

REQUEST FOR PROPOSALS

Issued: January 13, 2025

The Allegheny Conference on Community Development (ACCD) with the Pittsburgh Downtown Partnership (PDP) is requesting proposals for Construction Management (CM) services for revitalization of Market Square. Please review the following list that highlights information associated with the project that may be helpful in the RFP process. Respondents should review the Request for Proposal (RFP) in its entirety for details on the items highlighted below.

PROJECT: Market Square Revitalization

PROJECT ADDRESSES: Market Square,
Pittsburgh, PA 15222

PROJECT INFORMATION: Request for Proposal and Preliminary
Design Documents

**Link to RFP is available on ACCD
website**

**[https://www.alleghenyconference.org
/about/rfp/](https://www.alleghenyconference.org/about/rfp/)**

**The Pre-Bid Meeting/Site Tour will be
held Friday, January 17, 2025
beginning at 10:00AM at the Project
Address listed above.**

PROPOSAL DUE DATE:

Proposals will be received electronically by Stephen Needham, Project Director at sneedham@vvalc.com

On

Friday January 31, 2025 at 3:00PM

INTERPRETATION AND ADDENDA

Requests for interpretations, clarifications, corrections or changes of the RFP Document must be made in writing by email only at least [seven (7) calendar days] prior to the date for receipt of Proposals. No Addenda will be issued later than [two (2) business days] prior to the date for receipt of Proposals.

RACP REQUIREMENTS

RACP subcontractor bidding, bond and insurance requirements apply to the project

QUESTIONS

All questions should be directed to only Stephen Needham at sneedham@vvalc.com as listed above.

REQUEST FOR PROPOSAL

ALLEGHENY CONFERENCE ON COMMUNITY DEVELOPMENT

&

PITTSBURGH DOWNTOWN PARTNERSHIP

MARKET SQUARE REVITALIZATION PROJECT

REQUEST FOR PROPOSALS (RFP)

CONSTRUCTION MANAGEMENT

RFP ISSUE DATE: MONDAY JANUARY 13, 2025

INTRODUCTION

The Allegheny Conference on Community Development in partnership with the Pittsburgh Downtown Partnership (A/PDP), through its Project Management Consultant VVA, is seeking the services of an experienced Construction Management firm (Respondent) to provide Construction Management Services on its Downtown Pittsburgh Market Square Revitalization Project.

The project must follow requirements under the Pennsylvania Redevelopment Assistance Capital Program (RACP) competitive sub-contractor bidding process, Pennsylvania Steel Products Procurement Act, Trade Practices Act, public works contractors' bond law, the Pennsylvania Prevailing Wage Act, WBE/MBE participation, the Americans with Disabilities Act and meet certain fidelity bond and insurance (including but not limited to workers' compensation, general liability and property damage, and flood) thresholds. Please refer to the attached RACP Key Compliance Guidelines Dated November 2024 for details.

Project Design Development Documents are available for review and to inform responses by contacting Stephen Needham, Project Director at sneedham@vvalc.com

SCOPE OF WORK

1. Construction Phase Services

The Respondent shall be expected to provide sufficient personnel to coordinate closely with the clients and other members of the team, including the design team led by Field Operations during final design, bidding, construction and operational readiness phases of the projects. Such personnel shall include a Senior Project Manager and other necessary technical and administrative support. The primary tasks to be performed from March 2025 to the completion of construction in early April 2026 include but are not limited to:

- Assist in the continued development of the master project baseline schedule.
- Produce a detailed project schedule inclusive of both pre-construction and construction activities.
- Provide monthly reports describing activities and work performed during the prior month including financial status and schedule updates.
- Lead the value engineering process, leading work sessions, and recommend potential value engineering alternatives throughout the project.
- Provide a detailed and continuous review and assessment of all design and engineering approaches and documents. The CM shall, in its experience, advise the Project Team of constructability concerns, taking into consideration the design intent. The CM shall advise the Project Team of any concerns relative to the proposed design concepts. The CM shall also lead constructability and coordination meetings as necessary with the Project Team to review ongoing observations.
- Assist in the development of a risk identification and mitigation plan.
- Development of a detailed phasing and site logistics plan for the project.
- Provide estimating focus studies, as needed.
- Managing the early procurement and bidding activities inclusive of a procurement schedule (including obtaining all permits).
- Participate in the creation of a subcontractor bidder list, minimum 3 subcontractors per trade, and specific subcontractor pre-qualification plans.
- Provide a Quality Management Plan.
- Provide a manpower and cash flow analysis that reflects the CM's work plan to secure and manage the labor forces required to complete the Work per the Substantial Completion date reflected herein.
- Produce a project specific Safety Plan.
- Manage necessary mock-ups, if required.

- Provide assistance with permitting as required.
- Bid and GMP Process Coordination:
 - Conduct all bidding in accordance with RACP and all other regulatory requirements
 - Provide a proposed bidder list with minimum three (3) bidders for each trade including WBE and MBE owned subcontracting firms.
 - Prepare bid packages.
 - Distribute bid documents.
 - Coordinate and lead pre-bid conference(s) and walk through(s) coordinated through VVA.
 - Administer bid process.
 - Facilitate subcontractor scope and cost review conferences with participation by VVA and design team.
 - Provide complete bid tabulation spreadsheets and copies of all subcontractor bids for each trade.
 - Submit for approval Recommendation to Award letters and supporting backup prior to each subcontractor award.
 - Advise VVA and design team on strategies to meet budget and rebidding if necessary.
 - Develop and submit a Guaranteed Maximum Price (GMP) and all supporting documents for review, negotiation, and acceptance by owner.
- Participate in permit process administration and application.
- Provide other construction planning activities as required to support the success of the project.

During the construction phase, which is intended to commence on April 1, 2025 or earlier and be complete on April 1, 2026 or earlier, the Respondent shall be responsible for the following:

Provide customary services with similar significant renovation scope of work, including but necessarily limited to the following:

- a. Construction Oversight & Administration:
 - i. Maintain full-time on-site field supervisor.
 - ii. Maintain detailed construction schedule with dedicated scheduler.
 - iii. Provide look-ahead schedules on a weekly basis and note any potential disruptions or shutdown requests to Client.
 - iv. Coordinate and lead pre-construction kick-off conferences for all trades.
 - v. Administer and coordinate all subcontractors' work.
 - vi. Maintain construction quality control and track all pending issues.
 - vii. Maintain job-site records (contracts, drawings, submittals, as-builts, samples, etc.).
 - viii. Conduct weekly or at intervals agreed upon, OAC (Client, Architect, and Contractor) construction meetings, including maintaining and distributing minutes.
 - ix. Establish and maintain construction safety program with strict adherence to all applicable laws and guidelines.
 - x. Maintain secure construction site.
 - xi. Coordinate construction activities with Client .
 - xii. Attend Client meetings as requested.
- b. Financial Management & Document Control:
 - i. Prepare detailed schedule of values for Client approval.
 - ii. Maintain construction cost accounting system.
 - iii. Maintain and review submittal and procurement logs, provide update log at weekly meeting with Client and Design Team.
 - iv. Maintain and review Request For Information (RFI) logs, provide updated log at weekly OAC meetings.
 - v. Prepare change order proposals and maintain log of all potential, pending and approved change orders, provide updated log at weekly OAC meeting with Project Manager
 - vi. Maintain construction manager contingency log, provide updated log at weekly OAC meeting.

