

October 19, 2023

Kalamazoo Central High School Aggregate Panel Removal & Replacement 2432 North Drake Road Kalamazoo, MI 49006

TO: ALL BIDDERS OF RECORD

This Addendum forms a part of and modifies the Bidding Requirements, Contract Forms, Contract Conditions, the Specifications and the Drawings dated October 6, 2023, by TowerPinkster. Acknowledge receipt of the Addendum in the space provided on the Bid Form. Failure to do so may subject the Bidder to disqualification.

This Addendum consists of Pages ADD 1-1 through ADD 1-3, Specification Sections 00 00 20 - Table of Contents, 00 31 00 - Bid Form, 00 43 50 - Subcontractors and Products List, 00 70 00 - General Conditions, and 01 32 00 - Schedules and Reports.

A. <u>SPECIFICATION SECTION 00 00 20 TABLE OF CONTENTS</u>

1. Remove and replace with revised Table of Contents.

B. SPECIFICATION SECTION 00 20 00 INFORMATION AVAILABLE TO BIDDERS

Add the following items:

E. Refer to the attached Kalamazoo Public Schools 2023-2024 School Calendar for important dates.

F. Refer to the attached Site Logistics Plan dated 10.06.23 for anticipated construction staging, material lay down areas, dumpsters, contractor parking, signage, temporary fencing, and office trailer area.

G. Refer to the attached Construction Phasing Plan for preliminary sequence and phasing of Work.

C. SPECIFICATION SECTION 00 31 00 BID FORM

1. Insert

D. <u>SPECIFICATION SECTION 00 43 50 SUBCONTRACTORS AND PRODUCTS LIST</u> 1. Insert

E. SPECIFICATION SECTION 00 70 00 GENERAL CONDITIONS

1. Insert

F. <u>SPECIFICATION SECTION 01 12 00 MULTIPLE CONTRACT SUMMARY</u>

1. Paragraph 1.05 PRIME CONTRACTORS USE OF PREMISES

Add the following:

C. Note, KPS staff, students, parents, and Bus traffic starts around 6:50 am and continues through 7:40 am and in the afternoon starts at 1:30 pm to 2:30 pm. Contractors shall schedule material deliveries and minimize construction traffic and movement during these time frames. There are approximately 30 to 34 buses each day that stack and travel on site.

2. Paragraph 3.02 GENERAL REQUIREMENTS

B. Refer to the paragraph "All Contractors shall provide their Superintendents with radios capable of handling multiple channels and compatible with radios used by the Construction Manager." The radio requirement will be utilized and enforced.

3. Paragraph 3.03 BID CATEGORIES

A. Bid Category No. 1 – Demolition

Add the following General Clarification

6. Provide all demolition work to completely remove existing precast aggregate panel assembly, support clips, and support framing as required to facilitate proposed new hat channels, new framing, and new insulated metal panels.

B. Bid Category No. 2 – Metal Wall Panels

Add the following Specification Section: Section 02 41 19 – Selective Demolition

Revise the following Specification Section Name: Section 07 42 13.19 – Insulated Metal Wall Panels

Add the following General Clarification: 9. Metal Wall Panel Contractor shall provide 2 X blocking as required at "Wall" details to facilitate new work. Required 2 X blocking at top of wall to roof conditions shall be provided by Bid Category No. 3 Roofing, refer to Roofing Clarification No. 5.

C. Bid Category No. 3 – Roofing

Add the following Specification Section: Section 02 41 19 – Selective Demolition

Add the following General Clarification:

7. Metal Wall Panel Contractor shall provide 2 X blocking as required at "Wall" details to facilitate new work. Required 2 X blocking at top of wall to roof conditions shall be provided by Bid Category No. 3 Roofing, refer to Roofing Clarification No. 5.

G. SPECIFICATION SECTION 01 26 00 CONTRACT MODIFICATION PROCEDURES

1. Delete from Volume 2 of TowerPinkster specifications.

H. SPECIFICATION SECTION 01 29 00 PAYMENT PROCEDURES

- 1. Delete from Volume 2 of TowerPinkster specifications.
- I. <u>SPECIFICATION SECTION 01 32 00 SCHEDULES AND REPORTS</u> 1. Insert

J. SPECIFICATION SECTION 01 77 00 CLOSEOUT PROCEDURES

1. Delete from Volume 2 of TowerPinkster specifications.

TABLE OF CONTENTS

INTRODUCTORY INFORMATION

00 00 10	Title Page
00 00 20	Table of Contents

<u>DIVISION 0 - BIDDING REQUIREMENTS, CONTRACTOR FORMS AND</u> <u>CONDITIONS OF THE CONTRACT</u>

Section	00 02 00	Notice to Bidders
	00 10 00	Instructions to Bidders
	00 12 10	Substitution Request Form
	00 20 00	Information Available to Bidders
	00 30 50	Bidder Reminder List
	00 31 00	Bid Form
	00 31 00	Available Project Information (Reference TowerPinkster Volume
		No. 2)
	00 37 00	Standard Forms
	00 41 00	Bid Bond
	00 43 50	Subcontractors and Products List
	00 50 00	Standard Form of Agreement
		AIA 132 Exhibit A Insurance & Bonds
		Schedule of Insurance Requirements
	00 61 00	Performance Bond and Payment Bond
	00 70 00	Amended General Conditions
	00 83 00	Schedule of Project Construction Wages

DIVISION 1 - GENERAL REQUIREMENTS

01 12 00	Multiple Contract Summary
01 21 00	Allowances
01 23 00	Alternates
01 25 00	Contract Modification Procedures
01 28 00	Schedule of Values
01 29 00	Application for Payment
01 31 00	Project Meetings
01 31 00	Project Management and Coordination (Reference TowerPinkster
	Volume No. 2)
01 32 00	Schedules and Reports
01 33 00	Submittal Procedures
01 33 00	Submittal Procedures (Reference TowerPinkster Volume No. 2)
01 40 00	Quality Requirements
01 45 10	Testing Laboratory Services

Section

- 01 50 50 Temporary Facilities and Controls
- 01 51 10 Temporary Electricity, Lighting and Warning Systems
- 01 51 50 Temporary Water
- 01 51 60 Temporary Sanitary Facilities
- 01 51 80 Temporary Fire Protection
- 01 52 10 Construction Aids and Temporary Enclosures
- 01 52 60 Rubbish Container
- 01 53 10 Fences (Temporary Security)
- 01 53 20 Tree and Plant Protection
- 01 53 30 Barricades
- 01 54 60 Environment Protection
- 01 54 80 Utility Protection
- 01 55 00 Access Roads and Parking Areas
- 01 56 20 Dust Control
- 01 56 30 Water Control
- 01 56 80 Erosion Control
- 01 56 90 Housekeeping and Safety
- 01 57 60 Project Signs
- 01 59 10 Project Office
- 01 59 20 Offices and Sheds
- 01 60 00 Product Requirements
- 01 71 50 Final Cleaning
- 01 72 00 Field Engineering
- 01 72 50 Work Layout
- 01 73 00 Execution
- 01 73 10 Cutting and Patching
- 01 77 00 Contract Closeout
- 01 78 23 Operations and Maintenance Data
- 01 78 39 Project Record Documents
- 01 79 00 Demonstration and Training
- 01 91 13 General Commissioning Requirements

DIVISION 02 - EXISTING CONDITIONS

Section 02 41 19 Selective Demolition

DIVISION 03 - CONCRETE

NOT USED

DIVISION 04 - MASONRY

NOT USED

DIVISION 05 - METALS

TSC 218020.40

Section 05 40 00 Cold-Formed Metal Framing

DIVISION 06 - WOOD, PLASTICS, AND COMPOSITES

Section	06 10 00	Rough Carpentry
	06 16 00	Sheathing

DIVISION 07 - THERMAL AND MOISTURE PROTECTION

Section	07 2100	Thermal Insulation
	07 41 13.16	Standing-Seam Metal Roof Panels
	07 42 13.19	Insulated Metal Wall Panels
	07 51 13	Built-Up Asphalt Roofing
	07 53 23	Ethylene-Propylene-Diene-Monomer (EPDM) Roofing
	07 62 00	Sheet Metal Flashing and Trim
	07 71 00	Roof Specialties
	07 72 53	Snow Guards
	07 92 00	Joint Sealants

DIVISION 08 - OPENINGS

NOT USED

DIVISION 09 - FINISHES

NOT USED

DIVISION 10 - SPECIALTIES

Section 10 14 19 Dimensional Letter Signage

DIVISION 11 - EQUIPMENT

NOT USED

DIVISION 12 - FURNISHINGS

NOT USED

DIVISION 13 - SPECIAL CONSTRUCTION

NOT USED

DIVISION 14 - CONVEYING EQUIPMENT

NOT USED

DIVISION 21 - FIRE SUPPRESSION

NOT USED

DIVISION 22 - PLUMBING

NOT USED

DIVISION 23 - HEATING VENTILATING AND AIR CONDITIONING

NOT USED

DIVISION 25 - INTEGRATED AUTOMATION

NOT USED

DIVISION 26 - ELECTRICAL

NOT USED

DIVISION 27 - COMMUNICATIONS

Section27 05 00Common Work Results For Communications27 41 16Technology Equipment

DIVISION 28 - ELECTRONIC SAFETY AND SECURITY

NOT USED

DIVISION 31 - EARTHWORK

NOT USED

DIVISION 32 - EXTERIOR IMPROVEMENTS

Section 32 92 00 Turf and Grasses

DIVISION 33 - UTILITIES

NOT USED

END OF SECTION 00 00 20

2023-2024 School Calendar

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Kalamazoo	Public	Schools	

Aug. 28	First Day K-12; half day
Sept. 1	K-12 no students; schools open for enrollment
Sept. 4	Labor Day; all buildings closed
Sept. 5	First Day PreK ECSE (see special dates below)
Sept. 11	First day PEEP (see special dates below)
Oct. 6	PK-8 half day; records day
Oct. 11	9-12 half day; conferences in p.m.
Oct. 12	K-8 half day; a.m. schedule
Oct. 13	K-5 half day; p.m. schedule
Oct. 18	PK-12 early release; 1.5 hours early
Nov. 1	PK-12 no students; teacher PD
Nov. 1	Phoenix, KILP & virtual - virtual day or activitiy
Nov. 3	No school for Phoenix, KILP & virtual students
Nov. 17 &	20 9-12 half day
Nov. 21	PK-12 no students; records day
Nov. 22	Schools closed; no county programs
Nov. 23 &	24 Thanksgiving Break; all buildings closed
Dec. 13	PK-12 early release; 1.5 hours early
Dec. 25 -	Jan. 5 Winter Break
Jan 17	PK-12 early release; 1.5 hours
Jan. 19	6-8 half day; p.m. schedule
Jan. 24	9-12 conferences
Jan. 25	6-8 half day; a.m. schedule
Feb 28	PK-5 Literacy Night
Feb 29	6-8 Literacy Night
March 6	PEEP/Kindergarten Orientation
March 6 8	7 9-12 half day; 10:40 a.m. dismissal
March 8	PK-12 no school; records day
March 13	PK-12 early release; 1.5 hours
March 21	K-5 half-day; a.m. schedule
March 22	PK-12 no school; no county programs
March 25	- 29 Spring Break
April 24 &	25 9-12 conferences
April 26	6-8 half day; a.m. schedule
May 2	6-8 half day; p.m. schedule
May 24	Last day PEEP and graduating seniors
May 27	Memorial Day; all buildings closed
May 28	KAMSC senior recognition
May 29	Loy Norrix graduation
	Kalamazoo Central graduation
May 31	Phoenix graduation
May 31	Last day PreK ECSE
June 5	KILP graduation
June 6	K-11 half day; p.m. schedule
June 7	K-11 last day; half day; a.m. schedule
June 10	Adult Education graduation

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August 2023

MTWTFS

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Elementary schools: 8:44a - 3:52p	
Half day dismissal: 12:02p	
Edison, Lincoln & Woodward: 8:04a-3:	10p
Half day dismissal: 11:20a	
Secondary: 7:31a - 2:20p Half: 10:40a	
Linden Grove: 8:06a - 2:58p Half: 11:1	3a
Phoenix: 7:26a - 1:01p Half: 10:30a	

2023-24 Trimesters

Trimester 1: Aug. 28 - Nov. 21 Trimester 2: Nov. 27 - March 8 Trimester 3: March 11 - June 7 Half days (check for grade levels, dismissal times and schedules a.m./p.m.) First and last day of school No school for students (holidays, breaks, teacher PD or records days)

Early relase dates (1.5 hours early) Oct. 18, Dec. 13, Jan. 17 and March 13 Students released 1.5 hours early for staff professional development.

Special dates: Phoenix High School Parent-Teacher Conferences, 4-7 PM: Sept. 28, Nov. 16, Jan. 11, Feb. 29, April 18 and May 16 Full days: Nov 1, Nov. 17 and March 6 Half-days: Oct. 6, Nov. 20, Jan. 19 Mar. 7, April 26 and June 7 No school: Nov. 1, 3 & 21 and March 8 Special dates: PEEP & ESCE Preschool PEEP first day Sept. 11; last day May 24 ESCE first day Sept. 5; last day May 31 PEEP and ESCE PreK no school: Oct 11,

Dec. 13, Jan. 17, March 13 and May 17

Visit <u>kalamazoopublicschools.com</u> for a complete calendar

2023-2024 School Calendar

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June 10	Adult Education graduatio

Half day dismissal: 12:02p	June 10
Edison, Lincoln & Woodward: 8:04a-3:10p	
Half day dismissal: 11:20a	H
Secondary: 7:31a - 2:20p Half: 10:40a	C

Linden Grove: 8:06a - 2:58p Half: 11:13a Phoenix: 7:26a - 1:01p Half: 10:30a

Elementary schools: 8:44a - 3:52p

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PEEP and ESCE PreK no school: Oct 11, Dec. 13, Jan. 17, March 13 and May 17



SITE LOGISTICS PLAN - 10/6/23





KALAMAZOO PUBLIC SCHOOLS Kalamazoo Central High School Aggregate Panel Replacement

Legend:

- -Material Lay-Down Area
- -Construction Dumpsters
- -Contractor Parking
- -Project Signage
- -Skillman Office Trailer
- -Temporary Fencing



Kalamazoo Public Schools

Every child. Every opportunity. Every time.







(Amended for Kalamazoo Public Schools)

CONTRACTOR'S BID FOR PUBLIC WORKS

Kalamazoo Central High School Precast **Aggregate Panel Removal & Replacement**

Kalamazoo Public Schools Kalamazoo County, MI

PART I

(To be completed for all bids) (Please type or print)

BIDDER (firm)

Address P.O. Box

City/State/Zip ______ Email Address: ______ Email Address: ______ Pursuant to notices given, the undersigned offers to furnish labor and materials necessary to complete the construction work for:

Insert Bid Category No.(s) and Name(s)

of public works project, Kalamazoo Central High School Precast Aggregate Panel **Removal & Replacement**, in accordance with Plans and Specifications prepared by TowerPinkster, 242 E. Kalamazoo Ave, Suite 100, Kalamazoo, MI 49007, as follows:

BASE BID

For the sum of _____

(sum in words)

_____DOLLARS (\$______)
(sum in figures)

The undersigned acknowledges receipt of the following Addenda:

Receipt of Addenda No.(s)
PROPOSAL TIME

Bidder agrees that this Bid shall remain in force for a period of sixty (60) consecutive calendar days from the due date, and Bids may be accepted or rejected during this period. Bids not accepted within said sixty (60) consecutive calendar days shall be deemed rejected.

Attended pre-bid conference YES _____ NO

Has visited the jobsite YES _____ NO

The Bidder must attach to this bid, the sworn and notarized affidavit (attached at the end of this Bid Form) disclosing any familial relationship between the Owner or an employee of the bidder and any member of the District's Board or the Superintendent of the District.

