as applicable) 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 (or the Guaranteed Maximum Price, as applicable) 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 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. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 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.

The Costs described in Section 7.3.7.1 through and including 7.3.7.5 shall not include any of the following:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office of offices other than the site office, except as specifically approved by the Owner;
- .2 Expenses of the Contractor's principal office and offices other than the site office.
- .3 Overhead and general expenses, except as may be expressly included in Section 7.3.7.
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
- .5 Cost due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract Documents; or
- .6 Any cost not described in Section 7.3.7.1 through and including 7.3.7.5.

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment of those costs and certify for payment actual costs incurred by the Contractor as a result of such Construction Change Directive; provided, however, to the extent such Construction Change Directive is made necessary by the act or omission of the Contractor or of anyone for whom the Contractor is responsible, the Architect shall certify for payment the amount, if any, that the Architect determines, in the Architect's professional judgment, to be reasonable justified. The Architect's interim determination of cost shall adjust the Contract Sum (or the Guaranteed Maximum Price, as applicable) on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum (or the Guaranteed Maximum Price, as applicable) 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 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. The Contractor shall carry out such written orders promptly.

### 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.

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

#### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (i) 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; (ii) changes ordered in the Work by the Owner, which changes were not necessitated by the fault of the Contractor, a Subcontractor, a material or equipment supplier or anyone for whom any of them is responsible; (iii) area-wide labor disputes not directed at the Contractor or any of its Subcontractors or by illegal labor actions or disputes; (v) fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, (v) delay authorized by the Owner pending mediation; or (vi) other causes that the Architect determines may justify delay. Then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine provided that (i) any such delay has the effect of delaying completion of components of the Work on any critical path indicated in the Construction Schedule; (ii) any such delay is not caused by, or could not have been avoided by the exercise of reasonable efforts of the Contractor; (iii) any such delay could not be limited or avoided by the Contractor's timely notice to the Owner of the delay; and (iv) such delay has an impact of at least one (1) day.

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

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

§ 8.3.4 Contractor shall include in every Subcontract a "No-Damage-For-Delay" provision in a form reasonable approved by the Owner.

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§ 8.3.5 This Section 8.3 does not preclude recovery of damages for delay if expressly provided for under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

The Contract Sum is defined 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 (subject to the Guaranteed Maximum Price, as applicable) and subject to adjustment by Change Order as provided in 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, before the first Application for Payment, a schedule of values allocating the entire Contract Sum or the Guaranteed Maximum Price, as applicable, to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, upon the approval of the Owner and the architect, shall be used as a basis for reviewing the Contractor's Applications for Payment

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the Contract Documents and the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, the Architect, or any person or entity providing funding for the Project, may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage as provided for in the Contract Documents. All Applications for Payment shall be in the form, and contain the information and supporting documentation as required in this Section 9.3 and such additional information and documentation and as may be reasonably requested by the Owner.

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, or prohibited by any person or entity providing funding for the Project, 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, and not prohibited by any person or entity providing funding for the Project, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance (which insurance shall include coverage naming the Owner and the Owner's lender and such others as may be identified by the Owner from time to time as additional insureds, and which shall specify and relate to the address where the stored materials and equipment are located including, if applicable, the Project Site), storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment 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.

**§ 9.3.3.1** In the event that any Subcontractor, Supplier or other party for whom the Contractor is responsible files a lien against the Work, the Project site or any improvement thereon (whether it be legally viable or not), the Contractor shall, upon request of the Owner and at no cost to the Owner, (and provided that such lien does not arise solely from the Owner's failure to comply with its payment obligations under the Contract Documents), cause such Lien to be discharged (by recording a lien discharge bond from a surety and in form acceptable to the Owner or otherwise) within fifteen (15) days of the Contractor's receipt of the notice of such lien. If the Contractor fails to cause the lien to be discharged within such fifteen (15) day period, the Owner shall have the rights to withhold the next progress payment until such Lien is discharged at the satisfaction of the Owner. The Contractor agrees to indemnify, defend and hold harmless the Owner in connection with such lien in accordance with Section 3.18.3 of these General Conditions.