- vii. Provide monthly executive summary report which shall include construction progress photos, schedule update, Project budget versus cost summary, change order log, contingency log, and identify any upcoming Project risks.
- c. Project Close-Out:
 - i. Develop Project close-out program.
 - ii. Assemble and submit operations and maintenance manuals and warranties.
 - iii. Coordinate final inspections (punch lists, Certificate of Occupancy, etc.).
 - iv. Coordinate and support activities with Client facilities and operations staff.
 - v. Coordinate and support installation of Client supplied equipment.
 - vi. Coordinate final occupancy inspections with Client and local Authorities.
 - vii. Provide and manage warranty work.
 - viii. Provide all documentation required by owner necessary for the proper close-out requirements and auditing of the Project.

PROJECT SCHEDULE

The construction of the projects shall be completed on an aggressive schedule with no room for delay in completion.

The Respondent is expected to familiarize themselves with the design, and identify other work items, if necessary, to mitigate unforeseen conditions and identify constructability issues. The Respondent shall be expected to demonstrate creative, innovative, and collaborative approaches throughout the project to address unforeseen conditions and facilitate the completion of construction within the established schedule and budget. The Respondent shall also be responsible for the evaluation of design documents for adequacy of completion and constructability.

REQUIRED EXPERIENCE

The Respondent shall have demonstrated expertise in, and thorough working knowledge of, the estimating, scheduling, and construction of major outdoor civic spaces in a dense urban setting. It is essential that not only the firm but the key individuals on the team have a similar sophisticated level of expertise and experience.

The Respondent shall demonstrate its successful experience in providing similar construction management services on significant projects up to \$25 million. The Respondent shall emphasize projects that had a similar program, schedule and budget. The Respondent shall demonstrate a successful safety record. The Respondent shall have delivered projects with sustainability features. The Respondent shall demonstrate its ability to work as part of a collaborative team involving the Client, the architect, specialized consultants, as well as neighborhood groups, regulatory and approval agencies and other stakeholders. Such collaboration is critical to successfully implement the program.

The proposal shall clearly identify the individuals on the team and their qualifications for inclusion on this team. The proposal shall clearly indicate the expertise of each individual, as well as the firm's experience.

SUBMITTAL OF PROPOSAL

Respondent shall submit a written proposal which is responsive to each of the following Evaluation Criteria and such proposal shall be organized in a similar manner. In addition, the Respondent shall include a cover letter that introduces the firm, provides a summary of its proposed team including subconsultants, and clearly presents the team's qualifications for the project. The proposal shall also include an Executive Summary which provides a brief description in response to each of the Evaluation Criteria.

EVALUATION CRITERIA

Proposals, which shall be used to highlight the experience and expertise of the Respondent's firm, its personnel and its proposed team, shall specifically address the following evaluation criteria in order:

BILLABLE RATES, FEE, GENERAL CONDITIONS, GENERAL REQUIREMENT COSTS, CONTINGENCY

1a. Billable Rates - The Respondent shall provide Billable Rates for all individuals identified in this RFP. Billable Rates shall include all individuals of any subsidiary business or related company to the construction manager. Billable Rates shall be submitted for review and approval by Client, including seeking approval for any rate increase over the duration of the Contract. The Respondent shall certify in writing that such Billable Rates are the usual, customary rates for such individuals or categories of personnel, consistently charged with respect to all of the Respondent's projects. The submitted Billable Rates will be negotiable pending further project definition.

1b. Fee General Conditions, General Requirements & Contingency Proposal –

Using an estimated Hard Cost of \$8,000,000 the Respondent's Proposal shall include, at a minimum, the following information:

- (a) The Fee for Construction Phase services as a lump sum based on a percentage of the Hard Costs. This will become a fixed lump sum amount billed according to the GMP Contract.
- (b) General Conditions cost as a lump sum based on Hard Costs with a breakdown of all costs utilizing Billable Rates and personnel estimated hours; this will become a fixed lump sum amount billed according to the GMP Contract.
- (c) Proposed CM Percentage Mark up on Change Orders

ORGANIZATION

Organization Chart - The Respondent shall submit a complete and detailed Project Organization Chart that identifies the Project Team, including an explanation of the roles and responsibilities of key personnel that shall be responsible for providing services identified in this Request for Proposals and that clearly articulates how these personnel both as individuals and as a team fulfill the requirements described above.

The Respondent shall describe the ownership and current principals of its firm. In addition, the Respondent shall provide a statement of the history and growth of its organization and a corporate organization chart.

Staffing Requirements - The Respondent shall identify diverse individuals to fill the following positions and provide a resume that sufficiently details the experience and expertise of such people and their length of employment with the Respondent. The Respondent shall also provide a certificate that such personnel shall be available on an as-needed basis during the remaining pre-construction phase and will then be committed to the project during construction.

- A. Project Executive or Principal in charge
- B. Senior Project Manager
- C. Project Managers and Assistant Project Managers
- D. General Superintendent
- E. Assistant Superintendent(s)
- E. Scheduler
- F. Financial Change Management and Controls
- G. Chief Estimator

- H. Engineering Manager
- I. Safety Manager

Additionally, the Respondent shall include all other additional personnel deemed necessary to manage the aggressive schedule of the Work.

EXPERIENCE

Project Staff Experience - The Respondent shall provide details for its key personnel, including its proposed Senior Project Manager, Superintendents, and others in order to demonstrate that the staff proposed for the project has significant construction management experience in the following areas. It is important that the Respondent discuss individuals' experience and expertise as compared to the firm's experience and expertise.

- Individuals with successful experience coordinating and constructing major outdoor civic spaces within the last ten (10) years.
- Individuals with successful experience managing projects with a construction value between \$10 million and \$25 million dollars within the last ten (10) years.
- Individuals with successful experience managing projects with complex and extremely aggressive schedules (including projects where the CM was at risk) with a construction between \$10 million and \$25 million dollars within the last ten (10) years.
- Experience working in a dense congested urban setting.