The Bidder has reviewed the Guideline Schedule in Section 01 32 00 and the intent of the schedule can be met. _____YES _____NO

The Skillman Corporation's diversity initiative is to create a program to encourage, assist and measure the active participation of Minority- Owned, Women-Owned, Veteran – Owned and Disabled Individual-Owned Businesses. The Program is to ensure that MWVDBEs are provided full and equal opportunity to participate in all Skillman Corporation's Projects.

Bidder has included:	DBE: YES	%	NO
	MBE: YES	%	NO
	WBE: YES	%	NO
	VBE: YES	%	NO

The undersigned further agrees to furnish a bond or certified check with this Bid for an amount specified in the Notice to Bidders. If Alternate Bids apply, submit a proposal for each in accordance with the Plans and Specifications.

ALTERNATE BIDS

A blank entry or an entry of "No Bid", "N/A", or similar entry on any Alternate will cause the bid to be rejected as non-responsive only if that Alternate is selected. If no change in the bid amount is required, indicate "No Change".

NON-COLLUSION AFFIDAVIT

The undersigned Bidder or agent, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to induce anyone to refrain from bidding, and that this Bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He further says that no person or persons, firms, or corporations has, have, or will receive directly or indirectly, any rebate, fee, gift, commission, or thing of value on account of such sale.

OATH AND AFFIRMATION

I affirm under the penaltic best of my knowledge and		ry that the forego	ing facts an	d information are true and correct to the
Dated at	this	day of	, 20	
				(Name of Organization)
				By(Title of Person Signing)
				(Title of Person Signing)
		ACKNOWLED	GEMENT	
STATE OF	_)			
STATE OF) SS: COUNTY OF)			
		being duly sw	orn, depose	es and says that
he is	of	the above		
he is(Title)			(Name of	Organization)
and that the statements contained i	n the foreg	going Bid, certific	ation and A	Affidavit are true and correct.
Subscribed and sworn to before me	e this	day of	;	20
				Notary Public
My Commission Expires:				
County of Residence:				

PART II

(Complete sections I, II, and III for all state and local public works projects)

These statements to be submitted under oath by each bidder with and as a part of his bid. (Attach additional pages for each section as needed.)

SECTION I EXPERIENCE QUESTIONNAIRE

1. What public works projects has your organization completed?

Contract Amount	Class of Work	When Completed	Name and Address of Owner

2. What public works projects has your organization now in process of construction:

Contract Amount	Class of Work	When Completed	Name and Address of Owner

- 3. Have you ever failed to complete any work awarded to you?_____If so, where and why?_____
- 4. List references from private firms for which you have performed work.

SECTION II PLAN AND EQUIPMENT QUESTIONNAIRE

1. Explain your plan or layout for performing proposed Work.

2. If you intend to sublet any portion of the Work, state the name and address of each subcontractor, equipment to be used by the subcontractor, and whether you expect to require a bond.

3. What equipment do you intend to use for the proposed Project?

4. Have you made contracts or received offers for all materials within prices used in preparing your proposal? _____ yes _____ no.

SECTION III OATH AND AFFIRMATION

I hereby affirm under the penalties of perjury that the facts and information contained in the foregoing Bid for public works are true and correct to the best of my knowledge and belief.

IN TESTIMONY WHEREOF, The Bidder has hereunto set his hand this

_____ day of ______, 20 _____.

Bidder:_____

IN TESTIMONY WHEREOF, The Bidder (a firm) have hereunto set their hands this

_____ day of _____, 20____.

Firm Name: _____

By:_____

Individual names:

IN TESTIMONY WHEREOF, The Bidder (a corporation) ha	s caused this proposal to be signed by
its President and Secretary and affixed its corporate seal this_	day of ,
20	
Name of Corporation:	
President:	
Secretary:	
ACKNOWLEDGEMEN	NT
STATE OF)) SS:	
) 55. COUNTY OF)	
being duly sw	vorn, deposes and says that
he is of the above	
(Title)	(Name of Organization)
and that the answers to the questions in the foregoing question statements therein contained are true and correct.	maires and all
Subscribed and sworn to before me this day of	, 20
Notary Public	
My Commission Expires:	
County of Residence:	

AFFIDAVIT OF BIDDER - FAMILIAL DISCLOSURE

The undersigned, the Owner or authorized officer of ______ (the 'Bidder'), pursuant to the familial disclosure requirement provided in the ______ (the 'School District') advertisement for construction bids, hereby represent and warrant, except as provided below, that no familial relationships exist between the Owner(s) or any employee of ______ and any member of the Board of Education of the School District or the Superintendent of the School District.

List any Familial Relationships:

					BIDDER:				
					By:				
					Its:				
STATE OF MICHIGAN))ss.								
COUNTY OF									
This instrument was		before	me	on	the	day	of	, 20	, by
								, Notary F	Public
								County, Michigan	
			Му	/ Cor	nmission Exp	ires:			
			Ac	ting i	in the County	of:			

<u>CERTIFICATION OF COMPLIANCE – IRAN ECONOMIC SANCTIONS ACT</u> <u>Michigan Public Act No. 517 of 2012</u>

The undersigned, the owner, or authorized officer of the below-named company (the "Company"), pursuant to the compliance certification requirement provided in the [NAME OF SCHOOL DISTRICT]'s Request For Proposal (the "RFP"), hereby certifies, represents, and warrants that the Company (which includes its officers, directors and employees) is not an "Iran Linked Business" within the meaning of the Iran Economic Sanctions Act, Michigan Public Act No. 517 of 2012 (the "Act"), and that in the event the Company is awarded a contract by the [NAME OF SCHOOL DISTRICT] as a result of the aforementioned RFP, the Company is not and will not become an "Iran Linked Business" at any time during the course of performing any services under the contract.

The Company further acknowledges that any person who is found to have submitted a false certification is responsible for a civil penalty of not more than \$250,000.00 or two (2) times the amount of the contract or proposed contract for which the false certification was made, whichever is greater, the cost of the **[NAME OF SCHOOL DISTRICT]**'s investigation, and reasonable attorney fees, in addition to the fine. Moreover, any person who submitted a false certification shall be ineligible to bid on a request for proposal for three (3) years from the date that it is determined that the person has submitted the false certification.

BIDDER:

							-				
				M	v Cor	nmiss	ion Exp	ires:			
										County, Michigan	
										, Notar	y Public
This	instrument wa	s acknowledged	before	me	on	the		day	of	, 20	, by
COUN	NTY OF)ss.)									
STAT	E OF MICHIGA										
						Its:					
						By:					

END OF SECTION 00 31 00

SECTION 00 43 50 - SUBCONTRACTORS AND PRODUCTS LIST

PART 1 - GENERAL

1.01 DESCRIPTION

- A. The two (2) low responsive Bidders in each Bid Category shall furnish electronically, the following Subcontractors and Products List to the Construction Manager within <u>two (2) working days (48 hrs.) of bid opening, unless submitted with Bid.</u> The blanks appropriate to the Bid Category(ies) on which they bid shall be completed.
 - 1. The Owner and Architect shall have the right to select any material or equipment named in the Specifications for any particular item where the Bidder either fails to list same or lists more than one name for the item in question.
 - 2. It is intended that this list will show the manufacturer and supplier of major items of work that will be subcontracted and to whom.

1.02 INSTRUCTIONS FOR SUBCONTRACTORS AND PRODUCTS LISTS

- A. Each Bidder shall submit a copy of his list of subcontractors and manufacturers of products and equipment proposed for work indicated as required above.
- B. The list shall be submitted on forms provided and shall be completely executed. <u>"As Specified" or "With Equipment" type of terminology will not be accepted.</u>
- C. Under "Subcontractor", insert the name of the firm which the Bidder proposes to have perform the respective work. If work will be done by the Prime Bidder and no subcontract will be awarded, state "By Own Forces".
- D. Submission does not constitute acceptance for use of listed manufacturers' products. Materials and subcontractors are subject to the provisions of the General Conditions and "Standard of Product Acceptability" and must be formally reviewed and adjudged acceptable by the Architect/Engineer.
- E. Engineer, Architect and Owner reserve the right to reject submissions of materials, work, or subcontractors that do not, in their opinion, meet the requirements of Drawings, Specifications or job conditions.
- F. Materials and subcontractors used for work on the Project shall be in accordance with accepted material list.
 - 1. The list is intended to assure use of materials and vendors acceptably equivalent to those specified and is not a substitution sheet or complete listing of required materials or services.

2. Substitutions for listed items will not be allowed, except when termed acceptable, in writing by the Architect/Engineer, provided that substitution will result in a cost savings to the Owner, determined by the Owner to be a better product, or is made necessary due to unavailability of listed item. Unavailability shall be confirmed in writing by manufacturer named on accepted list.

1.03 CIVIL AND ARCHITECTURAL WORK SUBCONTRACTORS AND PRODUCTS LIST

BID CATEGORY NO. 01 – DEMOLITION

NAME OF BIDDER_____

The undersigned hereby submits the following Subcontractors and Products List which becomes a part of the undersigned Contract proposal. Subcontractor purchased material, equipment, and labor shall be under the direct management and control of the Prime Contractor. If a dual listing of manufacturers and subcontractors is herein made, it is understood the Architect/Engineer (not the Contractor) will select the manufacturer or subcontractor of his choice. State the XBE Designation.

Section	Description	<u>Costs \$\$\$</u>	Subcontractor	<u>Manufacturer</u>
01 21 00	Allowances			
02 41 19	Selective Demolition			

DEMOLITION WORK

Section	Description	<u>Costs \$\$\$</u>	<u>Subcontractor</u>	<u>Manufacturer</u>

Name of Bidder:	Date:
Address:	
City/State/Zip:	
Telephone:	
By:	

BID CATEGORY NO. 02 – METAL WALL PANELS

NAME OF BIDDER_____

The undersigned hereby submits the following Subcontractors and Products List which becomes a part of the undersigned Contract proposal. Subcontractor purchased material, equipment, and labor shall be under the direct management and control of the Prime Contractor. If a dual listing of manufacturers and subcontractors is herein made, it is understood the Architect/Engineer (not the Contractor) will select the manufacturer or subcontractor of his choice. State the XBE Designation.

Section	Description	<u>Costs \$\$\$</u>	Subcontractor	Manufacturer
01 21 00	Allowances			
01 51 10	Temporary Electricity, Lighting and Warning Systems			
01 51 30	Temporary Heating, Ventilation and Cooling			
01 51 50	Temporary Water			
01 51 80	Temporary Fire Protection			
01 52 10	Construction Aids and Temporary Enclosures			
01 53 20	Tree and Plant Protection			
01 53 30	Barricades			
01 55 00	Access Roads and Parking Areas			
01 56 20	Dust Control			
01 56 80	Erosion Control			
01 72 00	Field Engineering			
05 40 00	Cold-Formed Metal Framing			
06 10 00	Rough Carpentry			
06 16 00	Sheathing			
07 21 00	Thermal Installation			
07 42 13.19	Insulated Core Metal Wall Panels			
07 92 00	Joint Sealants			
10 14 19	Dimensional Letter Signage			
27 05 00	Common Work Results for Communications			
27 41 16	Technology Equipment			
32 92 00	Turf and Grasses			

<u>Section</u>	Description	<u>Costs \$\$\$</u>	<u>Subcontractor</u>	<u>Manufacturer</u>

Name of Bidder:	Date:
Address:	
City/State/Zip:	
Telephone:	
By:	

BID CATEGORY NO. 03 - ROOFING

NAME OF BIDDER

The undersigned hereby submits the following Subcontractors and Products List which becomes a part of the undersigned Contract proposal. Subcontractor purchased material, equipment, and labor shall be under the direct management and control of the Prime Contractor. If a dual listing of manufacturers and subcontractors is herein made, it is understood the Architect/Engineer (not the Contractor) will select the manufacturer or subcontractor of his choice. State the XBE Designation.

<u>Section</u>	Description	<u>Costs \$\$\$</u>	<u>Subcontractor</u>	<u>Manufacturer</u>
01 21 00	Allowances			
06 10 00	Rough Carpentry			
06 16 00	Sheathing			
07 41 13.16	Standing-Seam Metal Roof Panels			

Section	Description	<u>Costs \$\$\$</u>	Subcontractor	Manufacturer
07 51 13	Built-Up Asphalt Roofing			
07 53 23	Ethylene-Propylene-Diene- Monomer (EPDM) Roofing			
07 62 00	Sheet Metal Flashing and Trime			
07 71 00	Roof Specialties			
07 72 53	Snow Guards			
07 92 00	Joint Sealants			

Section	Description	<u>Costs \$\$\$</u>	Subcontractor	Manufacturer

Name of Bidder:	Date:
Address:	
City/State/Zip:	
Telephone:	
By:	

END OF SECTION 00 43 50

AIA Document A232[°] – 2019

General Conditions of the Contract for Construction, Construction Manager as Adviser **Edition**

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

THE CONSTRUCTION MANAGER: (Name, legal status, and address)

The Skillman Corporation

THE OWNER: (Name, legal status, and address)

THE ARCHITECT: (Name, legal status, and address)

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.

This document is intended to be used in conjunction with AIA Documents A132[™]–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132[™]–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager's consultants, (5) between the Constructor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their 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, transportation and services incidental thereto 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 other Contractors, and by the Owner's own forces and Separate Contractors.

§ 1.1.5 Contractors. Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

§ 1.1.6 Separate Contractors. Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

§ 1.1.7 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.

§ 1.1.8 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.

§ 1.1.9 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, calculations, studies, surveys, models, sketches, drawings, specifications, and other similar materials and electronic/digital information produced in relation to the Project.

(Paragraph deleted)

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§ 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. The Contractor shall promptly call to the attention of the Owner, the Construction Manager and the Architect any discrepancies or inconsistencies in the Drawings or Specifications that affect its Work. In the event of discrepancies or inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement. Figure dimensions shall take precedence over scale measurements, large scale details shall take precedence over small scall drawings, and drawings of a later date shall take precedence over those of an earlier date. Any part of the Work, the same as though included in both. The Work to be undertaken by the Contractor shall include all incidental work necessary for the completion of the Project even though it may not be specifically described in the Specifications or Drawings.

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. When a duplication of labor, material or equipment occurs in the Drawings or the Specifications by assignment of work to separate Contractors, each Contractor shall be deemed to have bid on the basis of providing such labor, material and equipment and the Construction Manager shall decide which Contractor(s) shall provide the same, with appropriate adjustment to the Contract Sum.

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.4.1 The terms "knowledge," "recognize," and "discover," and their respective derivatives, when used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising reasonable care and skill.

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§ 1.4.2 The phrase "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of a contractor by the Contract Documents.

§ 1.4.3 The words "approved," "equal to" and "as directed", shall mean "to the satisfaction of the Construction Manager and/or Architect".

§ 1.4.4 The words "products" and "materials" shall include all materials, goods, supplies, systems, and equipment.

§ 1.4.5 The word "provide," including derivatives, shall mean to fabricate, transport, deliver, install, erect, construct, test, and furnish all labor, materials, equipment, apparatus, appurtenances, and all other items necessary to properly complete in place, ready for operation and use.

§ 1.4.6 The words "repeatedly fails" and other similar expressions, as used in reference to the Contractor, shall mean any combination of acts and omissions that cause the Owner, Construction Manager or Architect to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum, or in compliance with the requirements of the Contract Documents.

§ 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Owner's rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner.

§ 1.6 Notice

§ 1.6.1 Where the Contract Documents require the Contractor to notify or give notice to the Owner or Construction Manager, including a Notice of Claim as provided in Section 15.1.3, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by certified or registered mail, or by courier providing proof of delivery.

(Paragraph deleted)

§ 1.7 Digital Data Use and Transmission

The parties may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

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

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§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work, and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; or (2) a change in the Work materially changes the Contract Sum.

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

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person without prior written notice to and consent of the Owner.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Owner under the Contract Documents, including those required under Section 3.7.1, the Contractor 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. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

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

§ 2.3.3 The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.4 If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

§ 2.3.5 The Owner may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site, but information furnished by the Owner that is not identified as a Contract Document is for informational purposes only and the Owner shall not be liable for inaccuracies or omissions therein, nor shall any inaccuracies or omissions in such items justify an increase in the Contract Sum or relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents.