**§ 9.3.3.2** Commencing with the second Application for Payment, and continuing with each Application for Payment submitted thereafter, the Contractor shall furnish to the Owner a properly executed release and waiver of (We only provide claim waivers at the end of the job) mechanics liens in in form acceptable to the Owner and its lender, as applicable, from the Contractor and each Subcontractor and material supplier whose Work was included on the previous Application for Payment for which payment by Owner was made to the Contractor. In addition to the foregoing, if requested by the Owner commencing with the first Application for Payment and continuing with each Application for Payment submitted thereafter, the Contractor shall also provide a properly executed conditional release and waiver of mechanics liens in form acceptable to the Owner from the Contractor and each Subcontractor and material or equipment supplier whose Work is included on the Application for Payment subject only to receipt of payment under such Application for Payment.

**§ 9.3.4** Applications for Payment, and invoices in support of the same, shall clearly distinguish between amounts charged for labor and amounts charged for materials.

**§ 9.3.5** Unless otherwise required by the Owner, Applications for Payment shall be on AIA documents G702 and G703.

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

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

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

**§ 9.4.3** Notwithstanding anything to the contrary, issuance of Certificate for Payment by the Architect is a recommendation only and payment to the Contractor of amounts certified in a Certificate for Payment is subject to the Owner's approval. Accordingly, the issuance of a Certificate for Payment by the Architect is not a condition precedent to the Owner's obligation to make payment hereunder.

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§ 9.4.4 Certificates for Payment shall be on AIA documents G702 and G703,

#### § 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. Amounts previously paid to the Contractor in excess of amounts properly due the Contractor;
9. failure of the Contractor to comply with any of the Contractor's indemnification obligations under the Contract Documents; or
10. failure of the Contractor to discharge or bond over any lien established by a Subcontractor, supplier or other party for whom the Contractor is responsible, unless such lien arises solely as a result of the breach by the Owner of its payment obligations under the Agreement.

§ 9.5.2 When the above reasons for withholding a Certificate for Payment are removed, the Certificate for Payment will be issued as regards 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 supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitable delivered. The Contractor will properly endorse any such joint checks upon Owner's request and, unless the Owner instructs otherwise, the Contractor shall thereafter promptly deliver the joint check(s) to the appropriate subcontractors and suppliers. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

#### § 9.6 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 any amounts due a Subcontractor or supplier, whether for labor performed or materials furnished, not later than seven (7) days after the date the Contractor receives payment from the Owner which encompasses labor performed or materials furnished by such Subcontractor or supplier. Retainage withheld by the Contractor from such payments shall not exceed amounts actually retained from payments to the Contractor on account of the Subcontractor's or supplier's portion of the Work. The Contractor shall include in all of its Subcontracts with its Subcontractors and suppliers a requirement that the Subcontractors and suppliers pay any amounts due any sub-subcontractors or suppliers no later than (7) days after the Subcontractor or supplier receives a payment from the Contractor which encompasses labor performed or materials furnished by such sub-subcontractor or supplier.

**§ 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 or applicable to Legal Requirements.

**§ 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.

**§ 9.6.8** Any provision in the Contract Documents to the contrary notwithstanding, the Owner shall not be obligated to make payment to the Contractor hereunder to the extent that the Contractor has not performed the Work or supplied the materials, for which payment is requested, in accordance with the Contract Documents.

#### **§ 9.7 FAILURE OF PAYMENT**

If the Architect does not issue a Certificate for Payment as required by the Contract Documents, through no fault of the Contractor, within ten 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 payment comes due as established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon ten 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 (or the Guaranteed Maximum Price, as applicable) shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### **§ 9.8 SUBSTANTIAL COMPLETION**

**§ 9.8.1** The Work shall be considered to be "Substantially Complete" and "Substantial Completion" of the Work achieved on the date as determined by the Architect when (1) the entirety of the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can utilize the Work for the use for which it is intended (subject only items on the Punch List, the completion of which can be accomplished within forty-five (45) days without interfering with the actual use of the Work by the Owner of those claiming by, through or under the Owner), (2) the Contractor has obtained a temporary or permanent certificate of occupancy for the Work permitting the lawful occupancy of the entire Project and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy thereof, and (3) the Architect has issued a Certificate of Substantial Completion for the entirety of the Work pursuant to Section 9.8.4 of these General Conditions.

Without limitation, if and to the extent applicable given the Work to be performed hereunder, Substantial Completion of the Work shall not be deemed to have occurred until construction and installation of all facilities and systems (including but not limited to instrumentation and controls) shall be complete in all respects as required for the issuance of all required use and occupancy permits and approvals by all applicable governmental authorities, excluding only the final landscaping work (if applicable). Further, if and to the extent applicable, given the Work to be performed hereunder, Substantial Completion requires full operation of all automatic systems, including but not

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limited to testing of individual system components and equipment and full operational startup and certification testing, to achieve Substantial Completion, the Contractor will also be required to achieve such full operation and complete such testing.