General CM Project Experience - The Respondent shall demonstrate that it has a successful record of providing construction services and completing projects on schedule and within budget by including project start and finish dates as well as initial and final contract amounts. The Respondent shall provide the Owner with references of those familiar with its services including titles and telephone numbers for each project listed. The Respondent shall ensure that all contact information is current and accurate.

Specific Project Experience - The Respondent shall demonstrate that its team has significant relevant experience in the following areas and provide related project references.

- A. Outdoor Civic Spaces.
- B. Dense Urban Settings.
- C. Logistics coordination with owner, city and state officials, businesses, and neighbors.
- D. Sustainability.
- E. Constructability reviews.
- F. Pre-construction existing conditions surveying and invasive exploratory work.
- G. Cost estimating.
- H. Critical path method scheduling.
- I. Value engineering.
- J. Quality assurance and quality control.
- K. Risk management.
- L. Management of information systems and technology.
- M. Management of regulated building materials (asbestos, lead, PCBs).
- N. Management/Treatment of soil and/or groundwater remediation work.
- O. Management of safety and programs to ensure adherence to standards and protocols.

CM Experience - The Respondent shall provide a list of its five most recent projects, including the Project Title, a brief description of the project and the services provided, and the GMP amount. The Respondent shall provide a brief overview of the services, including both pre-construction and construction, that it typically provides to similar projects using the CM delivery process and explain how it would implement such services on this Project to ensure success. The Respondent shall discuss its approach to value engineering and provide examples of how it has been successfully implemented on prior similar projects.

CAPACITY AND FINANCIAL STABILITY

The Respondent shall certify under the pains and penalties of perjury that the firm (separate and apart from any parent company or affiliate) is financially capable of completing the Project. In addition, the Respondent shall certify under the pains and penalties of perjury that it has not made a general assignment for the benefit of creditors, filed any voluntary petitions in bankruptcy or suffered the filing of any involuntary petitions by its creditors.

PROJECT CONTROLS

The Respondent shall discuss its approach to construction services, project management, and teamwork including specific examples of its experience related to working with an Owner, Architect, Owner's Representative, and other consultants on project facilitation, logistics and planning, cost control, and quality assurance.

It is owner's intent to utilize web-based project management applications to manage project communications and records. The Respondent shall describe any prior experience with such systems and the role it played with respect to document control when a project utilized a web-based system.

INSURANCE

The Respondent shall include a statement demonstrating its current insurance coverage meets RACP requirements including types, name of carriers, coverage limits, and deductibles/SIRs..

CONTRACT

The Respondent shall review the attached Contract Form and note any exceptions to contract terms. Respondents ability to minimize exceptions and expedite contract execution will be considered as part of the overall evaluation of proposals.

REP SCHEDULE

The proposed schedule for the selection process for Construction Services is described below:

- 1/13/25 – Advertise/Issue RFP
- 1/17/25 – Pre-Proposal Respondent Site Visit conducted by VVA
- 1/31/25 – RFP Responses Due
- 2/10/25 – Finalist Interview
- 2/14/25 – Selection/Award
- 2/21/25 – Contract Negotiated and Executed
- 2/21/25 – 3/31/25 – Subcontractor Bidding
- 4/7/25 – Construction Start
- 4/10/26 – Construction Complete

The current schedule is set forth above. However, owner may at its sole discretion, accelerate, delay, suspend, or terminate all of any part of the procurement process if it is deemed by owner to be in the interest of owner or the project to do so.

GENERAL TERMS

This Request for Proposals is solely an invitation to Respondents to provide information about professional qualifications to Client and is not an offer to contract. Furthermore, this request does not obligate Client to pay any costs that any Respondent may incur in connection with its response. All costs shall be borne solely by the Respondent. Upon receipt by Client, all Proposals and/or other submissions shall become the property of Client for disposition or usage by owner at its discretion. Client shall have no responsibility for maintaining the confidentiality of Proposals and/or other materials submitted to Client by Respondent.

All material in this Request for Proposals is confidential and shall be treated as such by Respondent. Client requires that Respondent treat all information obtained during this procurement process including qualifications, interviews, and RFP process as confidential. All Requests for Proposals and Financial Statements shall be signed by persons authorized to bind the Respondent.

SUBMISSION REQUIREMENTS

Electronic submissions (as a single PDF) should be limited to no more than 20 pages including a cover letter. The submission shall be e-mailed to the address listed below and received **no later than 3 pm on 1/31/25**.

The submission should be sent to the following Client Contact and email address:

Stephen Needham, Project Director

sneedham@vvalc.com

Any questions related to this Request for Proposal, or this procurement process should only be directed in writing to the above Client Contact.

Questions or inquiries by telephone shall not be accepted.

Redevelopment Assistance Capital Program (RACP)

Key Compliance Guidelines



November 2024

KEY COMPLIANCE GUIDELINES

It is suggested that a copy of this complete document be given to your Project, Construction Manager, and/or Architect so that they are fully aware of the RACP requirements related to each. This document should be included in your bid packages and should be made an addendum to any and all construction contracts, plans and specifications related to the RACP project.

Compliance with all RACP requirements, including the key items in these guidelines will be monitored frequently throughout the construction phase of your project and will be reviewed once more during the legislatively mandated close-out audit.

COMPETITIVE BIDDING REQUIREMENTS

The sole and exclusive bidding requirement for RACP projects is in the Capital Facilities Debt Enabling Act (Act 67 of 2004), which states "Notwithstanding any other provision of law, the solicitation of a minimum of three written bids for all contracted construction work on redevelopment assistance capital projects shall be the sole requirement for the composition, solicitation, opening and award of bids on such projects." Unless the terms of the law change, the Office of the Budget cannot grant waivers for bidding requirements to Grantees.

RACP projects are not subject to separation of trades. You are REQUIRED to solicit a minimum of three (3) bids for "all generally contracted work" being performed within the RACP defined scope of work. You are not required to receive three (3) bid responses. However, you should provide documentation to prove that at least three bids were solicited by providing copies of the solicitation letters (preferably on letterhead of the bidding entity) used in the bidding process. You are not required to select the lowest bidder, but if you do not, you will have to provide a brief written justification for your selection. Note: there is NO threshold level under the RACP program regardless of the size or dollar amount associated with the work to be performed. You need to show that you solicited a minimum of three (3) bids for any contract to be eligible for RACP.