§ 2.3.6 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 necessary to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.7 Unless otherwise provided in the Contract Documents, the Owner shall furnish the documents electronically and the Contractors shall subscribe and pay for their subscription to the software set forth by the Owner to manage the plans and specifications.

§ 2.3.8 The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

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§ 2.3.9 The Owner shall render decisions and give approvals to the extent required by the Contract Documents. Before performing the Work, the Contractor shall inform the Owner in writing of any information that is necessary for the Contractor's performance of the Work. The Owner's approval or acceptance of, or payment for, any of the Work shall not be construed or operate as a waiver of any right under the Contract or of any cause of action arising out of the performance of the Contract.

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within forty-eight (48) hours after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If such default or neglect results in an emergency or a threat to person or property, the Contractor shall immediately commence to correct such default or neglect upon receipt of written or oral notice.

§ 2.6 Extent of Owner's Rights

§ 2.6.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted in the Contract Documents or at law or in equity.

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

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 a single representative assigned to the Project who shall be responsible for attending all weekly and other meetings, monitoring schedules and coordinating all activities. The Contractor's representative shall have the authority to commit and bind the Contractor. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitations (1) the location, conditions, layout and nature of the Project site and surrounding areas, (2) general prevailing climatic conditions, (3) anticipated labor supply and costs, and (4) availability and cost of materials, tools and equipment.

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Neither the Owner nor the Construction Manager assume any responsibility or liability for the physical condition or safety of the Project site, or any improvements located on the Project site; these are solely the responsibility of the Contractor. The Owner shall make no adjustment to the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with this Subparagraph.

- The exactness of existing grades, elevations, dimensions and locations given on the Drawings or any document issued by the Construction Manager, the Architect or the Owner, or the work installed by separate contractors, is not guaranteed by the Architect, the Construction Manager, or the Owner.
- .2 Mechanical and electrical drawings are diagrammatic only; actual Work shall be installed from approved shop drawings with all measurements obtained at the Project site by the Contractor.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, 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 Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities relating to design (but not means, methods, techniques, sequences and procedures), but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require. If additional instructions from the Architect's interpretation as provided under Article 4. The Work, the Contractor shall be executed in conformity with the Architect's additional instructions and the Contractor shall refrain from any Work relating thereto until the Contractor has received the Architect's additional instructions.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities relating to design (but not means, methods, techniques, sequences and procedures)..

§ 3.3 Supervision and Construction Procedures

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall be 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 notice to the Owner, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures.

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

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

§ 3.3.4 Within fifteen (15) days after Preconstruction Meeting, the Contractor shall assemble all necessary information and data discussed with the Owner, Architect, and Construction Manager during the post-bid meetings as identified in the Information to Bidders, and submit updated information from those meetings as well as the following:

- 1. A Schedule of Values in the format and detail required by the Construction Manager.
- 2. The Contractor's safety program, including HAZCom Program.
- 3. A complete and detailed submittal schedule.

§ 3.3.5 The Contractor shall furnish to the Construction Manager and the Architect periodic progress reports on the Work in such form as requested by the Construction Manager, including information on the status of materials and equipment which may be in the course of preparation, manufacture or transit. Regularly scheduled progress meetings shall be held weekly, unless otherwise directed.

§ 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, all direct jobsite (or "General Conditions") costs, 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. The Contractor shall provide, maintain, and remove all temporary offices, structures, sheds and storage facilities and all related utilities, gas, telephone, water and restore all areas to their original or intended use to the satisfaction of the Owner. Storage areas for the use of the Contractor shall be designated by the Construction Manager.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, 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. The Contractor shall remove from the Project any person or entity under the Contractor's control which the Construction Manager or the Owner considers unsatisfactory. The Contractor shall assure harmonious labor relations to prevent delay, disruption, or interference to the Project, and shall prevent strikes, slowdown, work interruptions, jurisdictional disputes and other labor disputes relating to the Work. The Contractor shall require its Subcontractors, material suppliers and other such persons or entities to agree to the provisions of this Section and if any of them fail to fulfill any of the covenants set forth in this Section, the Contractor shall be deemed to be in default under the Contract Documents.

§ 3.4.4 Materials and equipment shall conform to manufacturers' standards and shall be installed in strict accordance with the manufacturers' latest directions. The Contractor shall, if required by the Owner, the Construction Manager or the Architect, furnish satisfactory evidence as to the kind and quality of any materials.

§ 3.4.5 The Contractor shall pay all royalties and license fees relating to the Work.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager, 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 and shall be performed in a workmanlike manner and comply with all applicable laws, building codes, rules and regulations. Products incorporated into the Work shall be fit for the purpose for which they are intended and shall be merchantable. 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

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executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Upon notice from the Owner or the Construction Manager, the Contractor shall, within forty-eight (48) hours following notice from the Owner, Architect or Construction Manager, correct and cure, at the Contractor's expense, all defects and non-conformance in the Work.

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

§ 3.5.3 If, within one year after the date of Substantial Completion of Work, or by the terms of a special warranty required by the Contract Documents, any of the Work is found to be defective or non-conforming with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner. The Contractor's warranty excludes defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, and improper or insufficient maintenance and abuse. This warranty is in addition to all special or extended warranties required by the Contract Documents or otherwise received from the Contractor or any Subcontractor, material supplier or manufacturer. The one year period for correction of defective or non-conforming Work does not constitute a limitation period with respect to the enforcement of the Contractor's other obligations under the Contract Documents and the foregoing warranty shall not affect, limit or impair the Contractor's responsibility for defects in the Work which do not appear within the applicable warranty period. Neither the acceptance of the Work nor any payment shall constitute a waiver of any claims against the Contractor for defective or nonconforming Work, whether latent or apparent, or otherwise act to release or discharge the Contractor from liability.

§ 3.5.4 The Contractor shall indemnify the Owner, the Construction Manager and the Architect against all claims, damages and expenses, including attorney's fees, incurred by the Owner, the Construction Manager or the Architect as a result of the Contractor's failure to abide by its warranty obligations.

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices, and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the general building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work. As soon as practicable following commencement of the Work, the Contractor shall furnish the Owner with copies or certificates of all permits and licenses obtained, fees paid and inspections necessary for the proper execution and completion of the Work. All connection charges, assessments, and inspection fees imposed by any governmental agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality or other public or private body with jurisdiction over the Project and shall prepare all applications, supply all necessary documentation, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate for the performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 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

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Contract Sum shall be equitably adjusted by Change Order, but only if the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. Any surveys and other documents describing the physical characteristics, legal limitations or utility locations for the Project site that are not identified as Contract Documents are for informational purposes only and the Owner shall not be liable for inaccuracies or omissions therein, nor shall any inaccuracies or omissions in such items relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents.

§ 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, Construction Manager, 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 under Sections 3.7.4 and 3.7.5 shall be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 Where allowances are required, they will be incorporated in Section 012100 – Allowances. References to Paragraph 3.8 elsewhere in the Contract Documents shall read as referring to that Section in the Specifications.

(Paragraphs deleted)

§ 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 on written request in each case.

§ 3.9.2 Superintendent shall be satisfactory to the Construction Manager and the Owner, and the Construction Manager and Owner shall have the right to require the Contractor to remove a Superintendent from the Project whose performance is not satisfactory, and replace the Superintendent with a Superintendent who is satisfactory to the Construction Manager and Owner. The Contractor shall not replace the Superintendent without the written consent of the Construction Manager and the Owner.

(Paragraph deleted)

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§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, within fifteen (15) days of the Pre-Construction Meeting, shall submit for the Owner's and Architect's information, and the Construction Manager's approval, a Contractor's Construction Schedule for the Work. The Construction Schedule shall contain detail appropriate for the Project as required by the Contract Documents, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of substantial Completion; (2) an apportionment of the Work by construction Schedule shall include a detailed breakdown of the planned duration, start date and completion date for each activity and estimated. The Construction Schedule shall provide for the orderly progression of the Work to completion, shall not exceed time limits under the Contract Documents, shall be related and conform to the Project Schedule, and shall provide for expeditious and practicable execution of the Work. The schedule shall be revised at appropriate intervals as required by the Contract Documents or otherwise required by the conditions of the Work and Project.

§ 3.10.2 The timing of all Work and material and equipment deliveries shall conform to the Project Schedule. The Construction Manager shall have the right to modify the Project Schedule to vary the sequence or suspend, delay, or accelerate the commencement or execution of the Work. The Contractor shall transfer its laborers to such points as directed by the Construction Manager and execute such portions of the Work as may be required to enable other Separate Contractors to properly carry on their work without delay or interference.

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§ 3.10.3 The Contractor shall prepare and keep current for the Construction Manager's and Architect's approval, a schedule of submittals which is coordinated with the Project Schedule and allows the Construction Manager and Architect reasonable time to review submittals.

§ 3.10.4 The Contractor shall perform the Work in conformance with the most recent Project Schedule issued by the Construction Manager.

§ 3.10.5 In the event the Construction Manger determines that the performance of the Work has not progressed, or likely will not progress, to the level of completion required by the Contract Documents, the Construction Manager shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) stacking trades, (3) expediting material deliveries, (4) supplying additional manpower, equipment, and facilities, and (5) other similar measures. Such corrective measures shall continue until the progress of the work complies with the state of completion required or anticipated by the Contract Documents. If the Contractor refuses to take such corrective measures as directed, the Owner may hire others to perform or supplement the Contractor's performance of the Work and deduct all associated costs from the Contract Sum or, to the extent the Contract Sum is insufficient to cover all such associated costs, Contractor shall reimburse the Owner within five (5) days of written demand by Owner.

§ 3.11 Documents and Samples at the Site

(Paragraph deleted)

Refer to Section 017700 - Closeout Procedure, for provisions on this subject. References to Section 3.11 elsewhere in the Contract Documents shall read as referring to Section 017700 in the Specifications.

§ 3.12 Shop Drawings, Product Data, and Samples

§ 3.12.1 Refer to Section 013300 - Submittal Procedures, for provisions on this subject. References to Section 3.12 elsewhere in the Contract Documents shall read as referring to Section 013300 in the Specifications.

(Paragraphs deleted)

§ 3.13 Use of Site

§ 3.13.1 Refer to Section 011200 – Multiple Contract Summary, for provisions on this subject. References to Section 3.13 elsewhere in the Contract Documents shall read as referring to Section 011200 in the Specifications.

(Paragraph deleted)

§ 3.14 Cutting and Patching

§ 3.14.1 Refer to Section 017310 – Cutting and Patching, for provisions on this subject. References to Section 3.14 elsewhere in the Contract Documents shall read as referring to Section 017310 in the Specifications.

(Paragraph deleted)

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents,. Construction Manager may impose a \$500 per day fine for each day the Contractor fails to clean up to the satisfaction of the Construction Manager. Refer to Specification Section 015690 - Housekeeping and Safety, for provisions on this subject. References to Section 3.15 elsewhere in the Contract Documents shall read as referring to Section 015690 in the Specifications.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager, and Architect with 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, Construction Manager, and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner, Architect, or Construction Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect through the Construction Manager.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, causes of action, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance under the Contract Documents, provided that such claim, damage, loss, or expense is (1) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (2) is caused or contributed to, or is alleged to have been caused or contributed to, in whole or in part, by (a) any negligent act or omission or (b) any act or omission inconsistent with the Contract Documents of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be responsible by contract or by law, regardless of whether or not such claim, cause of action, damage, loss, or expense is caused in part by the fault of a party indemnified hereunder. Contractor agrees that the duty to defend shall entitle the indemnitees to approval of the defense counsel. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 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 Indemnity for Liens/Release of Liens

§ 3.19 Project Construction Wages

§ 3.19.1 The Contractor shall pay wages not less than those established for the Project. Refer to Specification Section 008300 for the established wage for the Project.

§ 3.19.2 The Contractor shall provide a schedule of wages to the Owner and Construction Manager prior to commencing work. The Schedule of Wages shall conform to the requirements set forth in Article 7.2.1 of these amended General Conditions.

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 4.1 General

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

§ 4.1.2 The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

§ 4.1.3 Duties, responsibilities, and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Construction Manager and Architect except as provided in the Owner-Construction Manager or Owner-Architect Agreements. Consent shall not be unreasonably withheld.

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§ 4.2 Administration of the Contract

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest Project Schedule.

§ 4.2.5 The Construction Manager and 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, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 Communications. The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor except when necessary to confirm sums owed and payment to Subcontractors or material suppliers, when the Contractor fails to communicate with Subcontractors or material suppliers in an expeditious manner, and when otherwise provided in the Contract Documents. Communications by and with other Contractors shall be through the through the through the Contractors and suppliers in an expeditious manner, and when otherwise provided in the Contract Documents. Communications by and with other Contractors shall be through the through the Contractors by and with the Owner's own forces and Separate Contractors shall be through the Contract Documents may specify other communication protocols.

§ 4.2.7 The Construction Manager and Architect will review all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

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§ 4.2.9 Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 4.2.10 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those submitted by the Contractor . The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

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

§ 4.2.12 Review of the Contractor's submittals by the Construction Manager and Architect 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 Construction Manager and 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 Construction Manager and Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.13 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.14 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.15 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.16 The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application for Payment or final Project Application for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 4.2.17 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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§ 4.2.18 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.19 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 so rendered in good faith.

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

§ 4.2.21 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request 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 other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. The list of names shall state specifically the portion of the Work to be performed or supplied by each and that person's or entity's contract sum for that portion of the Work. The failure of the Owner to object to any person or entity on the list within ten (10) days shall constitute notice of no reasonable objection. The Contractor shall not accept bids from, any person or entity to whom the Owner has a reasonable objection. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager 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, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager 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.

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§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. The Contractor shall notify the Owner, Architect, and Construction Manager of the proposed substitution of a Subcontractor a minimum of ten (10) days prior to the proposed change. The Owner may require the Contractor to change a Subcontractor or Sub-subcontractor previously approved and, if the Contractor is in full compliance with the Contract Documents, the Contract Sum shall be increased or decreased by a mutually agreeable amount.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, technical, administrative, procedural, legal and otherwise, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager 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 to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1 Any portion of the Work performed by a Subcontractor shall be performed pursuant to a written subcontract between the Contractor and Subcontractor. The Construction Manager and the Architect assume no responsibility for reviewing, monitoring, or verifying activities or relationships involving Subcontractors or any lower tiered subcontractors and suppliers or their respective compliance with the Contract Documents.

§ 5.3.2 The Contract Documents shall confer no benefit, right or remedy, either intended or incidental, upon any Subcontractor, design professional, sub-subcontractor, material supplier, equipment lessor or laborer to make claims against the Owner, the Construction Manager or the Architect.

§ 5.4 Contingent Assignment of Subcontracts

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

- .1 assignment is effective only after termination of the Contract by the Owner and only for those
 - subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the
- § 5.4.2 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.

(Paragraph deleted)

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other 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 with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Contractor shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with the Contractor.

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

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other 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's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor causes to completed or partially completed construction, or to property of the Owner, Separate Contractors, or other Contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, other 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 Construction Manager will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.1.4. A change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by an alteration of or addition to the

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Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.1.5 The form and content of all recurring documents (i.e. Change Orders, Proceed Orders, reports, and timesheets) may be designated by the Construction Manager, and the Contractor agrees to use such forms.

§ 7.2 Change Orders

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A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, 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.

Within seven (7) days of receipt of a requested change, unless requested sooner by the Construction Manager, the Contractor shall advise the Construction Manager of the impact of the change, if any, upon the Contractor's Work, including any adjustment in the Contract Time or the Contract Sum. Failure to so advise the Construction Manager within the specified time period shall constitute a waiver of the Contractor's right to assert a Claim relating to the change.

§ 7.2.1 For each change over \$1,000.00, the Contractor shall furnish a detailed, written proposal itemized according to the pricing guidelines set forth below as a condition precedent to the Owner's consideration of a Change Order request. Any Subcontractor, sub-subcontractor and supplier pricing shall also be itemized according to these guidelines. All proposals shall be prepared in the categories and in the order listed below.