**§ 9.8.2** When the Contractor considers the Work is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment (the "Punchlist"). Failure to include an item on the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's punch list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon Substantial Completion of the Work and such acceptance and consent of surety, if any, the Owner may, in its sole and absolute discretion, release all or a portion of retainage as is applicable to Work that is complete and in accordance with the requirements of the Contract Documents. The Owner shall not be obligated to release any portion of retainage held by the Owner under the Contract until such time as the Work is finally complete pursuant to Section 9.10 of these General Conditions.

#### **§ 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 the Punch List to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not 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, and on the basis of the Architect's onsite 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 a final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents not previously delivered shall be assembled and delivered by the Contractor to the Owner and Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees and all other close-out deliverables (including those set forth in Section 9.10.2 below) have been received and accepted by the Owner.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If no such bond is provided, the Owner may, without limiting its remedies under law, in equity, or under the Contract Documents, withhold the portion of final payment claimed to be due by the relevant Subcontractor or supplier until such matter is satisfactorily resolved. 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.

Without limiting any other conditions to final payment, as set forth in the Contract Documents, to the extent consistent with the Contractor's scope of work under the Contract Documents, the Contractor shall be required to submit the following to the Owner and the Architect, as conditions to the issuance of a final Certificate for Payment and delivery of final payment:

- .1 final documents of similar nature to those required by the Contract Documents for any monthly payments hereunder.
- .2 all final permits, approvals (including, without limitation, the approval of the Owner's insurance company, if required and requested in a timely fashion) certificates (including, without limitation, certificates in respect of electrical systems and life safety systems) and authorization for use and occupancy of the Project required by any authority having jurisdiction, including any building permits, temporary and unconditioned permanent and full certificate of occupancy and any other necessary occupancy and use permits (except to the extent that the Owner or any third party other than the Contractor or any of its Subcontractors or suppliers, regardless of tier, are the cause of any delays in obtaining the same).
- .3 formally prepared "as built" drawings, records and related data including all field notes of all the Work (such drawings shall be in the form of "mylar" reproducible drawings, or otherwise called for in the Contract Documents).
- .4 all operating and maintenance manuals, parts lists, the final version of the Project Directory, and repair source lists.
- .5 all guarantees and warranties to which the Owner is entitled hereunder,
- .6 satisfactory proof that all claims, including taxes, arising out of the Work (including any claims of Subcontractors or suppliers) have been released or bonded.
- .7 a certificate of insurance for product liability and completed operations, for the six year period following final completion,
- .8 a final statement of accounting for all allowances in form satisfactory to the Owner and the Owner's lender.
- .9 if required by the Owner or the Owner's lender, other data establishing payment or satisfaction of all such obligations, and releases and final waivers of liens arising out of the Contract conditioned only upon

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receipt of final payment, the amount of which is consistent with the final Application for Payment, to the extent and in form reasonable satisfactory to the Owner, and  
.10 delivery of all spare parts required to be submitted pursuant to the Contract Documents.

If the final documentation submitted by the Contractor is not deemed complete by the Owner or if the Owner deems the Work incomplete in any respect, the Contractor shall promptly complete any such Work and shall promptly resubmit the final documentation.

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

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

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

### **§ 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 Legal Requirements 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. The Contractor shall also be responsible for all measures necessary to protect any property adjacent to the Project and improvements thereon. Any damage to such property or improvements shall be promptly repaired by the Contractor at its cost and expense.

§ 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, a Subcontractor, a supplier, a Sub-subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable.. The foregoing obligations of the Contractor separate form, are in addition to, and are not to be construed as included as part of, 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 The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibilities for the safety of persons and property and for compliance with all Federal, State and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.

#### § 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 5 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 In the event the Contractor identifies activities or conditions during performance of the Work or at the Project, which, in the Contractor's good faith opinion, pose an unreasonable risk of bodily injury or property damage, whether immediate or in the future, the Contractor shall have the right to immediately take steps to protect its personnel and Subcontractors and stop Work and remove its personnel from the affected area.

§ 10.2.10 The Contractor shall at all times provide protection against weather (rain, wind, storms, or heat) so as to maintain all Work, materials, apparatus and fixtures free from damage. At the end of the day's work, all new Work likely to be damaged shall be reasonably protected against such weather.