Bidding is acceptable at either the general contractor level (described in option a. below) or at the sub-contractor level (described in option b. below):

- **General Contractor (GC) Level** - If you chose to bid at the GC level, please note that the bid should encompass the entire RACP scope of work to be performed including all associated construction work. The dollar amount bid on the project must include 100% of the work to be performed by the GC and the sub-contractors. Bidding at the GC level will require submission of bidding and construction related documents at the GC level only (see Sub-Contractor level below for a distinction)
- **Sub-Contractor Level** - If you choose not to solicit three bids for a General Contractor, then you are required to solicit a minimum of three bids for EACH Sub-Contractor covering all trades involved in the project. Note that any self-performed work by a non-bid GC is NOT an eligible cost for reimbursement OR match purposes. Bidding at the Sub-Contractor level will require submission of bidding and construction related documents at the sub level...meaning proof of

bidding, construction contracts, payment and performance bonds, insurance etc. will need to be provided for every sub-contractor in the RACP scope.

Professional Services: Professional services associated with the project are not required to be bid as these associated costs are only eligible as match.

Change Orders: Grantees and/or Sub-Grantees are not required to competitively bid out change orders as long as the work was within the RACP scope of the original bid and is less than 20% of the total contract. If a change order is for work beyond the RACP scope of work originally bid, the Grantee will be required to competitively bid out the new scope of work in order to be considered RACP eligible.

PENNSYLVANIA STEEL PRODUCTS PROCUREMENT ACT

The Office of the Budget (OB) cannot grant waivers to the Pennsylvania Steel Products Procurement Act (SPPA) unless the terms of the law change. All RACP Grantees must comply with the SPPA. If a Grantee/RACP project fails to abide by the SPPA, it does so at its own risk.

[A full explanation on the RACP steel requirements is available as a PDF download.](#)

Up to 2011, OB only accepted the ST-4 Form (justification for the use of foreign steel) that the Department of General Services (DGS) had exclusively devised to address exceptions linked to the requirements of the SPPA, when it was necessary. Since 2011, OB has approved the acceptability of two more DGS ST Forms (ST-2, ST-3) with some caveats, providing that the forms are properly filled out. The ST-1 Form will not be accepted by OB. It is not necessary for the ST-2, ST-3, and ST-4 Forms to be notarized.

Since 2013, OB has utilized the DGS Exempt Machinery and Equipment Steel Products listings as part of the RACP steel policy. DGS published a Statement of Policy - Steel Products Procurement in the Pennsylvania Bulletin Volume 43, Number 6 dated February 9, 2013 (See PA Bulletin #43, pages 85-86) that discussed their production of an annual list, based on their analysis of submitted ST-4 forms, which exempts certain steel products not produced domestically in sufficient quantity. DGS publishes an updated "Exemption List" annually.

Please be aware that ST forms are acceptable only in cases where nonstructural steel needs to be addressed. The DGS ST forms do not replace the steel certification forms associated with structural steel. OB will continue to require the submission of steel mill certifications to demonstrate compliance with the steel requirements for structural steel.

The PDF copies of the three acceptable ST Forms for RACP listed below can be obtained from the RACP website:

- [ST-2 Steel Origin Certification: Non-Identifiable, Non-Structural Steel](#)
- [ST-3 75% U.S. Manufacture Certification](#)
- [ST-4 Not Domestically Manufactured: Prime Contractor](#) (only to be used when requesting items to be exempted that are not found on the current year's List of Exempt Machinery and Equipment Steel Products)

It is suggested that the certifications be collected at the time any steel for the project is purchased and delivered to ease the collection process.

Be advised that OB DOES NOT need to approve the ST forms prior to the start of the construction period. The ST forms need to be submitted to demonstrate that compliance, when and where necessary, has been met.

We shall deem as ineligible all contracts that are unable to demonstrate compliance via the submission of steel certifications for Structural Steel and for Non-structural Steel the submission of steel certifications and/or ST forms and/or DGS Exempt Machinery and Equipment Steel Products List. Therefore, the value of construction contracts associated with non-compliant steel will be removed (both materials and labor costs) from the scope of the project, which may in turn affect the project's ability to leverage their full grant amount (project may not receive its full grant).

Recycled products, melted from previously used steel, are acceptable, providing that adequate documentation from the supplier has been furnished. The supplier shall certify that the recycled steel product was produced in the USA.

TRADE PRACTICES ACT

In accordance with the Trade Practices Act of July 23, 1968, P.L. 686 (71 P.S. § 773.101 et seq.), the Grantee cannot and shall not use or permit to be used in the work any aluminum or steel products made in a foreign country which is listed below as a foreign country which discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Argentina, Brazil, South Korea, and Spain have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the purchase or use of those countries' products, as listed below, is not permitted:

- **Argentina:** carbon steel wire rod and cold-rolled carbon steel sheet.
- **Brazil:** welded carbon steel pipes and tubes; carbon steel wire rod; tool steel; certain stainless steel products, including hot-rolled stainless steel bar; stainless steel wire rod and cold-formed stainless steel bar; pre-stressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet; and cold-rolled carbon steel sheet.
- **South Korea:** welded carbon steel pipes and tubes; hot-rolled carbon steel plate; hot-rolled carbon steel sheet; and galvanized steel sheet.
- **Spain:** certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars; and cold-formed stainless steel bars; pre-stressed concrete steel wire strand; and certain steel products, including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes; galvanized carbon steel sheet, hot-rolled carbon steel bars, and cold-formed carbon steel bars.

Penalties for violation of the above paragraphs may be found in the Trade Practices Act, which penalties include becoming ineligible for public works contracts for a period of three years.

This provision in no way relieves the Grantee of responsibility to comply with those provisions which prohibit the use of foreign-made steel and cast iron products.

PUBLIC WORKS CONTRACTORS' BOND LAW (PAYMENT & PERFORMANCE BONDS)

The requirement for 100% payment and performance (P&P) bonds is a state law; the Office of the Budget cannot waive this requirement.

A performance bond must be obtained at 100% of the contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications, and conditions of the contract. Such bond shall be solely for the protection of the contracting body which awarded said contract.

A payment bond must be obtained at 100% of the contract amount. Such bond shall be solely for the protection of claimants supplying labor or materials to the Grantee, its contractor or to any of its subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned for the prompt payment of all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

PA PREVAILING WAGE ACT (PWA)

The Office of the Budget cannot grant waivers for the PA Prevailing Wage Act. All Grantees must comply with the act. Grantees that fail to abide by the Prevailing Wage Act do so at their own risk. Please do not assume that PA Prevailing Wage is always consistent with your local union wages.

All projects should apply for a wage determination letter prior to the start of construction by registering the project with the PA Department of Labor and Industry to obtain the prevailing wage rates relevant to your project. This determination sheet will provide the necessary trade classifications for the project, along with their corresponding hourly wage and hourly fringe rates that are required for the certified payrolls required as part of RACP. The wage determination should be obtained within 120 days of the award of construction contracts. If necessary, the Department of Labor and Industry can issue determinations letters after construction has begun.