- .1 Labor All field labor shall be priced in compliance with any Wage Determination for this Project, excluding labor burden which is covered under subsection .2 below. The payroll is to be based on straight time only and is to include number of hours and rate of pay for each classification of work. If overtime is approved in writing, the Contractor shall list only the straight time portion in this item.
- .2 Labor burden All established payroll taxes, assessments and fringe benefits on the labor under subsection .1 above. This may include, but is not limited to, FICA, Federal and State Unemployment, Health and Welfare, Pension Funds, Worker's Compensation and Apprentice Fund. Each of the fringes shall be listed as a separate line item.
- .3 Equipment rentals All charges for non-owned heavy or specialized equipment at up to 100% of the documented rental cost. No rental charges will be allowed for hand tools, minor equipment, scaffolds, etc. Downtime due to repairs, maintenance and weather delays will not be allowed.
- 4 Owned equipment All charges for owned, heavy or specialized equipment at up to 100% of the cost listed by the Associated Equipment Dealers Blue Book. No recovery will be allowed for hand tools, minor equipment, scaffolds, etc. Downtime due to repairs, maintenance and weather delays will not be allowed.
- .5 Trucking A reasonable delivery charge or per mile trucking charge for delivery of required materials or equipment. Charges for use of a pickup truck will not be allowed.
- .6 Overhead Includes telephone, telephone charges, facsimile, telegrams, postage, photos, photocopying, hand tools, scaffolds (one level high), tool breakage, tool repairs, tool replacement, tool blades, and bits, home office estimating, clerical and account support, home office labor, travel and parking expenses.
- .7 Materials All materials purchased by the Contractor and incorporated into the changed Work, showing costs, quantities, or Unit Prices of all items, as appropriate. Reimbursement for material costs shall only be allowed in the amount of the Contractor's actual cost including any and all discounts, rebates and related credits.
- .8 Miscellaneous The following items are allowable with no overhead and profit:

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(i) The cost of extending the Bond and the cost of extending commercial general liability, builder's risk and specialty coverage insurance.

(ii) The premium portion only for approved overtime (labor and labor burden). The straight time portion is included in subsections .1 and .2 above.

(iii) Fees for permits, licenses, inspections, tests, etc.

Costs which shall not be reimbursed for changed Work include the following:

(i) Employee Retirement and Profit-Sharing Plans, regardless of how defined or described.

(ii) Voluntary Employee Deductions.

.10 The cost of the Contractor's overhead and profit on Change Orders shall be:

(i) For extra Work completed by the Contractor with his own labor, ten percent (10%) shall be added to Items .1, .2, .3, .4, .5, and .7 of Section 7.2.1 as an allowance for overhead and profit.

(ii) For extra Work completed by Subcontractors of the Contractor, five percent (5%) shall be added to Items. 1, .2, .3, .4, .5, and .7 of Section 7.2.1 as an allowance for overhead and profit.

§ 7.2.1 The Owner, the Construction Manager and the Architect shall be permitted to review, audit and copy the Contractor's records relating to Change Order proposals, Change Orders and changed work (whether based on lump sum, unit prices, or costs) upon reasonable notice and during normal business working hours throughout the term of this Agreement and for a period of three (3) years after final payment or longer if required by law or the Contract Documents. "Records" shall include any and all information, materials and data of every kind and character (hard copy as well as computer readable data) that may, in the Owner's, the Construction Manager's or the Architect's judgment, have any bearing on or pertain to the pricing of changed, added or deleted Work and the accuracy of the Contractor's representations regarding pricing and claims information submitted by the Contractor. If an audit or examination in accordance with this Section disclosed overcharges by the Contractor, the cost of the audit shall be immediately reimbursed by the Contractor in addition to the overcharges.

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

§ 7.3 Construction Change Directives

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. (*Paragraphs deleted*)

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

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

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be the net cost plus 5% reduction for overhead and profit as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowances for overhead and profit shall be figured the basis of net increase and decrease, 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 Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 The Contractor shall not engage in the practice of inflating Change Order proposals or costs under Article 7 (generally known as buyouts) by submitting Subcontractor prices that are higher than the Contractor's actual known Subcontract costs. Each component of a Change Order proposal affecting the Contract Sum shall be supported by an underlying cost element and documentation evidencing actual costs. Where a Subcontract price has been obtained that is lower than what was submitted in an original Change Order proposal (for whatever reason or through whatever means), the Contractor shall pass along such savings to the Owner. If the lower price is obtained prior to the execution of a Change Order, such savings shall be incorporated into the proposed Change Order prior to execution. If a Change Order has already been executed, a deductive Change Order shall be issued to the Owner for the difference.

§ 7.4 Minor Changes in the Work

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

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ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not, except by instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The timing of all Work and material and equipment deliveries shall conform to the Project Schedule.

§ 8.2.4 The Owner and the Construction Manager shall have the right to modify the Project Schedule to vary the sequence or suspend, delay, or accelerate the commencement or execution of the Work. The Contractor shall transfer its laborers to such points as directed by the Construction Manager and execute such portions of the Work as may be required to enable Contractors to properly carry on their work without delay or interference.

§ 8.2.5 If the Contractor should (1) fail, refuse or neglect to supply a sufficient number of workers or deliver materials or equipment with such promptness as to prevent delay in the progress of the Work; (2) fail to commence and diligently prosecute the Work and proceed to the point to which the Contractor should have proceeded in accordance with the Project Schedule in order to achieve Substantial Completion in accordance with the Project Schedule; or (3) fail to commence, prosecute, finish, deliver or install the different portions of the Work in accordance with the Project Schedule, the Construction Manager shall have the right to direct the Contractor to prepare a written plan, for the Owner's approval, to accelerate the Work to comply with the Project Schedule, including, without limitation, providing additional labor, expediting deliveries of materials and equipment, performing overtime and/or resequencing the Work, without an increase in the Contract Sum. Upon the Owner's approval of the acceleration plan, the Contractor shall accelerate the Work in accordance with the plan. The Contractor shall compensate the Owner for, and indemnify the Owner against, all damages, losses and expenses, including additional compensation of the Construction Manager and the Architect, and attorney's fees, proximately resulting from the acceleration of Contractor's Work.

§ 8.3 Delays and Extensions of Time

Init.

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then the Contract Time shall be extended for such the period of time lost on the critical path of Contractor's Work as shown on the Project Schedule ("Excusable Event of Delay"). The phrase "Excusable Event of Delay" does not include delays or disruptions in the performance of Work arising from or related to, in whole or in part: (1) inadequate construction forces or general labor shortages; (2) conditions within the Contractor to place orders for equipment or materials sufficiently in advance to insure timely delivery or (5) Contractor's failure to perform its Work in accordance with the Contract Documents..

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§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. Claims requesting an increase in the Contract Time or the Contract Sum as a result of an Excusable Event of Delay shall be made in accordance with applicable provisions of Section 15.1.3, except that the Claim(s) must be made within five (5) days from the date that the Excusable Event of Delay begins. The Claim shall notify the Owner and Construction Manager, in writing, of all facts then available to the Contractor relative to the nature and extent of the Excusable Event of Delay, and its anticipated effect, (if any) upon the time or date established for Substantial Completion of the Work. Construction Manager will promptly acknowledge the Contractor's request for extension of time, but Construction Manager need not make a determination concerning the same until the nature and extent of the delay and its related impact upon the Contract Time for completion of the Work is determined. The Contract Time may be increased by Change Order as set forth in Section 15.1.6. The notice requirements of this Section are a condition precedent to the relief contemplated under Section 8.3 and if the Contractor fails to comply with these requirements, the Contractor shall be deemed to have waived the claim.

(Paragraph deleted)

§ 8.3.3. If the Contractor's Work or the Project is delayed by any act or omission of the Contractor or any person or entity for whom the Contractor is responsible, or by acts, omissions, events, or occurrences that are not a result of an Excusable Event of Delay, the Contractor shall (1) be assessed liquidated damages if provided for in the Contract, or (2) if liquidated damages are not provided for in the Contract, compensate the Owner for, and indemnify the Owner against, all damages, losses and expenses, including additional compensation of the Construction Manager and the Architect, and attorney's fees, proximately caused by such inexcusable delay.

§ 8.3.4 The Contractor's sole remedy for any delay or disruption in the commencement, prosecution, or completion of the Work, disruption to or interference with the performance of the Work, loss of productivity, or other similar claims, whether or not foreseeable, shall be an increase in the Contract Time pursuant to Sections 8.3.1 and 8.3.2 and an increase in the Contract Sum, but only for and to the extent of an increase in the Contractor's General Conditions directly associated with the increase in the Contract Time afforded under Sections 8.3.1 and 8.3.2. The Owner's, Construction Manager's, or the Architect's exercise of the right to make changes in the Work or to require the correction of damaged, defective or non-confirming Work shall not under any circumstances be construed an Excusable Event of Delay. In no event shall the Contractor be entitled to any compensation or the recovery of any damages in connection with any such claims, including consequential or incidental damages, lost opportunity costs, impact damages, or other similar remuneration. If the Contractor submits a progress report indicating, or the Contractor otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created, implied or permitted.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

Init.

Within fifteen (15) days of the Preconstruction Meeting, or as otherwise required by Division 1 of the Project Manual, the Contractor shall submit a schedule of values to the Construction Manager, before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect, including a complete billing breakdown on AIA Form G-703, or similar form provided by the Construction Manager or the Architect may require. The form shall be divided in detail sufficient to identify specific divisions of the Work and shall be updated as required by the Construction Manager to reflect (1) description of Work (listing labor and material separately), (2) total value, (3) percent of the Work completed to date, (4) value of Work completed to date, (5) percent of previous amount billed, (6) previous amount billed, (7) current percent completed, and (8) value of Work

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Completed to date. Any breakdown that fails to include sufficient detail is unbalanced or exhibits "front-loading" of the value of the Work, shall be rejected. Once approved by the Owner, these documents shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. Each subsequent Application for Payment must be accompanied by an updated billing breakdown. If a breakdown is approved and subsequently used but is later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.3 Applications for Payment

Init.

1

§ 9.3.1 Based upon an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. The Owner shall make progress payments to the Contractor as provided below and elsewhere in the Contract Documents. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. The Application for Payment must be prepared in duplicate on AIA Form G-732 and G-703, or similar form provided by the Construction Manager, and shall indicate the percentage of completion of each portion of the Work as the end of the period covered by the Application for Payment. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Construction Manager and Owner: (1) A lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors, sub-subcontractors, and suppliers, the amount of each Subcontract, the amount requested for any Subcontractor and supplier in the requested progress payment, and the amount to be paid by the Contractor from such progress payment; (2) executed lien waivers from all Subcontractors, sub-subcontractors, and suppliers establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (3) all information and materials required to comply with the requirements of the Contract Documents. Any detailed or supplemental information requested by the Construction Manager or the Architect shall be supplied by the Contractor.

§ 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 Change Orders.

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing but payment to the Contractor for materials stored off site generally will not be recommended by the Construction Manager. Where circumstances indicate that the Owner's best interest will be served by payment for off-site storage, the Contractor shall make written request to the Construction Manager for approval to include such costs in the Contractor's next Application for Payment. The Contractor's request shall include the following information:

.1 A list of the fabricated materials (which shall be clearly identified), giving the place of storage together with copies of invoices and reasons why materials cannot be delivered to the Project site.

.2 Certification that the materials have been tagged for delivery to the Project and that they will not be used for another purpose.

.3 A letter from the Contractor's Surety indicating agreement to the arrangements and that payment to the Contractor shall not relieve either party of their responsibilities under the Contract Documents.

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.4 Evidence of adequate insurance covering the material in storage which shall name the Owner as additional insured.

The costs incurred by the Construction Manager and Architect to inspect material in off-site storage shall be paid by the Contractor. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. If payment is made for materials or equipment stored off-site, title shall pass to the Owner, but the Contractor shall remain fully liable for all such material and equipment until incorporated in the Project.

§ 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 (1) all Work for which Applications for Payment have been previously recommended for payment and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials and equipment relating to the Work, (2) the Work covered by the Application for Payment has been completed in accordance with the Contract Documents, (3) the current payment shown is now due, (4) except as set forth in the Application for Payment, no additional amounts are due, (5) all amounts have been paid by the Contractor for Work for which previous payments have been received, (6) the Contractor has complied with and paid all amounts due under federal, state and local tax laws, including social security, unemployment compensation and worker's compensation laws, and (7) the remaining balance of the Contract Sum is sufficient to complete the Work free and clear of all liens and encumbrances.

§ 9.4 Recommendations for Payment

Init.

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a recommendation for payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a recommendation for payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding recommendation in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reasons for withholding recommendation 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding recommendation.

§ 9.4.2 Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and recommend the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and recommendation for payment; (4) recommend the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and recommendation for payment to the Architect.

§ 9.4.2.1 Within seven days after the Architect receives the Project Application and Project recommendation for payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project recommendation for payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding recommendation in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding recommendation in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding recommendation to the Contractors.

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§ 9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and recommendation for payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's recommendation will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount recommended.

§ 9.4.4 The Architect's issuance of a recommendation for payment or, in the case of more than one Contractor, Project or a Project recommendation for payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount recommended.

§ 9.4.5 The representations made pursuant to Sections 9.4.3 and 9.4.4 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 Construction Manager or Architect.

§ 9.4.6 The issuance of a recommendation for payment or a Project recommendation for payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Recommendation

Init.

§ 9.5.1 The Construction Manager or Architect may withhold a recommendation for payment or Project recommendation for payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to recommend payment in the amount of the Application, the Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a recommendation for payment or a Project recommendation for payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a recommendation for payment or Project recommendation for payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a recommendation for payment or Project recommendation for payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a recommendation for payment or Project recommendation for payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from

- .1 defective or nonconforming Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials, services 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 or other Contractor or other third-parties who could make a claim against the Owner;
- .6 reasonable evidence that the Work will not be completed within the Contract Time or a Milestone Date, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to comply with the requirements of the Contract Documents or carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the reasons for withholding recommendation are removed, certification will be made for amounts previously withheld with the next Application for Payment that includes such amounts previously withheld.

§ 9.5.3 The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier and charge such payment against the Contract Sum.

(Paragraph deleted)

Init.

§ 9.6 Progress Payments

§ 9.6.1 The Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractor shall, within twenty (20) days of the filing of the lien or submission of the claim, satisfy, discharge or bond-off the claim or lien, cause the Owner to be dismissed from any action which may be brought in connection with the claim or lien, and compensate the Owner for, and indemnify the Owner against, any and all losses, damages, and expenses, including attorney's fees, sustained or incurred by the Owner.

§ 9.6.3 The Construction Manager may, 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 Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Contractor shall pay for all labor, materials, equipment and services through the period covered by the previous payment received from the Owner, and shall furnish satisfactory evidence, including (as a condition precedent to payment) releases and lien waivers on forms provided by the Owner, to verify compliance with this requirement. The Owner has the right to request additional written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

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

§ 9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor (unless required by applicable law), create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. The Contractor shall substitute a surety bond for the property against which the lien or other claim for payment has been asserted promptly upon the demand of the Owner. If Owner incurs any costs, expenses, damages, including reasonable attorneys' fees, to cause the release of any such lien, Contractor shall immediately reimburse Owner or said amounts shall be deducted from the Contract Sum.

§ 9.7 Failure of Payment

If the Owner does not pay the Contractor within fourteen (14) days after the date established in the Contract Documents, the amount due the Contractor, the Contractor may, upon fourteen (14) additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received.

§ 9.8 Substantial Completion

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

§ 9.8.1 Project Closeout includes those activities leading to Substantial Completion and Final Completion of the Work. Project Closeout activities and requirements are specified in Division 1, Section 017700 – "Contract Closeout" of the Manual. To administer and conduct Project Closeout, the Contractor shall indicate a designated value as specified in Division 1, Section 012800 – Schedule of Values of this manual.