§ 10.2.11 The Contractor shall provide adequate fire protection for all operations associated with the Work, and such protection must meet all applicable federal (including OSHA), State and municipal regulations.

§ 10.2.12 The Contractor shall remove and replace with new work, at the Contractor's own expense, any Work damaged by failure to provide protection pursuant to Sections 10.2.10 and 10.2.11 subject to compensation under Builder's Risk policy.

§ 10.2.13 The Contractor shall be responsible, to the extent not covered by insurance, for damage loss or liability due to theft or vandalism to the Work and stored materials whether the same occurs while work is in progress or not, and during the day or at night, or on weekdays, weekends, or holidays.

§ 10.2.14 The Contractor shall protect and prevent damage to all finished and unfinished phases of the Work during the course of the Project.

#### § 10.2.15 SECURING THE SITE

The Contractor is responsible for securing, and preventing access by unauthorized individuals to, the Project site from such date as the Contractor, Subcontractors, suppliers, consultants, or agents commence the Work until the date of Final Completion, unless the Owner and Contractor agree in writing to an earlier date.

#### **§ 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 5 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### **§ 10.3 HAZARDOUS MATERIALS**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, whether naturally occurring or manmade, that is hazardous, toxic, or words of similar import or regulatory effect, and any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls (collectively, "Hazardous Materials"). If the Contractor believes its Work will disturb or otherwise implicate any actual or suspected Hazardous Material or encounters a Hazardous Material not addressed in the Contract Documents, the Contractor exert its best efforts to shall not disturb any such Hazardous Material, immediately report the condition to the Owner and the Architect in writing and take all necessary precautions to prevent release of and exposure to the Hazardous Materials and foreseeable bodily injury or death to persons resulting from such Hazardous Material. If such reasonable precautions will be inadequate to prevent release of and exposure to Hazardous Materials, or foreseeable bodily injury and death, the Contractor shall, upon recognizing the condition, immediately stop Work.

**§ 10.3.2** Upon receipt of the Contractor's written notice, pursuant to Section 10.3.1, of the existence of actual or suspect Hazardous Materials not addressed in the Contract Documents, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of Hazardous Material reported by the Contractor and, in the event such Hazardous Material is found to be present, to cause it to be rendered harmless or otherwise abated.

Unless otherwise required by the Contract Documents, the Owner shall furnish in writing 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 will promptly reply to the Owner in writing stating whether or not the Contractor 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 Hazardous Material has been rendered harmless and/or otherwise abated in accordance with all applicable Legal Requirements, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum (or the Guaranteed Maximum Price, as applicable) shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay, and start-up except to the extent that the Hazardous Material was first encountered due to the negligence, willful or intentional misconduct, or breach of contract of the Contractor.

**§ 10.3.2.1** In no event shall the Owner have any responsibility for any substance or material (including, but not limited to, any Hazardous Material) that is brought to the Project site by the Contractor, any Subcontractor or any materialman or supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work which are Hazardous Materials or comprised of any items that are Hazardous Materials except to the extent provided in Section 10.3.7.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work in the affected area and related to the presence of any actual or suspected Hazardous Materials if in fact such Hazardous Material presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless or otherwise abated, 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).

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Notwithstanding the foregoing, the Owner shall have no indemnity obligations under this Section 10.3.3 to the extent that the damage, loss or expense was caused by, or results from the negligence of, or the intentional or willful misconduct or breach of contract by the party seeking indemnity, or the negligence of, or intentional or willful misconduct or breach of contract by such party's agents (including Subcontractors) or employees. Notwithstanding anything contained herein to the contrary, in no event shall the Contractor be liable for the Owner's responsibility as the Generator of any such Hazardous Material, as such term is defined by applicable local and federal law.

§ 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 To the fullest extent permitted by law 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 or fault on the part of the Contractor or any party for whose acts the Contractor is responsible, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of properly performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.3.7 The Contractor shall perform all required procedures necessary to insure that there will be no actual or threatened release, discharge, spillage, uncontrolled loss, seepage or filtration (each a "Release") of any Hazardous Material brought to the site caused by Contractor's operations. The Contractor is responsible for any and all costs and liabilities associated with the investigation and remediation of any such Release, or as required by regulating authorities have jurisdiction under any of the applicable Legal Requirements, and hold the Owner, its employees and agents, and the fee owner of the Project site (if other than the Owner), harmless against any current or future liabilities resulting from such incidents.