The prevailing wage information and forms can be found on the [PA Department of Labor & Industry website](#).

AMERICANS WITH DISABILITIES ACT (ADA)

Typically your architect should provide a letter stating the plans and specs are in compliance with ADA regulations. Additionally, the Grantee agrees to comply with the General Prohibitions Against Discrimination, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the commonwealth through contracts.

FIDELITY BONDS

The Grantee shall procure and furnish evidence to OB, of fidelity bonds with coverage to be maintained under the administrative title of the position, in amounts and for such positions as are reasonably determined by OB. Fidelity Bonding is also commonly known as "Employee Dishonesty Insurance."

Grantees should submit certificates of insurance to support fidelity bond coverage is in effect and the coverage amount meets or exceeds the RACP grant amount, or the coverage amount meets or exceeds the monthly project funding schedule contained in Appendix C of the grant agreement. For Grantees with multiple projects and/or grants larger than \$5,000,000 the coverage amount can be the lesser of either \$1,000,000 or 20% of the RACP grant amount(s).

INSURANCE REQUIREMENTS

- Worker's Compensation Insurance - The Grantee shall provide Worker's Compensation Insurance where required, and shall accept full responsibility for the payment of premiums for Worker's Compensation Insurance and Social Security, as well as income tax withholding and any other taxes or payroll deductions required by law for its employees who are performing services related to the project.
- General Liability & Property Damage Insurance - The Grantee will provide and maintain comprehensive general liability and property damage insurance in the minimum amount of \$250,000.00 per person for injury and death in a single occurrence; \$1,000,000.00 per occurrence for injury or death of more than one (1) person in a single occurrence; and \$500,000.00 for a single occurrence of property damage, and which shall be endorsed to protect the commonwealth.
- Flood Insurance – If the project is wholly or partially within a floodplain, proof of sufficient flood insurance coverage must be provided. In any case, a project is required to provide a copy of a floodplain map of the project area, with the project site being delineated thereon.

Identify Commonwealth as Additional Insured: The commonwealth shall be listed on the above insurance policies as an additional insured. Upon request, the Grantee shall furnish proof of insurance as required by this section to OB.

RESTRICTIONS ON GOVERNMENTAL ENTITIES SELLING RACP PROJECTS

Article 8 of the RACP Grant Agreement spells out sale price restrictions for a governmental entity that sells property that was acquired and/or improved with RACP funds. The restrictions are required to insure that the Grantees CANNOT sell the property for a net gain or even recoup the value of the grant in the sale price. [A PDF download is available that contains more information on Article 8.](#)

DRAFT AIA® Document A133® - 2019

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

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month, and year.)

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

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

« »
« »
« »
« »

for the following Project:
(Name, location, and detailed description)

« »
« »
« »

The Architect:
(Name, legal status, address, and other information)

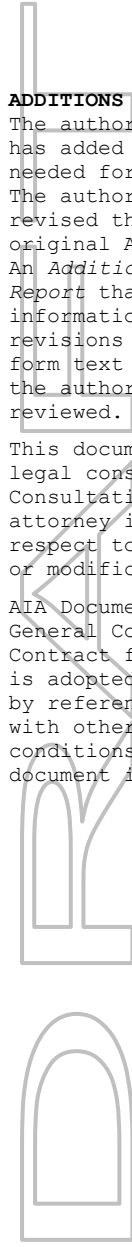
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The Owner and Construction Manager agree as follows.

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.

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

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as “not applicable” or “unknown at time of execution.”)

§ 1.1.1 The Owner’s program for the Project, as described in Section 4.1.1:

(Insert the Owner’s program, identify documentation that establishes the Owner’s program, or state the manner in which the program will be developed.)

« »

§ 1.1.2 The Project’s physical characteristics:

(Identify or describe pertinent information about the Project’s physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

« »

§ 1.1.3 The Owner’s budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

« »

§ 1.1.4 The Owner’s anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

« »

.2 Construction commencement date:

« »

.3 Substantial Completion date or dates:

« »

.4 Other milestone dates:

« »

§ 1.1.5 The Owner’s requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

« »

§ 1.1.6 The Owner’s anticipated Sustainable Objective for the Project:
(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

« »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

« »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

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§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Construction Manager’s submittals to the Owner are as follows:
(List name, address and other contact information.)

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§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

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.2 Civil Engineer:

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.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

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§ 1.1.11 The Architect’s representative:
(List name, address, and other contact information.)

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§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

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§ 1.1.13 The Owner’s requirements for the Construction Manager’s staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

<< >>

§ 1.1.14 The Owner’s requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

<< >>

§ 1.1.15 Other Initial Information on which this Agreement is based:

<< >>

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, the agreed-upon, modified AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project and furnish to the Owner and Architect for their information a list of possible Subcontractors. The Architect and/or Owner will promptly notify the Construction Manager if the Architect or Owner has any objection to any such Subcontractors. The receipt of said list shall not require the Architect or Owner to investigate the qualifications of any proposed Subcontractor, nor shall it waive the right of the Architect or Owner later to object to or reject any proposed Subcontractor. If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 7.8.2.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

« »

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of

the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

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

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

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

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

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

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

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

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

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in an agreed upon Agreement Between Owner and Architect. Upon the request of the Construction Manager, the Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement from which the compensation provisions may be deleted.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

<< >>

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

<< >>

Individual or Position

Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

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

§ 5.2 Payments

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

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

« » % « »

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

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

« »

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

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

« »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed « » percent (« » %) of the standard rental rate paid at the place of the Project. Rental rates for equipment rented by the Construction Manager shall not exceed the actual rental rates paid by the Construction Manager

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

«In the event of Construction Manager's delay, default or failure timely to correct a defect in the Work or materials, Contractor acknowledges there will be unascertainable costs associated with the delay in addition to other ascertainable costs. If the Work does not achieve Substantial Completion within the time set forth in the Contract Documents, or within any time extension granted by Owner, Construction Manager shall pay to Owner, in order to compensate Owner solely for unascertainable costs caused by such delay, the sum of [INSERT AMOUNT] Dollars (\$_____.00) per day for each and every calendar day that the Work is delayed as settled and liquidated damages for such portion of the damages caused by such nonperformance. The Parties agree that the aforesaid liquidated damages are not a penalty and are a reasonable estimate of the damages the Owner will suffer in the event of Construction Manager's delay, default or failure timely to correct a defect in the Work or materials. Construction Manager agrees to pay such amounts within ten (10) calendar days after written request from Owner. If Construction Manager is obligated

to pay any amount to Owner pursuant to this Section, then Owner shall have the right to offset any such amounts from any amount otherwise due Construction Manager under this Agreement. Such payment shall be in addition to and in no event shall relieve Construction Manager from liability for those damages and costs which can be ascertained and for any other damages resulting from any reasons other than delay, or as specified in the Contract Documents. »

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

« »

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. To the extent the Cost of the Work plus the Construction Manager's fee exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

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

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

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

« »

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

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

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

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

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

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201-2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

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

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term “related party” shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 The Owner shall approve that portion of the Work (if any) to be self-performed by the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

« »

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the « » day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the « » day of the « » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « » (« ») days after the Architect receives the Application for Payment.