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

§ 9.8.3 Upon receipt of the list, the Architect, assisted by the Construction Manager, 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 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, assisted by the Construction Manager, to determine Substantial Completion. If, upon the Architect's completion of the initial inspection, there remains incomplete or unsatisfactory Work, the Contractor will be back-charged for the time expended by the Architect and Construction Manager for additional inspections.

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

Init.

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Construction Manager has assigned to the Owner and Contractor 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 and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final recommendation for payment or Project recommendation for payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final recommendation is due and payable. The Construction Manager's and Architect's final recommendation for payment or Project recommendation for payment been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits (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 in the form of AIA Document G706, "Contractor's Affidavit of Payment of Debt and Claims," (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no 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 in the form of AIA Document G707, "Consent of Surety Company to Final Payment," (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (7) a certificate stating that no materials containing asbestos were incorporated into the Work, (8) all warranties, guarantees, record drawings, and other close-out documents required by the Contract Documents, and (9) such evidence as may be necessary to show that any out-of-state Subcontractor or supplier has fully met the requirements for payment of taxes as established by the laws of the state or local subdivision in effect at the time of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 Final payment, including retainage or escrowed principal and escrowed income by the escrow agent, shall be paid to the Contractor no less than sixty (60) days following the date of Substantial Completion. If at that time there remain defective, non-conforming or incomplete items of Work, an amount equal to 200% of the value of each item as determined by the Construction Manager and Architect shall be withheld until said items are completed. 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 Construction Manager and Architect so confirm, the Owner may, upon application by the Contractor , and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed retrins and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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§ 9.10.4

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(Paragraphs deleted)

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

(Paragraph deleted)

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .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; and
- .4 construction or operations by the Owner, Separate Contractors, or other Contractors.
- .5 excavations, trenches, buildings and grounds from all water damage, including the use of temporary drainage to keep excavations free of water
- .6 benchmarks, monuments and other reference points affected by the Work, including re-establishment of benchmarks, monuments or other references point and the resetting of markers which are displaced or destroyed, all under the supervision of a licensed surveyor who shall furnish certificates of its work; and
- .7 the structural components of the Project by assuring safe erection procedures and sequences and the use of temporary bracing, guys and tie-downs as may be prudent

The Contractor acknowledges that the safety of the Owner's students, employees, and guests is of the utmost importance. The Contractor shall take no action which would jeopardize the safety of the Owner's students, employees or guest and, shall take no action which would interfere with the Owner's activities, without the Owner's written approval.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss. In addition, the Contractor shall comply with the safety requirement of Division 1 of the Specifications and other safety requirements and regulations set forth elsewhere in the Contract Documents.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property and improvements adjacent to the Project. Any damage to such property or improvements shall be promptly repaired by the Contractor. Without limiting the indemnity provisions contained elsewhere in the Contract Documents, the Contractor shall indemnify and hold the Owner harmless from and against any and all actions or damages resulting from damage to such property or improvements.

§ 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, 10.2.1.3 and 10.2.1.4 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, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents and who shall cooperate with the Contractors or Separate Contractors to the extent necessary to promote Project safety. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect. A safety representative employed by the Owner or an insurer may, from time to time, conduct safety inspections and submit safety findings. The Contractor shall, at its expense, implement any abatement procedures recommended by such safety representative.

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume. By Change Order, the Contract Time shall be extended as set forth in Section 8.3.1 and the Contract Sum shall be increased as set forth in Section 8.3.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim,

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damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

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

§ 10.3.5 Hazardous material shall not be used without the prior written consent of the Construction Manager. If hazardous material are of a type of which an employer is required by law to notify its employees, Subcontractors or anyone directly or indirectly employed by them, the Contractor shall, prior to the possible exposure to such substances, give written notice of the detailed chemical composition thereof to the Construction Manager. The Contractor, in addition to products banned as part of the Clean Air Act (40 CFR 60, Subpart M), shall not use or bring on site materials containing more than 1% asbestos by content. No materials marked as "MAY CONTAIN MINERAL FIBERS" shall be used in construction unless written results of microscopic examination by an AIHA or NVLP certified laboratory documenting the asbestos content at less than 1% by weight are provided to the Construction Manager and approved before installation. If materials containing more than 1% asbestos content are brought onto the Project site by the Contractor, the materials shall be removed in accordance with all applicable laws and precautions so as not to make fibers friable. Removal of materials containing more than 1% asbestos and replacement of such materials shall be at the Contractor's expense. Prior to Final Payment, the Contractor shall submit to the Owner a signed and notarized copy of the following statement: "I hereby certify to the best of my knowledge no asbestos containing material (ACM) above 1% content was used as a building material for this Project." The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

§ 10.3.7 A "hazardous material or substance" is any substance or material identified as hazardous under any federal state or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal and/or cleanup.

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies rating A+ VII, A VII or A- VII by A. M. Best and lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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

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

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

§ 11.2 Owner's Insurance

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

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

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

§ 11.3 Waivers of Subrogation

§ 11.3.1 If permitted by the Owner's insurance company without penalties the Owner, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent of actual recovery under any property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive

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claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

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 Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their 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 Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and

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inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If the Contractor fails to correct defective or non-conforming Work within two (2) calendar days after receipt of written notice from the Owner, the Construction Manager or the Architect, the Owner may make good the deficiencies and the cost shall be charged to the Contractor. If payments due the Contractor are not sufficient to cover the cost, the Contractor shall pay the difference to the Owner.

§ 12.2.2 After Substantial Completion

§ 12.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the contractor and give the Contractor and give the Contractor and poportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

§ 12.2.5 Nothing contained in this Section 12.2 or the Contract Documents shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 and Section 3.5 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. The acceptance of nonconforming Work by the Owner shall be by written Change Order, signed by the Owner's authorized representative. No other person or entity has authority to accept nonconforming Work.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

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

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

§ 13.3 Rights and Remedies

§ 13.3.1 Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

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

§ 13.4 Tests and Inspections

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§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until the effective date of the Contract. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and 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 Construction Manager and Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in its scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor.

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

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

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

§ 13.4.7 Neither the observations of the Architect nor Construction Manager in their administration of the Contract Documents, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor of its obligation to perform the Work in accordance with the Contract Documents.

§ 13.5 Interest

Unless otherwise expressly provided in the Contract Documents, payments due and unpaid under the Contract Documents shall bear no interest. If interest is expressly provided for in the Contract Documents, then such interest shall apply only with respect to liquidated and undisputed payment amounts due, and shall only accrue from and after the tenth (10th) day following the Owner's receipt of a notice containing an express statement by the Contract Documents or by law, or in the event of a good faith dispute between the Owner and the Contractor, no interest shall accrue.

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 90 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be *(Paragraphs deleted)*
 - stopped.

(Paragraph deleted)

§ 14.1.3 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for the cost of the Work executed and accepted, as well as reasonable overhead and profit on Work executed and accepted by Owner, and actual costs incurred solely by reason of such termination. Recovery by the Contractor of lost anticipated profits and other incidental or consequential damages are specifically excluded.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 fails in any material respect to prosecute the Work according to Project Schedule or causes delay to, disruption of, or interference with the work of any other Contractor; or
- .6 files bankruptcy or makes a general assignment for the benefit of creditors, or if a receiver is appointed over the Contractor.

In the event any termination of the Contractor for default is later determined to have been improper, the termination shall automatically convert to a termination for convenience, and the Contractor shall be limited in its recovery strictly to the compensation provided for in Section 14.4.3 below.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, after consultation with the Construction Manager or the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and

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the Contractor's surety, if any, forty-eight (48) hours' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses (including reasonable attorneys' fees) made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The 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 upon forty-eight (48) hours written notice to the Contractor. The Contractor shall resume the Work as directed by the Owner or the Construction Manager. If the Project is resumed after being suspended for more than ninety (90) days, the Contract Sum shall be equitably adjusted.

(Paragraphs deleted)

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of 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 Owner shall pay the Contractor for Work properly executed, plus a reasonable markup for overhead and profit on Work performed and accepted. The Contractor shall make its records available for the Owner's, the Construction Manager's and the Architect's review; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition. A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the Contractor. This Article 15 shall not grant or enlarge upon the Contractor's right to make claims that are otherwise modified, disclaimed or waived by the Contract Documents.

§ 15.1.2 Time Limits on Claims

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

but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 The Contractor shall make all claims for an increase in the Contract Sum or the Contract Time in accordance with the Contract Documents and in strict compliance with the procedures provided below. If the Contractor claims that it is entitled to additional sums or time, for any reason whatsoever, the Contractor shall give the Owner, the Construction Manager and the Architect written notice of the claim within ten (10) days after the occurrence giving rise to the claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the claim, whichever is later. The notice of the claim shall set forth the circumstances giving rise to the claim and the relief sought. Failure by the Contractor to provide written notice of the claim shall result in a waiver of the claim. Within thirty (30) days after providing written notice of a claim, the Contractor shall submit complete support for the claim including, without limitation, documents, backup data and other information supporting the claim, the relief sought, and those persons with knowledge of the claim. No additional sums shall be paid to the Contractor, and no additional time shall be granted or recognized, unless the Contractor has received a written Change Order signed by the Owner, the Construction Manager and the Architect. VERBAL CHANGES OR EXTRAS SHALL NOT BE VALID OR ENFORCEABLE.

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

§ 15.1.4 Continuing Contract Performance

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

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

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

§ 15.1.6 Claims for Additional Time

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§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor'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.

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

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.8 The Contractor shall not knowingly present or cause to be presented a false or fraudulent Claim. As a condition precedent to making a Claim, the Claim shall be accompanied by an affidavit sworn to before a notary public or other person authorized by law to administer oaths and executed by an authorized representative of the Contractor which states stat: "This Claim complies with Article 15 of the General Conditions, which provides that the Contractor shall not knowingly present or cause to be presented a false or fraudulent Claim."

§ 15.2 Initial Decision

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§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Construction Manager, in consultation with the Owner, will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. The Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

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

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

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

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to litigation.

§ 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.

(Paragraph deleted)

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

(Paragraphs deleted) **ARTICLE 16** EQUAL OPPORUNITY

§ 16.1 The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth these policies of non-discrimination.

§ 16.2 The Contractor and Subcontractors shall, in solicitations or advertisements for employees placed by them or on their behalf, state that qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

Additions and Deletions Report for

AIA[®] Document A232[™] – 2019

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The Skillman Corporation PAGE 3

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

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§ 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, transportation and services incidental thereto 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.

§ 1.1.9 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, calculations, studies, surveys, models, sketches, drawings, specifications, and other similar materials.materials and electronic/digital information produced in relation to the Project.

§ 1.1.10 Initial Decision Maker. The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2.1 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. The Contractor shall promptly call to the attention of the Owner, the Construction Manager and the Architect any discrepancies or inconsistencies in the Drawings or Specifications that affect its Work. In the event of discrepancies or inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement. Figure dimensions shall take precedence over scale

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measurements, large scale details shall take precedence over small scall drawings, and drawings of a later date shall take precedence over those of an earlier date. Any part of the Work shown on the Drawings but not in the Specifications, or vice versa, shall be considered as part of the Work, the same as though included in both. The Work to be undertaken by the Contractor shall include all incidental work necessary for the completion of the Project even though it may not be specifically described in the Specifications or Drawings. PAGE 4

§ 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. When a duplication of labor, material or equipment occurs in the Drawings or the Specifications by assignment of work to separate Contractors, each Contractor shall be deemed to have bid on the basis of providing such labor, material and equipment and the Construction Manager shall decide which Contractor(s) shall provide the same, with appropriate adjustment to the Contract Sum.

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- Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an .1 American National Standards Institute Specification, or other association standard, the Contractor shall present an affidavit from the manufacturer when requested by the Owner or required by the Contract Documents, certifying that the product complies with the particular standard or specification. When requested by the Owner or the Construction Manager or required by the Contract Documents, support test data shall be submitted to substantiate compliance.
- Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a change in the Work in accordance with the Contract Documents.
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§ 1.4.1 The terms "knowledge," "recognize," and "discover," and their respective derivatives, when used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising reasonable care and skill.

§ 1.4.2 The phrase "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of a contractor by the Contract Documents.

§ 1.4.3 The words "approved," "equal to" and "as directed", shall mean "to the satisfaction of the Construction Manager and/or Architect".

§ 1.4.4 The words "products" and "materials" shall include all materials, goods, supplies, systems, and equipment.

§ 1.4.5 The word "provide," including derivatives, shall mean to fabricate, transport, deliver, install, erect, construct, test, and furnish all labor, materials, equipment, apparatus, appurtenances, and all other items necessary to properly complete in place, ready for operation and use.

§ 1.4.6 The words "repeatedly fails" and other similar expressions, as used in reference to the Contractor, shall mean any combination of acts and omissions that cause the Owner, Construction Manager or Architect to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum, or in compliance with the requirements of the Contract Documents.

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or

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distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved Owner's rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants. Owner. PAGE 5

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party-Where the Contract Documents require the Contractor to notify or give notice to the other party, Owner or Construction Manager, including a Notice of Claim as provided in Section 15.1.3, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.certified or registered mail, or by courier providing proof of delivery.

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

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

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203TM 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202TM 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees. PAGE 6

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

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

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a or (2) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the

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Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.person without prior written notice to and consent of the Owner.

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor Owner under the Contract Documents, including those required under Section 3.7.1, the Owner-Contractor 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. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

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§ 2.3.4 If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

§ 2.3.5 The Owner shall-may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. site, but information furnished by the Owner that is not identified as a Contract Document is for informational purposes only and the Owner shall not be liable for inaccuracies or omissions therein, nor shall any inaccuracies or omissions in such items justify an increase in the Contract Sum or relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents.

§ 2.3.6 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 necessary to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.7 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. the documents electronically and the Contractors shall subscribe and pay for their subscription to the software set forth by the Owner to manage the plans and specifications. .

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§ 2.3.9 The Owner shall render decisions and give approvals to the extent required by the Contract Documents. Before performing the Work, the Contractor shall inform the Owner in writing of any information that is necessary for the Contractor's performance of the Work. The Owner's approval or acceptance of, or payment for, any of the Work shall not be construed or operate as a waiver of any right under the Contract or of any cause of action arising out of the performance of the Contract.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten day period forty-eight (48) hours after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the The Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. such default or neglect results in an emergency or a threat to person or property, the Contractor shall immediately commence to correct such default or neglect upon receipt of written or oral notice.

§ 2.6 Extent of Owner's Rights

§ 2.6.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted in the Contract Documents or at law or in equity.

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

§ 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 a single representative assigned to the Project who shall be responsible for attending all weekly and other meetings, monitoring schedules and coordinating all activities. The Contractor's representative shall have the authority to commit and bind the Contractor. 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.

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitations (1) the location, conditions, layout and nature of the Project site and surrounding areas, (2) general prevailing climatic conditions, (3) anticipated labor supply and costs, and (4) availability and cost of materials, tools and equipment. Neither the Owner nor the Construction Manager assume any responsibility or liability for the physical condition or safety of the Project site, or any improvements located on the Project site; these are solely the responsibility of the Contractor. The Owner shall make no adjustment to the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with this Subparagraph.

- The exactness of existing grades, elevations, dimensions and locations given on the Drawings or any document issued by the Construction Manager, the Architect or the Owner, or the work installed by separate contractors, is not guaranteed by the Architect, the Construction Manager, or the Owner.
 - Mechanical and electrical drawings are diagrammatic only; actual Work shall be installed from approved shop drawings with all measurements obtained at the Project site by the Contractor.

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§ 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, authorities relating to design

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(but not means, methods, techniques, sequences and procedures), but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require. If additional instructions from the Architect are necessary for the proper execution of the Work, the Contractor shall make a written request for the Architect's interpretation as provided under Article 4. The Work shall be executed in conformity with the Architect's additional instructions and the Contractor shall refrain from any Work relating thereto until the Contractor has received the Architect's additional instructions.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.authorities relating to design (but not means, methods, techniques, sequences and 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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§ 3.3.4 Within fifteen (15) days after Preconstruction Meeting, the Contractor shall assemble all necessary information and data discussed with the Owner, Architect, and Construction Manager during the post-bid meetings as identified in the Information to Bidders, and submit updated information from those meetings as well as the following:

- A Schedule of Values in the format and detail required by the Construction Manager.
- 2. The Contractor's safety program, including HAZCom Program.
- 3. A complete and detailed submittal schedule.