§ 10.3.8 All material and equipment furnished under the Contract Documents shall be free of asbestos, lead based paint, and PCBs. Unless otherwise specified in the Contract Documents, any material or equipment containing these, and any other Hazardous Materials shall be considered defective and shall be removed by the Contractor at the Contractor's sole expense.

#### § 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;
- .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;

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- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified below or required by law, whichever coverage is greater. ..

a. Commercial General Liability:

\$4,000,000 General Aggregate Limit (other than Products-Completed Operations)

\$4,000,000 Products-Completed Operations Aggregate Limit

\$2,000,000 Personal and Advertising Liability

\$2,000,000 Each Occurrence Limit

\$1,000,000 Fire Legal Liability

\$10,000 Medical Expense Limit (each person)

\$1,000,000 Employee Benefit Liability

b. Business Automobile Liability

\$1,000,000 Bodily Injury and Property Damage Combined Single Limit

c. Excess Umbrella Liability

\$40,000,000 Per Occurrence

\$40,000,000 Annual Aggregate

§ 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. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required by Section 11.1. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include ( The Owner and such other persons and entities as additional insureds as required by the Contract Documents.

## § 11.2 OWNER'S LIABILITY INSURANCE

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

11.2.2 If Owner hires separate contractors to perform work for, or in or around, the Project, it shall include in its contracts with each separate contractor the following provisions: Contractor and its officers, directors, partners, members, employees and agents shall be (i) named as an additional insureds on a primary, non-contributory basis to any commercial general liability, pollution liability and excess liability insurance policies and (ii) provided a waiver of subrogation on all workers compensation and professional liability insurance policies.

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### § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided by the Contract Documents, 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, (or the Guaranteed Maximum Price, as applicable), 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 with such deductibles that shall not exceed \$5,000. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by Owner and Contractor, 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 the Owner, the Contractor, Subcontractors and all tier Sub-subcontractors as named or additional insureds for the Project. The insured status of Contractor, Subcontractors and all tier Sub-subcontractors shall not be modified by the phrase "as their interests may appear" or other any language which could restrict an insured's coverage to only that of its interest in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, terrorism coverage, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, glass breakage malicious mischief, collapse (not limited to named perils), earthquake, hail, flood (including seepage, sewer back-up and inundation), named and unnamed windstorm, falsework, hot and cold testing and startup (including any commissioning), resulting loss from faulty workmanship and/or faulty design, equipment breakdown (including related soft costs), pollutant clean-up, ordinance or law coverage, 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. The property insurance shall also include coverage for expediting expenses, soft costs (including delay in startup/loss of earnings), foundations, underground pipes, site preparation and excavation.

§ 11.3.1.2 Contract Documents require that the Contractor purchase and maintain builder's risk insurance, the Contractor shall purchase and maintain builder's risk coverage pursuant to the requirements of the Agreement.

§ 11.3.1.3 If the property insurance maintained by the Contractor under section 11.3.1.2 requires deductibles, the Contractor shall pay costs not covered because of such deductibles. If the property insurance is maintained by the Owner and such insurance requires deductibles, the Owner shall pay the costs not covered because of the deductibles unless the subject loss is the fault of the Contractor, a subcontractor, a supplier or any other person to whom any of them is responsible, in which case, the Contractor shall be responsible for such deductibles.

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

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

§ 11.3.2 Intentionally omitted.

*(Paragraph Deleted)*

### § 11.3.3 LOSS OF USE INSURANCE

*(Paragraph Deleted)*

§ 11.3.4 Intentionally Omitted

§ 11.3.5 Intentionally Omitted.

§ 11.3.6 Intentionally Omitted

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### **§ 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. 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. The waiver requirements in this paragraph apply to, but are not limited to, insurance coverage provided by private sector insurers and any self-insured persons, organizations or entities.

**§ 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 for the insureds subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.9** The Owner shall have the power to adjust and settle a loss with any insurers.

**§ 11.3.10** Intentionally Omitted.

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

**§ 11.4.1** Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents prior to or on the date of execution of the Guaranteed Maximum Price Amendment.

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

## **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 or the Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense 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 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, 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 entirety of the Work 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 by the end of such one-year period and, thereafter, give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

**§ 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 modify the Contractor's obligation under Section 3.5 or 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.

#### **§ 12.2.6 AUDITS**

Upon request of the Owner, the Contractor will cooperate and secure the cooperation of all Subcontractors, suppliers and Sub-subcontractors, and assist the Owner during any audit of the Project conducted by the Owner at anytime after Substantial Completion at no cost to the Owner. Such cooperation shall include providing the Owner with access to all records related to the Project.