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

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Each Application for Payment shall also include a Construction Manager's sworn statement, detailing all parties who performed any part of the Work, the amount of such parties' contracts, including Change Orders, the amount paid to date and the amounts due with such Application for Payment. Each Application for Payment shall also include a lien waiver (in a form acceptable to the Owner) from Construction Manager waiving any and all mechanic's lien rights through the date of such Application for Payment, and similar sworn statements and lien waivers from all Subcontractors and materials suppliers through the date of such Application for Payment.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

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

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

«ten percent (10%) »

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

« »

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

« »

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner’s audit and reconciliation, upon Substantial Completion.)

«Upon Substantial Completion of the Work and submission of a proper Application for Payment, Owner shall release retainage currently withheld except for an amount equal to 200% of the cost of remaining Work and cost to complete the Punchlist »

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

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

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

§ 11.1.12 In taking action on the Construction Manager’s Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

« »

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

« » % « »

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the

Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

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§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[] Arbitration pursuant to Article 15 of AIA Document A201–2017

[] Litigation in a court of competent jurisdiction

[] Other: *(Specify)*

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

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

- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

« »

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, 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 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, 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.

§ 14.2.2 The Owner may, without consent of the Construction Manager, 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 Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than « » (\$ « ») for each occurrence and « » (\$ « ») in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than « » (\$ « ») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than « » (\$ « ») each accident, « » (\$ « ») each employee, and « » (\$ « ») policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™-2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« »

§ 14.5 Other provisions:

« »

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 Building Information Modeling Exhibit, if completed:

« »

- .6 Other Exhibits:
(Check all boxes that apply.)

« » AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

« »

« » Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|----------|-------|------|-------|
| | | | |

- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« »

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

OWNER *(Signature)*

« »« »

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

« »« »

(Printed name and title)



DRAFT AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

<<
>>
<< >>

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.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents consist of the Agreement between the Owner and Contractor (hereinafter the “Agreement”) and consist of the 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. Insofar as possible, the Contract Documents shall be interpreted to be consistent with one another. 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 other documents such as bidding requirements (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”). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect’s consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect’s consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect’s duties. In the event of inconsistencies within or between parts of the Contract Documents relating to the quantity or quality of the Work, the Contractor shall, without an increase in the Contract Sum or the Contract Time, proceed based on mutual agreement, or in the absence of mutual agreement, shall provide the better quality or greater quantity of Work. In the event of a conflict between parts of the Contract Documents other than a conflict relating to the quantity or quality of the Work, in the absence of mutual agreement, where the conflict cannot otherwise be reasonably resolved by the language used, the following order of precedence shall control: (1) the Agreement, with any Modifications; (2) the exhibits and attachments to this Agreement; (3) the General Conditions; (4) the Drawings; (5) the Specifications; and (6) any other Contract Documents in the order that is most reasonable under the circumstances.

§ 1.1.3 The Work

The term “Work” means the construction and services required by or reasonably inferable from the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, general conditions, project management and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project. The Work shall also include labor, materials, equipment and services provided by Subcontractors, Sub-subcontractors, material suppliers or any other person or entity for whom Contractor is responsible under or pursuant to the Contract Documents. The Contractor acknowledges and agrees that the Contract Documents are adequate and sufficient to provide for the completion of the Work.

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect’s consultants under their

respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 KNOWLEDGE

The terms “knowledge,” “recognize” and “discover,” their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows, recognizes or discovers in exercising the care, skill and diligence required by the Contract Documents. The expression “reasonably inferable,” “reasonably practicable” and similar terms in the Contract documents shall be interpreted to mean reasonably inferable or reasonably practicable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Requirements of the Contract Documents that are indicated or shown on any one document shall be deemed to have been included, and will be as binding as it is shown on all other documents. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation reviewed and approved by the Owner. A duplication of work is not intended by the Contract Documents and any duplication specified shall not become a basis for extra work to the Owner. The terms and conditions of this Subsection 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7 herein.

§ 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.

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

§ 1.2.3.1 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 by the Owner in writing prior to execution of the Contract or if accepted as a change in the Work by Owner and Architect in writing.

§ 1.2.4 The Contract Documents contemplate a finished Project of such character and quality as described herein and is reasonably inferable from the Contract Documents, and the Contractor, recognizing the impossibility of producing Drawings and Specifications with perfect accuracy, agrees that its Contract Sum for the Work is for a complete and operable Project, in compliance with good practice and other terms and conditions of the Contract Documents.

§ 1.2.5 Drawings are, in general, drawn to scale, and are of necessity diagrammatic; symbols are used to indicate materials and structural, mechanical and electrical control requirements. The Contractor acknowledges that it is not possible to indicate all connections, fittings, fastenings, etc. which are required to be furnished for the proper execution of the Work and which are reasonably inferred from the Drawings. Any connections, fittings, fastenings, etc. required to be furnished for the proper execution of the Work shall be reasonably inferred from the Drawings using industry standards and good construction practice as a basis for making such inference. Connections, fittings, fastenings, etc. included in the Contract Documents shall be furnished by the Contractor as part of the Contract Sum.

§ 1.2.6 It is the Contractor's responsibility to obtain from the Architect any and all required clarifications of all questions which may have arisen or may arise as to the intent of the Contract Documents. Should the Contractor have failed to obtain such clarification and the Architect is subsequently informed by a person other than the Contractor that a question exists regarding the intent of the Contract Documents, then the Architect shall provide reasonable clarifications which shall be binding on the Contractor. Except as provided herein, such clarifications by the Architect shall not constitute the basis for claims for extra costs by the Contractor. In the event that such clarification leads to a material change in the scope of Work, a Change Order shall be issued.

§ 1.2.7 The Contractor shall verify all dimensions prior to execution of any particular phase of the Work. Whenever inaccuracies or discrepancies are found, the Contractor shall consult the Owner and the Architect prior to any construction or demolition. Should any dimensions be missing, the Owner and the Architect will be consulted and supply them prior to execution of the Work. Dimensions for items to be fitted into constructed conditions at the job will be taken at the job.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights, unless the contract between the Owner and the Architect provides otherwise. 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 Architect's consultants' reserved 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 without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, 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.