§ 3.3.5 The Contractor shall furnish to the Construction Manager and the Architect periodic progress reports on the Work in such form as requested by the Construction Manager, including information on the status of materials and equipment which may be in the course of preparation, manufacture or transit. Regularly scheduled progress meetings shall be held weekly, unless otherwise directed.

§ 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, all direct jobsite (or "General Conditions") costs, 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. The Contractor shall provide, maintain, and remove all temporary offices, structures, sheds and storage facilities and all related utilities, gas, telephone, water and restore all areas to their original or intended use to the

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satisfaction of the Owner. Storage areas for the use of the Contractor shall be designated by the Construction Manager. No materials or products shall be stored except in areas approved by the Construction Manager.

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§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall remove from the Project any person or entity under the Contractor's control which the Construction Manager or the Owner considers unsatisfactory. The Contractor shall assure harmonious labor relations to prevent delay, disruption, or interference to the Project, and shall prevent strikes, slowdown, work interruptions, jurisdictional disputes and other labor disputes relating to the Work. The Contractor shall require its Subcontractors, material suppliers and other such persons or entities to agree to the provisions of this Section and if any of them fail to fulfill any of the covenants set forth in this Section, the Contractor shall be deemed to be in default under the Contract Documents.

§ 3.4.4 Materials and equipment shall conform to manufacturers' standards and shall be installed in strict accordance with the manufacturers' latest directions. The Contractor shall, if required by the Owner, the Construction Manager or the Architect, furnish satisfactory evidence as to the kind and quality of any materials.

§ 3.4.5 The Contractor shall pay all royalties and license fees relating to the Work.

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager, 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. permit and shall be performed in a workmanlike manner and comply with all applicable laws, building codes, rules and regulations. Products incorporated into the Work shall be fit for the purpose for which they are intended and shall be merchantable. 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 Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Upon notice from the Owner or the Construction Manager, the Contractor shall, within forty-eight (48) hours following notice from the Owner, Architect or Construction Manager, correct and cure, at the Contractor's expense, all defects and non-conformance in the Work. **PAGE 10**

§ 3.5.3 If, within one year after the date of Substantial Completion of Work, or by the terms of a special warranty required by the Contract Documents, any of the Work is found to be defective or non-conforming with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner. The Contractor's warranty excludes defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, and improper or insufficient maintenance and abuse. This warranty is in addition to all special or extended warranties required by the Contract Documents or otherwise received from the Contractor or any Subcontractor, material supplier or manufacturer. The one year period for correction of defective or non-conforming Work does not constitute a limitation period with respect to the enforcement of the Contractor's other obligations under the Contract Documents and the foregoing warranty shall not affect, limit or impair the Contractor's responsibility for defects in the Work which do not appear within the applicable warranty period. Neither the acceptance of the Work nor any payment shall constitute a waiver of any claims against the Contractor for defective or nonconforming Work, whether latent or apparent, or otherwise act to release or discharge the Contractor from liability.

§ 3.5.4 The Contractor shall indemnify the Owner, the Construction Manager and the Architect against all claims, damages and expenses, including attorney's fees, incurred by the Owner, the Construction Manager or the Architect as a result of the Contractor's failure to abide by its warranty obligations.

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§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the general building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations eoneluded.of the Work. As soon as practicable following commencement of the Work, the Contractor shall furnish the Owner with copies or certificates of all permits and licenses obtained, fees paid and inspections necessary for the proper execution and completion of the Work. All connection charges, assessments, and inspection fees imposed by any governmental agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality or other public or private body with jurisdiction over the Project and shall prepare all applications, supply all necessary documentation, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate for the performance of the Work.

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§ 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 Contract Sum shall be equitably adjusted by Change Order, but only if the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, 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, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15. Any surveys and other documents describing the physical characteristics, legal limitations or utility locations for the Project site that are not identified as Contract Documents are for informational purposes only and the Owner shall not be liable for inaccuracies or omissions therein, nor shall any inaccuracies or omissions in such items relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents.

§ 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, Construction Manager, 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-under Sections 3.7.4 and 3.7.5 shall be made as provided in Article 15. PAGE 11

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection. Where allowances are required, they will be incorporated in Section 012100 - Allowances. References to Paragraph 3.8 elsewhere in the Contract Documents shall read as referring to that Section in the Specifications.

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§ 3.8.2 Unless otherwise provided in the Contract Documents:

- 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
- 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.

§ 3.9.1 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 on written request in each case.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. Failure of the Construction Manager to provide notice within the 14 day period shall constitute notice of no reasonable objection. Superintendent shall be satisfactory to the Construction Manager and the Owner, and the Construction Manager and Owner shall have the right to require the Contractor to remove a Superintendent from the Project whose performance is not satisfactory, and replace the Superintendent with a Superintendent who is satisfactory to the Construction Manager and Owner. The Contractor shall not replace the Superintendent without the written consent of the Construction Manager and the Owner.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10.1 The Contractor, promptly after being awarded the Contract, within fifteen (15) days of the Pre-Construction Meeting, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule approval, a Contractor's Construction Schedule for the Work. The Construction Schedule shall contain detail appropriate for the Project, Project as required by the Contract Documents, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule In addition, the Construction Schedule shall include a detailed breakdown of the planned duration, start date and completion date for each activity and estimated. The Construction Schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. completion, shall not exceed time limits under the Contract Documents, shall be related and conform to the Project Schedule, and shall provide for expeditious and practicable execution of the Work. The schedule shall be revised at appropriate intervals as required by the Contract Documents or otherwise required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submittal schedule for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager

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and Architect reasonable time to review submittals. If the Contractor fails to submitt a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.timing of all Work and material and equipment deliveries shall conform to the Project Schedule. The Construction Manager shall have the right to modify the Project Schedule to vary the sequence or suspend, delay, or accelerate the commencement or execution of the Work. The Contractor shall transfer its laborers to such points as directed by the Construction Manager and execute such portions of the Work as may be required to enable other Separate Contractors to properly carry on their work without delay or interference.

§ 3.10.3 The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.prepare and keep current for the Construction Manager's and Architect's approval, a schedule of submittals which is coordinated with the Project Schedule and allows the Construction Manager and Architect reasonable time to review submittals.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.conformance with the most recent Project Schedule issued by the Construction Manager.

§ 3.10.5 In the event the Construction Manger determines that the performance of the Work has not progressed, or likely will not progress, to the level of completion required by the Contract Documents, the Construction Manager shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) stacking trades, (3) expediting material deliveries, (4) supplying additional manpower, equipment, and facilities, and (5) other similar measures. Such corrective measures shall continue until the progress of the work complies with the state of completion required or anticipated by the Contract Documents. If the Contractor refuses to take such corrective measures as directed, the Owner may hire others to perform or supplement the Contractor's performance of the Work and deduct all associated costs from the Contract Sum or, to the extent the Contract Sum is insufficient to cover all such associated costs, Contractor shall reimburse the Owner within five (5) days of written demand by Owner.

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

Refer to Section 017700 - Closeout Procedure, for provisions on this subject. References to Section 3.11 elsewhere in the Contract Documents shall read as referring to Section 017700 in the Specifications. **PAGE 12**

§ 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. Refer to Section 013300 – Submittal Procedures, for provisions on this subject. References to Section 3.12 elsewhere in the Contract Documents shall read as referring to Section 013300 in the Specifications.

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive

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action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors.

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

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§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Construction Manager and Architect at the time and in the form specified by the Architect.

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Refer to Section 011200 - Multiple Contract Summary, for provisions on this subject. References to Section 3.13 elsewhere in the Contract Documents shall read as referring to Section 011200 in the Specifications.

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents. Refer to Section 017310 - Cutting and Patching, for provisions on this subject. References to Section 3.14 elsewhere in the Contract Documents shall read as referring to Section 017310 in the Specifications.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor. Documents, Construction Manager may impose a \$500 per day fine for each day the Contractor fails to clean up to the satisfaction of the Construction Manager. Refer to Specification Section 015690 - Housekeeping and Safety, for provisions on this subject. References to Section 3.15 elsewhere in the Contract Documents shall read as referring to Section 015690 in the Specifications. **PAGE 13**

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, causes of action, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, under the Contract Documents, provided that such claim, damage, loss, or expense is (1) 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 property, including the loss of use resulting therefrom, and (2) is caused or contributed to, or is alleged to have been caused or contributed to, in whole or in part, by (a) any negligent act or omission or (b) any act or omission inconsistent with the Contract Documents of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, any of them may be responsible by contract or by law, regardless of whether or not such claim, cause of action, damage, loss, or expense is caused in part by the fault of a party indemnified hereunder. Contractor agrees that the duty to defend shall entitle the indemnitees to approval of the defense counsel. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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§ 3.18.3 Indemnity for Liens/Release of Liens

§ 3.19 Project Construction Wages

§ 3.19.1 The Contractor shall pay wages not less than those established for the Project. Refer to Specification Section 008300 for the established wage for the Project.

§ 3.19.2 The Contractor shall provide a schedule of wages to the Owner and Construction Manager prior to commencing work. The Schedule of Wages shall conform to the requirements set forth in Article 7.2.1 of these amended General Conditions.

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§ 4.1.3 Duties, responsibilities, and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Construction Manager, Architect, and Contractor. Manager and Architect except as provided in the Owner-Construction Manager or Owner-Architect Agreements. Consent shall not be unreasonably withheld.
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§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule. Project Schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, Manager and 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, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 Communications. The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the <u>Contractor except</u> when necessary to confirm sums owed and payment to Subcontractors or material suppliers, when the Contractor fails to communicate with <u>Subcontractors or material suppliers</u> in an expeditious manner, and when otherwise provided in the <u>Contract</u> <u>Documents</u>. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9. **PAGE 15**

§ 4.2.10 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. submitted by the Contractor. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved

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§ 4.2.16 The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents. **PAGE 16**

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. The list of names shall state specifically the portion of the Work to be performed or supplied by each and that person's or entity's contract sum for that portion of the Work. The failure of the Owner to object to any person or entity on the list within ten (10) days shall constitute notice of no reasonable objection. The Contractor shall not accept bids from, any person or entity to whom the Owner has a reasonable objection. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection. **PAGE 17**

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. The Contractor shall notify the Owner, Architect, and Construction Manager of the proposed substitution of a Subcontractor a minimum of ten (10) days prior to the proposed change. The Owner may require the Contractor to change a Subcontractor or Sub-subcontractor previously approved and, if the Contractor is in full compliance with the Contract Documents, the Contract Sum shall be increased or decreased by a mutually agreeable amount.

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

§ 5.3.1 Any portion of the Work performed by a Subcontractor shall be performed pursuant to a written subcontract between the Contractor and Subcontractor. The Construction Manager and the Architect assume no responsibility for reviewing, monitoring, or verifying activities or relationships involving Subcontractors or any lower tiered subcontractors and suppliers or their respective compliance with the Contract Documents.

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§ 5.3.2 The Contract Documents shall confer no benefit, right or remedy, either intended or incidental, upon any Subcontractor, design professional, sub-subcontractor, material supplier, equipment lessor or laborer to make claims against the Owner, the Construction Manager or the Architect.

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

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

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.

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

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§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner-Contractor shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.the Contractor. PAGE 18

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors.

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

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If a dispute arises among the Contractor, Separate Contractors, other 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 Construction Manager, with notice to the Architect, Manager will allocate the cost among those responsible.

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§ 7.1.4. A change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by an alteration of or addition to the

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§ 7.1.5 The form and content of all recurring documents (i.e. Change Orders, Proceed Orders, reports, and timesheets) may be designated by the Construction Manager, and the Contractor agrees to use such forms.

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Within seven (7) days of receipt of a requested change, unless requested sooner by the Construction Manager, the Contractor shall advise the Construction Manager of the impact of the change, if any, upon the Contractor's Work, including any adjustment in the Contract Time or the Contract Sum. Failure to so advise the Construction Manager within the specified time period shall constitute a waiver of the Contractor's right to assert a Claim relating to the change.

§ 7.2.1 For each change over \$1,000.00, the Contractor shall furnish a detailed, written proposal itemized according to the pricing guidelines set forth below as a condition precedent to the Owner's consideration of a Change Order request. Any Subcontractor, sub-subcontractor and supplier pricing shall also be itemized according to these guidelines. All proposals shall be prepared in the categories and in the order listed below.

- .1 Labor All field labor shall be priced in compliance with any Wage Determination for this Project, excluding labor burden which is covered under subsection .2 below. The payroll is to be based on straight time only and is to include number of hours and rate of pay for each classification of work. If overtime is approved in writing, the Contractor shall list only the straight time portion in this item.
- .2 Labor burden All established payroll taxes, assessments and fringe benefits on the labor under subsection .1 above. This may include, but is not limited to, FICA, Federal and State Unemployment, Health and Welfare, Pension Funds, Worker's Compensation and Apprentice Fund. Each of the fringes shall be listed as a separate line item.
 - .3 Equipment rentals All charges for non-owned heavy or specialized equipment at up to 100% of the documented rental cost. No rental charges will be allowed for hand tools, minor equipment, scaffolds, etc. Downtime due to repairs, maintenance and weather delays will not be allowed.
- .4 Owned equipment All charges for owned, heavy or specialized equipment at up to 100% of the cost listed by the Associated Equipment Dealers Blue Book. No recovery will be allowed for hand tools, minor equipment, scaffolds, etc. Downtime due to repairs, maintenance and weather delays will not be allowed.
 - .5 Trucking A reasonable delivery charge or per mile trucking charge for delivery of required materials or equipment. Charges for use of a pickup truck will not be allowed.
 - .6 Overhead Includes telephone, telephone charges, facsimile, telegrams, postage, photos, photocopying, hand tools, scaffolds (one level high), tool breakage, tool repairs, tool replacement, tool blades, and bits, home office estimating, clerical and account support, home office labor, travel and parking expenses.
 - .7 Materials All materials purchased by the Contractor and incorporated into the changed Work, showing costs, quantities, or Unit Prices of all items, as appropriate. Reimbursement for material costs shall only be allowed in the amount of the Contractor's actual cost including any and all discounts, rebates and related credits.
 - .8 Miscellaneous The following items are allowable with no overhead and profit:
 - (i) The cost of extending the Bond and the cost of extending commercial general liability, builder's risk and specialty coverage insurance.

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	(ii) The premium portion only for approved overtime (labor and labor burden). The straight time portion is included in subsections .1 and .2 above.
	(iii) Fees for permits, licenses, inspections, tests, etc.
.9	Costs which shall not be reimbursed for changed Work include the following:
	(i) Employee Retirement and Profit-Sharing Plans, regardless of how defined or described.
	(ii) Voluntary Employee Deductions.
.10	The cost of the Contractor's overhead and profit on Change Orders shall be:
	(i) For extra Work completed by the Contractor with his own labor, ten percent (10%) shall be added to Items .1, .2, .3, .4, .5, and .7 of Section 7.2.1 as an allowance for overhead and profit.
	(ii) For extra Work completed by Subcontractors of the Contractor, five percent (5%) shall be added to Items. 1, .2, .3, .4, .5, and .7 of Section 7.2.1 as an allowance for overhead and profit.