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

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

### **ARTICLE 13 MISCELLANEOUS PROVISIONS**

#### **§ 13.1 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located (but excluding its choice of law provisions).

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## **§ 13.2 SUCCESSORS AND ASSIGNS**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents to the extent such rights and obligations arise after the effective date of the assignment to the lender. 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 or in equity.

**§ 13.4.2** The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability or effect of the remaining parts and provisions of the Contract Documents and the parties agree to substitute for the invalid provision the provision within the bounds of the law which most clearly effectuates the legal and economic intent of the invalid provision.

**§ 13.4.3** No provision contained in the Contract Documents shall create or give to third parties any claim or right against the Owner or the Contractor except as specifically provided herein.

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

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

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

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

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

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

#### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest as provided in the agreement.

#### § 13.7 TIME LIMITS ON CLAIMS

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

### 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 Owner has defaulted, beyond any applicable notice and cure periods, in its payment obligations to the Contractor under the Contract.
- .4 The owner has failed to furnish the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor, supplier or any of their respective 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 in accordance with the Contract Documents for Work executed in accordance with the Contract Documents and direct costs incurred by the Contractor by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a supplier, a Sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable or any other persons performing portions of the Work on behalf of any of them 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.

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§ 14.1.5 The notice of termination delivered pursuant to Section 14.1.3 or 14.1.4 must state with specificity the means by which the Owner may cure its nonperformance, and the Contractor shall not terminate the Contract if, within the applicable ten (10) day period, the Owner substantially takes such curative measures.

#### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may without prejudice and without waiving any other rights or remedies the Owner may have, 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.
- .5 institutes proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or similar or applicable federal or state law, or a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing, or the Contractor admits in writing its inability to pay its debts as they become due, or it makes a general assignment for the benefit of its creditors, or a receiver, liquidator, trustee, or assignee is appointed, or a receiver of all or any substantial portion of the Contractor's properties is appointed
- .6 abandons the Work;
- .7 submits an Application for payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified;
- .8 fails to make prompt payment to Subcontractors or for materials or labor in accordance with the respective subcontractors or otherwise breaches its obligations under any subcontract with a Subcontractor; or
- .9 disregards any provision of the Lease with which the Contract Documents require the Contractor to comply; or
- .10 if a mechanics or materialman's lien or notice of lien is filed against any part of the Work or the Project site and not promptly bonded or insured over by the contractor, provided the Owner has paid the Contractor for the Work which is the subject of the lien.

§ 14.2.2 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, 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 remaining balance of the estimate of the Cost of the Work included as a component of the Guaranteed Maximum Price (the "Remaining Balance") exceeds the aggregate of the (i) the Cost of the Work attributable to finishing the Work, (ii) the compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, (such costs, compensation, expenses and damages, collectively, the "Completion Cost"), such excess shall be retained by the Owner. If the Completion Cost exceeds the Remaining 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 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.

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

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

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

**§ 14.4.1** The Owner may, at any time, without prejudice and without waiving any other right or remedy the owner may have, 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 in accordance with the Contract Documents, and direct, costs incurred by reason of such termination.

#### **§ 14.5 Payment upon Termination**

**§ 14.5.1** Except for claims for such payments as the Owner is explicitly required to make upon termination pursuant to this Article 14, the Contractor hereby waives and forfeits all claims for payment and damages, including without limitation, anticipated profits.

**§ 14.5.2** When making any payment upon termination required under this Article 14, the Owner shall be credited for (1) payment previously made to the Contractor for the terminated portion of the Work, (2) valid claims which the Owner has against the Contractor under the Contract Document, and (3) the value of the materials, supplies, equipment or other times that are to be disposed of by the Contractor that are included in the Contract Sum (or the Guaranteed Maximum Price, as applicable).

### **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 must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

##### **§ 15.1.3 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 the performance of its obligations under the Contract Documents 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.

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

If the Contractor wishes to make a Claim for an increase in the Contract Sum (or the Guaranteed Maximum Price, as applicable), written notice as provided herein shall be given before proceeding to execute the Work with the approval of the Owner. 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 Sum (or the Guaranteed Maximum Price, as applicable), written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

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

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

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. Notwithstanding the foregoing, the Contractor shall be entitled to an equitable adjustment in its fee and general conditions in the event of delays beyond its control as more specifically defined in Subparagraph 8.3.1.

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**

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

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

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

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

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

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

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

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

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

### § 15.3 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 the Contract Documents shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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