§ 1.7 Digital Data Use and Transmission

The parties shall 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.

§ 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 and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite

AIA Document G202™–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.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Unless otherwise expressly provided in the Contract, no one other than the Owner's representative shall have authority to act on behalf of the Owner with respect to the Contract.

§ 2.2 INTENTIONALLY DELETED

§ 2.3 Information and Services Required of the Owner

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

§ 2.3.2 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 INTENTIONALLY DELETED

§ 2.3.4 The Owner shall furnish customary surveys describing physical characteristics, and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to reasonably rely on the accuracy of information prepared by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Information furnished by any of the Owner's third-party consultants or engineers (regarding surveys, subsurface investigative reports, soil borings, and other material of a similar nature) is for general information only and is not a guarantee of the completeness or accuracy of such information, unless specifically noted otherwise herein. The Contractor shall verify all existing grades, conditions and dimensions of existing physical conditions and structures and shall report any inconsistencies in writing to the Owner and Architect. The Contractor shall establish all lines and levels required to execute the Work and shall bear all costs involved and shall be responsible for their accuracy and maintenance.

§ 2.3.4.1 In all cases of interconnection of its Work with existing work, the Contractor shall verify at the Project site all dimensions relating to such existing work. Any errors due to the Contractor's failure to so verify locations or dimensions shall be promptly rectified by the Contractor without any additional cost to the Owner.

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

§ 2.3.6 The Contractor shall be furnished free of charge one Project Manual, one set of prints of Drawings, and one set of reproducible Drawings. Additional copies of Contract Documents may be printed by Contractor at its expense. .

§ 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 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. This right shall be in addition to, and not in restriction of, the Owner's rights under Section 12.2.

§ 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 a seven-day period 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 Architect may 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, without limitation, Owner's expenses and compensation for the Architect's additional services and other professional services made necessary by such default, neglect, or failure plus the administrative cost to Owner in effecting the correction of 18% of the cost of the correction. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If providing the above referenced seven days' prior notice to the Contractor is not reasonable because of an emergency or exigent circumstances, the Owner shall provide only that prior notice which is reasonable under the circumstances.

§ 2.6 SAFETY PROGRAMS

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

§ 2.7 CUMULATIVE RIGHTS

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and, unless otherwise provided in the Contract Document, in accordance with all material and product manufacturers' specifications and directives.

§ 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 Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor. The Contractor shall at all times facilitate and permit the inspection of the Work by the Owner, the Owner's landlord, the Architect, public authorities, others who may need to inspect the Work, and any agents, employees, representatives, designees and consultants of any of the foregoing.

§ 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 previously visited the site, become familiar with local conditions under which the Work is to be performed, studied information provided by the Owner and the Owner's consultants, and correlated personal observations with requirements of the Contract Documents. The Contractor agrees that notwithstanding any other provision of the Contract, it shall not be entitled to any increase in the Contract Sum or the Contract Time with respect to any condition which could have been known by the Contractor as a result of the investigation, evaluation, and information described in this Section 3.2.1, or was reasonably apparent from the information provided by the Owner or the Owner's consultants. In addition, the Contractor shall perform the Work in accordance with the Contract Documents and submittals approved

pursuant to Section 3.12 shall at no time perform a portion of the Work without such Contract Documents and submittals.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, prior to execution of the Contract and before starting each portion of the Work thereafter, 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 2.3.4, 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. The Contractor's review shall include identification of materials, products, systems, procedures or methods of construction which are incorrect, inadequate, obsolete or unsuitable for the purpose intended. These obligations are for the purpose of facilitating coordination and construction by the Contractor; however, the Contractor shall promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect and the Owner may require.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall 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.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. 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 and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures and shall not proceed with that portion of the Work without further written instructions from the Architect or the Owner. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures, but the Contractor shall remain responsible for using reasonable care and skill in carrying out the means, methods, techniques, sequences, or procedures specified by the Owner. In no event shall the Contractor employ construction means, methods, procedures or techniques that violate (1) requirements of any warranties applicable to the Work, or (2) laws, ordinances, regulations, codes or other legal requirements applicable to the Contractor's performance of the Work.

§ 3.3.1.1 The Contractor represents that the construction means, methods, procedures and techniques selected by the Contractor to perform the Work will be consistent with: (1) good and sound practices within the construction industry (including LEED compliance); (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) all laws, ordinances, regulations, orders, and other legal requirements which bear upon the Contractor's performance of the Work.

§ 3.3.2 The Contractor shall be responsible to the Owner for and indemnify the Owner for the 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 or any of its suppliers.

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

§ 3.3.3.1 Contractor shall require each of its Subcontractors to inspect Work in place prior to proceeding with the Subcontractor's work to determine that such Work is in proper condition to receive the Subcontractor's work. A decision by a Subcontractor to proceed with its Work shall constitute an acknowledgment that the Subcontractor has inspected the Work in place and that the Work is in proper condition to receive the Subcontractor's work.

§ 3.4 Labor and Materials

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

§ 3.4.2 Except in the case of minor changes in the Work 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 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 or the employment of Subcontractors who are not licensed or skilled to perform the work required of them.

§ 3.4.4 The Contractor shall at all times provide an adequate quantity and quality of labor to maintain the schedule for the Work and to achieve Substantial Completion of the Work within the Contract Time (including any authorized extension thereof). To the extent that the Contractor falls behind schedule for a reason attributable to the Contractor, a Subcontractor, or a Sub-subcontractor, the Contractor shall provide all additional necessary labor, including overtime labor if necessary, to make up the schedule, with no increase in the Contract Time or the Contract Sum. In addition, if the Contractor fails to provide an adequate quantity and quality of labor, the Owner may, but shall not be obligated to, with two (2) days' notice, supplement the Contractor's forces and deduct all associated costs from the Contract Sum.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects in materials and workmanship not inherent in the quality required or permitted, that the Work will conform to the requirements of the Contract Documents, and that the Work is fit for the purposes for which it is intended or foreseeably may be used. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Owner will, in its sole judgment, determine the quality and acceptability of all parts of the Work. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Also, if requested by the Owner, Contractor shall execute a separate written guaranty.

§ 3.5.2 The Contractor expressly warrants its Work for one year after Completion. The Contractor will make any repair or replacement to the Work resulting from or necessitated by defective materials or workmanship or construction not in accordance with the Contract Documents. The Contractor shall make the repairs or replacements required by this Subparagraph within ten (10) days after Owner gives written notice to the Contractor. Should the Contractor fail to make timely corrections, the Owner shall have the right to make the corrections and the Contractor shall be responsible for the immediate payment thereof.