§ 7.2.1 The Owner, the Construction Manager and the Architect shall be permitted to review, audit and copy the Contractor's records relating to Change Order proposals, Change Orders and changed work (whether based on lump sum, unit prices, or costs) upon reasonable notice and during normal business working hours throughout the term of this Agreement and for a period of three (3) years after final payment or longer if required by law or the Contract Documents. "Records" shall include any and all information, materials and data of every kind and character (hard copy as well as computer readable data) that may, in the Owner's, the Construction Manager's or the Architect's judgment, have any bearing on or pertain to the pricing of changed, added or deleted Work and the accuracy of the Contractor's representations regarding pricing and claims information submitted by the Contractor. If an audit or examination in accordance with this Section disclosed overcharges by the Contractor, the cost of the audit shall be immediately reimbursed by the Contractor in addition to the overcharges.

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

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§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- -1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Construction Manager and Architect;
- Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or 2 consumed:
- Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor .3 or others:
- Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- Costs of supervision and field office personnel directly attributable to the change.

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

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§ 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 the net cost plus 5% reduction for overhead and profit as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance allowances for overhead and profit shall be figured on the basis of net increase, if any, increase and decrease, with respect to that change.

....

§ 7.3.11 The Contractor shall not engage in the practice of inflating Change Order proposals or costs under Article 7 (generally known as buyouts) by submitting Subcontractor prices that are higher than the Contractor's actual known Subcontract costs. Each component of a Change Order proposal affecting the Contract Sum shall be supported by an underlying cost element and documentation evidencing actual costs. Where a Subcontract price has been obtained that is lower than what was submitted in an original Change Order proposal (for whatever reason or through whatever means), the Contractor shall pass along such savings to the Owner. If the lower price is obtained prior to the execution of a Change Order, such savings shall be incorporated into the proposed Change Order prior to execution. If a Change Order has already been executed, a deductive Change Order shall be issued to the Owner for the difference.

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§ 8.2.2 The Contractor shall not knowingly, not, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The timing of all Work and material and equipment deliveries shall conform to the Project Schedule.

§ 8.2.4 The Owner and the Construction Manager shall have the right to modify the Project Schedule to vary the sequence or suspend, delay, or accelerate the commencement or execution of the Work. The Contractor shall transfer its laborers to such points as directed by the Construction Manager and execute such portions of the Work as may be required to enable Contractors to properly carry on their work without delay or interference.

§ 8.2.5 If the Contractor should (1) fail, refuse or neglect to supply a sufficient number of workers or deliver materials or equipment with such promptness as to prevent delay in the progress of the Work; (2) fail to commence and diligently prosecute the Work and proceed to the point to which the Contractor should have proceeded in accordance with the Project Schedule in order to achieve Substantial Completion in accordance with the Project Schedule; or (3) fail to commence, prosecute, finish, deliver or install the different portions of the Work in accordance with the Project Schedule, the Construction Manager shall have the right to direct the Contractor to prepare a written plan, for the Owner's approval, to accelerate the Work to comply with the Project Schedule, including, without limitation, providing additional labor, expediting deliveries of materials and equipment, performing overtime and/or resequencing the Work, without an increase in the Contract Sum. Upon the Owner's approval of the acceleration plan, the Contractor shall accelerate the Work in accordance with the plan. The Contractor shall compensate the Owner for, and indemnify the Owner against, all damages, losses and expenses, including additional compensation of the Construction Manager and the Architect, and attorney's fees, proximately resulting from the acceleration of Contractor's Work.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine the period of time lost on the critical path of Contractor's Work as shown on the Project Schedule ("Excusable Event of Delay"). The phrase "Excusable Event of Delay" does not include delays or disruptions in the performance of Work arising from or related to, in whole or in part: (1) inadequate construction forces or general labor shortages; (2) conditions within the Contractor's knowledge at the time of executing the Agreement, (3) inadequate labor forces,(4) failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure timely delivery or (5) Contractor's failure to perform its Work in accordance with the Contract Documents ..

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. Claims requesting an increase in the Contract Time or the Contract Sum as a result of an Excusable Event of Delay shall be made in accordance with applicable provisions of Section 15.1.3, except that the Claim(s) must be made within five (5) days from the date that the Excusable Event of Delay begins. The Claim shall notify the Owner and Construction Manager, in writing, of all facts then available to the Contractor relative to the nature and extent of the Excusable Event of Delay, and its anticipated effect, (if any) upon the time or date established for Substantial Completion of the Work. Construction Manager will promptly acknowledge the Contractor's request for extension of time, but Construction Manager need not make a determination concerning the same until the nature and extent of the delay and its related impact upon the Contract Time for completion of the Work is determined. The Contract Time may be increased by Change Order as set forth in Section 15.1.6. The notice requirements of this Section are a condition precedent to the relief contemplated under Section 8.3 and if the Contractor fails to comply with these requirements, the Contractor shall be deemed to have waived the claim.

§ 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.

§ 8.3.3. If the Contractor's Work or the Project is delayed by any act or omission of the Contractor or any person or entity for whom the Contractor is responsible, or by acts, omissions, events, or occurrences that are not a result of an Excusable Event of Delay, the Contractor shall (1) be assessed liquidated damages if provided for in the Contract, or (2) if liquidated damages are not provided for in the Contract, compensate the Owner for, and indemnify the Owner against, all damages, losses and expenses, including additional compensation of the Construction Manager and the Architect, and attorney's fees, proximately caused by such inexcusable delay.

§ 8.3.4 The Contractor's sole remedy for any delay or disruption in the commencement, prosecution, or completion of the Work, disruption to or interference with the performance of the Work, loss of productivity, or other similar claims, whether or not foreseeable, shall be an increase in the Contract Time pursuant to Sections 8.3.1 and 8.3.2 and an increase in the Contract Sum, but only for and to the extent of an increase in the Contractor's General Conditions directly associated with the increase in the Contract Time afforded under Sections 8.3.1 and 8.3.2. The Owner's, Construction Manager's, or the Architect's exercise of the right to make changes in the Work or to require the correction of damaged, defective or non-confirming Work shall not under any circumstances be construed an Excusable Event of Delay. In no event shall the Contractor be entitled to any compensation or the recovery of any damages in connection with any such claims, including consequential or incidental damages, lost opportunity costs, impact damages, or other similar remuneration. If the Contractor submits a progress report indicating, or the Contractor otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created, implied or permitted.

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, Within fifteen (15) days of the Preconstruction Meeting, or as otherwise required by Division 1 of the Project Manual, the Contractor shall submit a

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schedule of values to the Construction Manager, before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. This schedule, unless objected to by the Construction Manager or Architect, Architect, including a complete billing breakdown on AIA Form G-703, or similar form provided by the Construction Manager, prepared in such form and supported by such data as the Construction Manager or the Architect may require. The form shall be divided in detail sufficient to identify specific divisions of the Work and shall be updated as required by the Construction Manager to reflect (1) description of Work (listing labor and material separately), (2) total value, (3) percent of the Work completed to date, (4) value of Work completed to date, (5) percent of previous amount billed, (6) previous amount billed, (7) current percent completed, and (8) value of Work Completed to date. Any breakdown that fails to include sufficient detail is unbalanced or exhibits "front-loading" of the value of the Work, shall be rejected. Once approved by the Owner, these documents shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. Each subsequent Application for Payment must be accompanied by an updated billing breakdown. If a breakdown is approved and subsequently used but is later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work. **PAGE 24**

§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager Based upon an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. The Owner shall make progress payments to the Contractor as provided below and elsewhere in the Contract Documents. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. The Application for Payment must be prepared in duplicate on AIA Form G-732 and G-703, or similar form provided by the Construction Manager, and shall indicate the percentage of completion of each portion of the Work as the end of the period covered by the Application for Payment. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Construction Manager and Owner: (1) A lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors, sub-subcontractors, and suppliers, the amount of each Subcontract, the amount requested for any Subcontractor and supplier in the requested progress payment, and the amount to be paid by the Contractor from such progress payment; (2) executed lien waivers from all Subcontractors, sub-subcontractors, and suppliers establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (3) all information and materials required to comply with the requirements of the Contract Documents. Any detailed or supplemental information requested by the Construction Manager or the Architect shall be supplied by the Contractor.

§ 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 Construction Manager and Architect, but not yet included in Change Orders.

....

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing, writing but payment to the Contractor for materials stored off site generally will not be recommended by the Construction Manager. Where circumstances indicate that the Owner's best interest will be served by payment for off-site storage, the Contractor shall make written request to the Construction Manager for approval to include such costs in the Contractor's next Application for Payment. The Contractor's request shall include the following information:

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.1 A list of the fabricated materials (which shall be clearly identified), giving the place of storage together with copies of invoices and reasons why materials cannot be delivered to the Project site.

.2 Certification that the materials have been tagged for delivery to the Project and that they will not be used for another purpose.

3 A letter from the Contractor's Surety indicating agreement to the arrangements and that payment to the Contractor shall not relieve either party of their responsibilities under the Contract Documents.

4 Evidence of adequate insurance covering the material in storage which shall name the Owner as additional insured.

The costs incurred by the Construction Manager and Architect to inspect material in off-site storage shall be paid by the Contractor. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. If payment is made for materials or equipment stored off-site, title shall pass to the Owner, but the Contractor shall remain fully liable for all such material and equipment until incorporated in the Project.

§ 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 (1) all Work for which Certificates Applications for Payment have been previously issued recommended for payment and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials and equipment relating to the Work. to the Work, (2) the Work covered by the Application for Payment has been completed in accordance with the Contract Documents, (3) the current payment shown is now due, (4) except as set forth in the Application for Payment, no additional amounts are due, (5) all amounts have been paid by the Contractor for Work for which previous payments have been received, (6) the Contractor has complied with and paid all amounts due under federal, state and local tax laws, including social security, unemployment compensation and worker's compensation laws, and (7) the remaining balance of the Contract Sum is sufficient to complete the Work free and clear of all liens and encumbrances.

§ 9.4 Certificates for PaymentRecommendations for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, recommendation for payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment recommendation for payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification recommendation in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.recommendation.

§ 9.4.2 Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and eertify recommend the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify recommendation for payment; (4) recommend the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment recommendation for payment to the Architect.

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§ 9.4.2.1 Within seven days after the Architect receives the Project Application and Project Certificate for Payment recommendation for payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, recommendation for payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification recommendation in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification recommendation in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding eertification recommendation to the Contractors.

§ 9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, recommendation for payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's ertification recommendation will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.recommended.

§ 9.4.4 The Architect's issuance of a Certificate for Payment recommendation for payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, or a Project recommendation for payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.recommended.

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§ 9.4.6 The issuance of a Certificate for Payment or a Project Certificate for Payment recommendation for payment or a Project recommendation for payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification Decisions to Withhold Recommendation

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment-recommendation for payment or Project recommendation for payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify recommend payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment recommendation for payment or a Project recommendation for payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment recommendation for payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment recommendation for payment or Project recommendation for payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

- defective or nonconforming Work not remedied; .1
- failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials .3 materials, services or equipment;

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- damage to the Owner or a Separate Contractor or other Contractor; Contractor or other Contractor or .5 other third-parties who could make a claim against the Owner;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, Time or a Milestone Date, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

...

.7 repeated failure to comply with the requirements of the Contract Documents or carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15. the reasons for withholding recommendation are removed, certification will be made for amounts previously withheld with the next Application for Payment that includes such amounts previously withheld.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier and charge such payment against the Contract Sum.

§ 9.5.4 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both will reflect such payment on the next Certificate for Payment.

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

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. If any payment claim or lien is made or filed with or against the Owner or the Project, the Contractor shall, within twenty (20) days of the filing of the lien or submission of the claim, satisfy, discharge or bond-off the claim or lien, cause the Owner to be dismissed from any action which may be brought in connection with the claim or lien, and compensate the Owner for, and indemnify the Owner against, any and all losses, damages, and expenses, including attorney's fees, sustained or incurred by the Owner.

§ 9.6.3 The Construction Manager will, may, 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 Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Contractor shall pay for all labor, materials, equipment and services through the period covered by the previous payment received from the Owner, and shall furnish satisfactory evidence, including (as a condition precedent to payment) releases and lien waivers on forms provided by the Owner, to verify compliance with this requirement. The Owner has the right to request additional written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law. **PAGE 27**

§ 9.6.6 A Certificate for Payment, Any payment, including 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.

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may The Contractor shall substitute a surety bond for the property against which the lien or other claim for payment has been asserted.asserted promptly upon the demand of the Owner. If Owner incurs any costs, expenses, damages, including reasonable attorneys' fees, to cause the release of any such lien, Contractor shall immediately reimburse Owner or said amounts shall be deducted from the Contract Sum.

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

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

§ 9.8.1 Project Closeout includes those activities leading to Substantial Completion and Final Completion of the Work. Project Closeout activities and requirements are specified in Division 1, Section 017700 – "Contract Closeout" of the Manual. To administer and conduct Project Closeout, the Contractor shall indicate a designated value as specified in Division 1, Section 012800 – Schedule of Values of this manual.

....

§ 9.8.3 Upon receipt of the list, the Architect, assisted by the Construction Manager, 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 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, assisted by the Construction Manager, to determine Substantial Completion. If, upon the Architect's completion of the initial inspection, there remains incomplete or unsatisfactory Work, the Contractor will be back-charged for the time expended by the Architect and Construction Manager for additional inspections.

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§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment recommendation for payment or Project recommendation for payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate recommendation is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment recommendation for payment or Project recommendation for payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (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, satisfied in the form of AIA Document G706, "Contractor's Affidavit of Payment of Debt and Claims," (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no 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 in the form of AIA Document G707, "Consent of Surety Company to Final Payment," (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. (7) a certificate stating that no materials containing asbestos were incorporated into the Work, (8) all warranties, guarantees, record drawings, and other close-out documents required by the Contract Documents, and (9) such evidence as may be necessary to show that any out-of-state Subcontractor or supplier has fully met the requirements for payment of taxes as established by the laws of the state or local subdivision in effect at the time of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 Final payment, including retainage or escrowed principal and escrowed income by the escrow agent, shall be paid to the Contractor no less than sixty (60) days following the date of Substantial Completion. If at that time there remain defective, non-conforming or incomplete items of Work, an amount equal to 200% of the value of each item as determined by the Construction Manager and Architect shall be withheld until said items are completed. If, after

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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 Construction Manager and Architect so confirm, the Owner shall, may, upon application by the Contractor and certification by the Construction Manager and Architect, and, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Contract Documents;

.3 terms of special warranties required by the Contract Documents; or

audits performed by the Owner, if permitted by the Contract Documents, after final payment. Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

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

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The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

- .5 excavations, trenches, buildings and grounds from all water damage, including the use of temporary drainage to keep excavations free of water
- .6 benchmarks, monuments and other reference points affected by the Work, including re-establishment of benchmarks, monuments or other references point and the resetting of markers which are displaced or destroyed, all under the supervision of a licensed surveyor who shall furnish certificates of its work; and
- the structural components of the Project by assuring safe erection procedures and sequences and the use .7 of temporary bracing, guys and tie-downs as may be prudent

The Contractor acknowledges that the safety of the Owner's students, employees, and guests is of the utmost importance. The Contractor shall take no action which would jeopardize the safety of the Owner's students, employees or guest and, shall take no action which would interfere with the Owner's activities, without the Owner's written approval.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss. In addition, the Contractor shall comply with the safety requirement of Division 1 of the Specifications and other safety requirements and regulations set forth elsewhere in the Contract Documents.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures

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necessary to protect any property and improvements adjacent to the Project. Any damage to such property or improvements shall be promptly repaired by the Contractor. Without limiting the indemnity provisions contained elsewhere in the Contract Documents, the Contractor shall indemnify and hold the Owner harmless from and against any and all actions or damages resulting from damage to such property or improvements. **PAGE 31**

§ 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, accidents and who shall cooperate with the Contractors or Separate Contractors to the extent necessary to promote Project safety. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect. A safety representative employed by the Owner or an insurer may, from time to time, conduct safety inspections and submit safety findings. The Contractor shall, at its expense, implement any abatement procedures recommended by such safety representative.

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§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. resume. By Change Order, the Contract Time shall be extended appropriately as set forth in Section 8.3.1 and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start up as set forth in Section 8.3. **PAGE 32**

§ 10.3.5 Hazardous material shall not be used without the prior written consent of the Construction Manager. If hazardous material are of a type of which an employer is required by law to notify its employees, Subcontractors or anyone directly or indirectly employed by them, the Contractor shall, prior to the possible exposure to such substances, give written notice of the detailed chemical composition thereof to the Construction Manager. The Contractor, in addition to products banned as part of the Clean Air Act (40 CFR 60, Subpart M), shall not use or bring on site materials containing more than 1% asbestos by content. No materials marked as "MAY CONTAIN MINERAL FIBERS" shall be used in construction unless written results of microscopic examination by an AIHA or NVLP certified laboratory documenting the asbestos content at less than 1% by weight are provided to the Construction Manager and approved before installation. If materials containing more than 1% asbestos content are brought onto the Project site by the Contractor, the materials shall be removed in accordance with all applicable laws and precautions so as not to make fibers friable. Removal of materials containing more than 1% asbestos and replacement of such materials shall be at the Contractor's expense. Prior to Final Payment, the Contractor shall submit to the Owner a signed and notarized copy of the following statement: "I hereby certify to the best of my knowledge no asbestos containing material (ACM) above 1% content was used as a building material for this Project." The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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§ 10.3.7 A "hazardous material or substance" is any substance or material identified as hazardous under any federal state or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal and/or cleanup.

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§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies rating A+VII, A VII or A-VII by A. M. Best and lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. PAGE 33

§ 11.3.1 The If permitted by the Owner's insurance company without penalties the Owner, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by of actual recovery under any property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

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§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

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The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If the Contractor fails to correct defective or non-conforming Work within two (2) calendar days after receipt of written notice from the Owner, the Construction Manager or the Architect, the Owner may make good the deficiencies and the cost shall be charged to the Contractor. If payments due the Contractor are not sufficient to cover the cost, the Contractor shall pay the difference to the Owner.

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§ 12.2.5 Nothing contained in this Section 12.2 or the Contract Documents shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 and Section 3.5 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.

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If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. The acceptance of nonconforming Work by the Owner shall be by written Change Order, signed by the Owner's authorized representative. No other person or entity has authority to accept nonconforming Work. **PAGE 36**

§ 13.3.1 Duties Except as expressly provided in the Contract Documents, 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.

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

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§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in its scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.Architect and the Construction Manager. **PAGE 37**

§ 13.4.7 Neither the observations of the Architect nor Construction Manager in their administration of the Contract Documents, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor of its obligation to perform the Work in accordance with the Contract Documents.

Payments-Unless otherwise expressly provided in the Contract Documents, payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.no interest. If interest is expressly provided for in the Contract Documents, then such interest shall apply only with respect to liquidated and undisputed payment amounts due, and shall only accrue from and after the tenth (10th) day following the Owner's receipt of a notice containing an express statement by the Contractor of its intention to assess interest. In the event the Owner is entitled to withhold payment under the Contract Documents or by law, or in the event of a good faith dispute between the Owner and the Contractor, no interest shall accrue.

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§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30-90 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be .1 stopped; or
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- 3 Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents: or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.stopped.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, the cost of the Work executed and accepted, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination. executed and accepted by Owner, and actual costs incurred solely by reason of such termination. Recovery by the Contractor of lost anticipated profits and other incidental or consequential damages are specifically excluded.

...

- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents. Documents;
- .5 fails in any material respect to prosecute the Work according to Project Schedule or causes delay to, disruption of, or interference with the work of any other Contractor; or
- .6 files bankruptcy or makes a general assignment for the benefit of creditors, or if a receiver is appointed over the Contractor.

In the event any termination of the Contractor for default is later determined to have been improper, the termination shall automatically convert to a termination for convenience, and the Contractor shall be limited in its recovery strictly to the compensation provided for in Section 14.4.3 below.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, after consultation with the Construction Manager, and upon certification by the Architect that sufficient cause exists to justify such action, Manager or 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' forty-eight (48) hours' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses (including reasonable attorneys' fees) made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

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§ 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.determine upon forty-eight (48) hours written notice to the Contractor. The Contractor shall resume the Work as directed by the Owner or the Construction Manager. If the Project is resumed after being suspended for more than ninety (90) days, the Contract Sum shall be equitably adjusted.

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

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

....

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; executed, plus a reasonable markup for overhead and profit on Work performed and accepted. Contractor shall make its records available for the Owner's, the Construction Manager's and the Architect's review; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

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§ 15.1.1 Definition. A Claim is a demand or assertion by one of the parties the Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with Contractor. This Article 15 shall not grant or enlarge upon the Contractor's right to make claims that are otherwise modified, disclaimed or waived by the Contract Documents. **PAGE 39**

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant The Contractor shall make all claims for an increase in the Contract Sum or the Contract Time in accordance with the Contract Documents and in strict compliance with the procedures provided below. If the Contractor claims that it is entitled to additional sums or time, for any reason whatsoever, the Contractor shall give the Owner, the Construction Manager and the Architect written notice of the claim within ten (10) days after the occurrence giving rise to the claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.claim, whichever is later. The notice of the claim shall set forth the circumstances giving rise to the claim, and to the extent reasonably available, facts, documents, backup data and other information supporting the claim and the relief sought. Failure by the Contractor to provide written notice of the claim shall result in a waiver of the claim. Within thirty (30) days after providing written notice of a claim, the Contractor shall submit complete support for the claim including, without limitation, documents, backup data and other information supporting the claim, the relief sought, and those persons with knowledge of the claim. No additional sums shall be paid to the Contractor, and no additional time shall be granted or recognized, unless the Contractor has received a written Change Order signed by the Owner, the Construction Manager and the Architect. VERBAL CHANGES OR EXTRAS SHALL NOT BE VALID OR ENFORCEABLE.

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§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker. PAGE 40

§ 15.1.8 The Contractor shall not knowingly present or cause to be presented a false or fraudulent Claim. As a condition precedent to making a Claim, the Claim shall be accompanied by an affidavit sworn to before a notary public or other person authorized by law to administer oaths and executed by an authorized representative of the Contractor which states stat: "This Claim complies with Article 15 of the General Conditions, which provides that the Contractor shall not knowingly present or cause to be presented a false or fraudulent Claim."

...

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect Construction Manager, in consultation with the Owner, will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the The Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner. PAGE 41

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, Contract shall be subject to mediation as a condition precedent to binding dispute resolution.litigation.

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

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

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

EQUAL OPPORUNITY ARTICLE 16

§ 16.1 The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth these policies of non-discrimination.

§ 16.2 The Contractor and Subcontractors shall, in solicitations or advertisements for employees placed by them or on their behalf, state that qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

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SECTION 01 32 00 - SCHEDULES AND REPORTS

PART 1 - GENERAL

1.01 RELATED DOCUMENTS

A. The Work of this Section shall be included as a part of the Contract Documents of each Contractor on this Project. Where such Work applies to only one Contractor, it shall be defined as to which Contractor the Work belongs.

1.02 SUMMARY

- A. This Section includes administrative and procedural requirements for schedules and reports required for proper performance of the Work, including:
 - 1. Construction schedule
 - 2. Submittal schedule
 - 3. Use of site plan

1.03 GUIDELINE SCHEDULE

- A. A Guideline Schedule is is including showing milestone activities for the Project, as well as anticipated completion date.
 - 1. Prior to bidding Project, Contractor shall review the Guideline Schedule to determine if the intent of the schedule can be met.
 - 2. The Guideline Schedule is to be used for bidding reference only; however, the indicated completion date of all Work of the Project must be accomplished by all Contractors.
- B. Sequence of Work
 - 1. Upon receipt of Notice To Proceed, expedite submittals and shop drawings from material suppliers and vendors.
 - 2. Order long lead materials and confirm delivery dates.
 - 3. Participate in Pre-Installation Conferences for proper coordination and execution of Work.
 - 4. Provide actual sequence of work and detailed construction schedule.
 - 5. Complete the Work and achieve Substantial Completion as Guideline Schedule has prescribed.

1.04 CONSTRUCTION SCHEDULES

- A. Within 15 days of the Pre-construction Meeting, each Contractor is to assemble all necessary information and dates concerning his activities, and those of his Subcontractors and Suppliers and submit such information in the form required by the Construction Manager. Each Contractor shall submit the following schedule information to the Construction Manager as a minimum:
 - 1. A bar chart schedule of all activities contained in the Contractor's Scope of Work. This schedule shall include activity descriptions and durations for

all activities in workdays (as opposed to calendar day) for shop drawings, fabrication, delivery and installation of products, materials, and equipment. The activities on the schedule must be at a level of detail approved by the Construction Manager and agree with the terminology and building sequencing established by the Construction Manager.

- 2. Identification of precedent relationships between the Contractor's activities and those of other Contractors based on a thorough review of the Contract Drawings and details showing interface between Contracts.
- 3. Graphic diagrams indicating the proposed direction of work whenever applicable or if requested by the Construction Manager.
- 4. Assumed crew size, equipment, production rates, and similar data used to arrive at adequate durations and sequences.
- 5. If a Contractor cannot provide a complete schedule of all of his activities within 15 days after Pre-construction Meeting, the Contractor may, after Construction Manager's written approval, provide a work plan for the first 60 days after award. The Contractor's final schedule shall be complete and submitted to the Construction Manager prior to the 45th day after the Pre-construction Meeting.
- B. In collaboration with the various Contractors associated with the Work, the Construction Manager will compile all Contractor schedules and develop a project master construction schedule, which integrates activities of Architect, Construction Manager, Contractors, Subcontractors, and Suppliers and meets the time requirements. The sequence of all work activities shall be determined by the Construction Manager and reviewed by all Contractors. This schedule will become the project plan for construction.
- C. Contractors' schedule activities may be re-sequenced and the schedule adjusted provided all Work is completed within the stated milestone dates and if the Construction Manager and affected Contractors are notified of the change within 5 calendar days of receipt of the schedule; otherwise, the project master construction schedule shall be deemed accepted by all parties and becomes a contractual requirement for each Contractor.
- D. The project construction schedule will be provided by the Construction Manager, consistent with the guideline schedule and utilizing the Contractors' construction schedules provided by the separate Contractors.
 - 1. Contractor shall provide the Construction Manager with information and data to prepare a working day construction schedule and sequence of events for each work activity included in his bid category within 15 days after the Pre-construction Meeting. The Contractor shall cooperate with the Construction Manager in establishing a final overall project schedule which meets the specified completion date.
 - 2. After the project schedule has been established, Contractors shall work overtime, nights, and weekends, if necessary, to maintain their portion of the schedule.

- a. Overtime, night and weekend work will be at no additional cost to the Owner.
- b. Failure of the Contractor to maintain his portion of the schedule will be grounds for the Owner to withhold all or part of any payments which may become due to the Contractor for work completed.
- 3. The Contractor is responsible to expedite all approvals and deliveries of material so as not to delay job progress.
- 4. The Contractor shall begin all phases of his work as quickly as physically possible, but not to impede or jeopardize the work of other Contractors.
- 5. Phases of the work may be started prior to the scheduled start dates if coordinated with other Contractors, and, if approved through the Construction Manager.
- 6. The Contractor shall cooperate fully with the Construction Manager in the coordination of the work with all other Contractors and the convenience of the Owner as indicated in the Specifications.
- E. Each Contractor's work shall be executed at such a rate as to ensure meeting the specified milestone dates for Substantial Completion. By execution of the Contract, a Contractor represents he has analyzed the Work, the materials and methods involved, the systems of the building, availability of qualified mechanics and unskilled labor, restrictions of the site, constraints imposed, his own work load and capacity to perform the Work and agrees that the specified dates are reasonable considering the existing conditions prevailing in the locality of the Work, including weather conditions, and other factors, with reasonable allowance for variations from average or ideal conditions.
- F. The Construction Manager will utilize the project master construction schedule to plan, coordinate, and manage all construction activities of Contractors, Subcontractors, and Suppliers. All Contractors are to complete all Work in accordance with this schedule.
- G. The Construction Manager will hold periodic progress meetings at the jobsite. Field supervisors from each Contractor working on the site are to attend all such meetings. Each Contractor is to provide services of responsible personnel to provide necessary scheduling and manpower information. Each Contractor shall be responsible to be familiar with the schedule, how it will affect or modify his operations including his coordination with the activities of other Contractors. Each Contractor shall prepare a short interval schedule generally covering a two-week period to coordinate with the activities of other Contractors. Each Contractor shall prepare a short interval schedule generally covering a two-week period to coordinate the detailed activities of subcontractors and suppliers. The short interval schedules shall be prepared on The Skillman Corporations' Look Ahead form at the end of this Section and be submitted 24 hours prior to the job progress meetings, or as required by the Construction Manager. The Construction Manager will update the project master construction schedule monthly and display the current schedule at the jobsite and prepare progress reports accordingly.

- H. Whenever it becomes apparent that any activity completion date may not be met, the responsible Contractor(s) are to take some or all of the following actions at no additional cost to the Owner or Construction Manager.
 - 1. Increase construction manpower to put the project back on schedule.
 - 2. Increase number of working hours per shift, shifts per working day, working days per week, amount of construction equipment, or any combination, which will place the project back on schedule.
 - 3. Reschedule activities to achieve maximum practical concurrency and place the project back on schedule.
- A. If the Contractor fails to take any of the above actions, Owner or Construction Manager may take action to attempt to put the project back on schedule and deduct cost of such actions from monies due or to become due the Contractor in accordance with Subparagraph 2.4.1. of the amended General Conditions.
- B. The Construction Manager will manage the project and will make every effort to complete the project within the schedule. Time extensions may be granted to various Contractors when delays that affect final completion date have been caused by inability of another Contractor to meet his time commitments; however, neither Owner nor Construction Manager will assume responsibility to any Contractor for compensation, damages, or other costs due to delays.

1.05 LIST OF SUBCONTRACTORS, SUPPLIERS, AND MANUFACTURERS

A. Each Contractor shall submit, through the Construction Manager, a list of subcontractors and manufacturer's participating on this Project. List shall be submitted within 48 hours after receipt of bids. The list shall be complete with names, street addresses, city, state, and zip code.

1.06 SUBMITTAL SCHEDULE

- A. Within 15 days of the Pre-Construction Meeting, each Contractor shall submit their schedule of submittals.
 - 1. Coordinate Submittal Schedule with the list of subcontracts, Schedule of Values, and the list of products as well as the Construction Schedule.
 - 2. The contractor shall provide the following information:
 - a. Scheduled date for the first submittal (due date).
 - b. Name of the Subcontractor (under comments).
 - c. Fabrication time.
- B. Distribution: Following response to the initial submittal, print and distribute copies to the Construction Manager, Architect, Owner, subcontractors, and other parties required to comply with submittal dates indicated.
 - 1. When revisions are made, distribute to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the Work and are no longer involved in construction activities.

C. Schedule Updating: Revise the schedule after each meeting or activity where revisions have been recognized or made. Issue the updated schedule concurrently with the report of each meeting.

1.07 PROJECT USE SITE PLAN

- A. The Construction Manager, in cooperation with other Contractors on this Project, shall prepare a proposed project use site plan.
- B. Contractor shall confine operations at the site to areas within the areas indicated and as approved on the use of the site plan, and as permitted by law, ordinances, and permits. Site shall not be unreasonably encumbered with materials, products, or construction equipment.
- C. The Construction Manager in reviewing his use of the site shall include access to proposed building for construction purposes, storage of materials and products, parking, where possible, for employees, temporary facilities including offices, storage, and workshop sheds or portable trailers, and unloading space.
- D. Where a temporary fence is to be provided, the Construction Manager shall show any additional area needed in the Contractor's use of the site beyond that which may be indicated on the Drawings.
- E. The Construction Manager will indicate to the other Contractors after award of Contract which portions of the existing parking lot and nonpaved areas can be used for construction activities. Damage to existing parking lot or unpaved areas shall be paid for by the Contractor responsible for damage.

PART 2 - PRODUCTS, PART 3 - EXECUTION (Not Used)

END OF SECTION 01 32 00