§ 3.5.3 Without limiting the effect of other warranties or representations, expressed or implied, relating to the Contract, Contractor warrants and represents that the Contractor carefully has examined all the Contract Documents,

the site of the Project and is familiar with all aspects of the site and Project as they relate to the Work, the schedule of Work and the actual or potential weather, site, site supervision, control and coordination, Project schedule and Contractor problems that may adversely affect the Work, its schedule and the profitability of its bid, and that nonetheless, Contractor has bid and contracted the Work as set forth on a Guaranteed Maximum Price basis and acted in accordance with that knowledge, understanding and examination, and previously to executing the Contract has documented in writing to Owner any limitations to the Contract or the Work arising from such examination. Contractor understands that Owner has relied on Contractor's compliance with this Section 3.5.3 in awarding the contract.

§ 3.5.4 Contractor further warrants that Contractor is financially solvent, experienced in the Work, experienced in the size and magnitude of the Work, and competent to perform the Work in accordance with the requirements of the Contract and the schedule set forth in the Contract Documents.

§ 3.5.5 During the performance of its Work, Contractor will at all times comply with, and will not violate any applicable federal, state, county, or local statutes, laws, orders, regulations, rules, ordinances, codes, licenses and permits of any court, agency or governmental authorities, including without limitations, those relating to environmental matters, including without limitation, (i) the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 69 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (and any amendments or extensions thereof) ("CERCLA"), 42 U.S.C. § 9601 et seq., the Toxic Substances Control Act ("TSCA"), the Hazardous Materials Transportation Act, as amended (49 U.S. C. § 1801 et seq.), the Resource Conservation Law and any amendments or extensions to any such statutes, laws, orders, regulations, rules, ordinances, codes, licenses and permits, and (ii) all other applicable environmental requirements.

§ 3.5.6 The warranties provided in this Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy provided by law or by the Contract Documents and shall survive the Completion of the Work and the acceptance of the Work by the Owner.

§ 3.5.7 Contractor shall not terminate any subcontract of more than Fifty Thousand Dollars and No Cents (\$50,000.00) without the prior written approval of Owner.

§ 3.5.8 Contractor has taken all steps necessary to lawfully authorize its entry into and the execution of the Contract.

§ 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. The Contractor shall collect all written warranties and equipment manuals which are available with reasonable diligence and deliver them to the Owner prior to final payment from the Owner to the Contractor. The warranties to be collected and delivered to the Owner under this Section shall include, without limitation, all warranties and guarantees of Subcontractors with respect to any portion of the Work. The Contractor shall ensure that all such warranties and guarantees are obtained so that they extend for the benefit of the Owner, and are available to be asserted by the Owner. The Contractor shall avoid acts and omissions which cause any such warranties to become void. The Contractor agrees to assign to the Owner at the time of Completion of the Work any and all manufacturer's warranties relating to goods and equipment incorporated in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ 3.6 Taxes

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. In addition, the Contractor shall pay all unemployment, social security, workers' compensation, and other such taxes imposed by governmental authorities, and shall require all Subcontractors to pay such taxes.

§ 3.6.2 The Contractor shall pay all wage and occupation taxes as required by the local municipality at the Project Site.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

§ 3.7.1.1 Copies of all certificates, permits, approvals and similar documents obtained by Contractor shall be delivered to the Owner as soon as practicable. Certificates of inspection, use and occupancy shall be delivered to the Owner in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. The costs of all permits, fees and inspections that are the Contractor's responsibility are included within the Contract Sum except as otherwise expressly provided in the Contract Documents.

§ 3.7.1.2 In the absence of prior written consent of the Owner, Contractor shall not perform all or any portion of the Work until the required permits have been obtained for that portion of the Work.

§ 3.7.2 The Work shall conform to and Contractor shall comply with and give notices required by all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, permits and lawful orders of public authorities applicable to performance of the Work. Contractor shall at no cost to Owner, correct any and all Work that is performed contrary to any applicable laws, statutes, regulations, rules, ordinances, codes, licenses and/or permits and shall indemnify, defend, and hold harmless the Owner from and against all claims, losses, damages, fines, penalties, costs and expenses (including attorneys' fees) incurred by Owner as a result of any actual or alleged non-compliance. The Contractor's obligations under this Section 3.7.2 shall specifically survive the one year warranty contained in Section 3.5.2. The Contractor shall arrange for necessary inspections by governmental authorities to enable the Owner to obtain necessary occupancy permits.

§ 3.7.3 If the Contractor observes that portions of the Contract Documents are at variance with any applicable law, statute, regulation, rule, ordinance, code, license, or permit, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification. If the Contractor performs Work that it knew or should have known was 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 Contractor shall immediately provide notice to the Owner before conditions are disturbed and immediately after discovery but in no event later than 5 days after first observance of the conditions make an appropriate Claim for an increase in the Contract Sum and/or the Contract Time as provided in these General Conditions. Such Claim is further subject to the other requirements and limitations in the Contract, including, without limitation, those in Section 3.2.1 of these General Conditions.

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 Superintendent and Project Manager

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during performance of the Work. The Contractor shall also employ a project manager, who shall have responsibility for the Project but is not required to be in attendance at the Project site at all times. The superintendent and project manager 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. The superintendent may not be removed without the prior written consent of the Owner. The Owner reserves the right to have any employee of the Contractor or of any Subcontractor removed from the Project.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent and project manager. Within 14 days of receipt of the information, the Architect or the Owner may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or project manager or (2) requires additional time for review. Failure of the Architect or Owner to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent or project manager to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent or project manager without the Owner's consent, except in the event of the superintendent or project manager becomes unable to perform any required duties due to death, disability, transfer, or termination of employment with the Contractor..

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, 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 shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect'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 Owner and the Architect reasonable time to review submittals. If the Contractor fails to submit 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.

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

§ 3.10.4 The construction schedule shall be in a detailed precedence-style critical path management or primavera-type format satisfactory to the Owner and the Architect that shall also: (i) provide a graphic representation of all

activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"); and (iv) provide load cost information to each task. Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed to be part of the Contract Documents and attached to the Agreement as an Exhibit hereto and made a part hereof. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner and the Architect of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in this Agreement as "progress reports") as set forth in Subsection 3.10.1 or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the time for completion of the Project, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to in writing by the Owner and authorized pursuant to Change Order.

§ 3.10.5 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective action necessary to expedite the progress of construction, including, without limitation: (i) working additional shifts or overtime; (ii) supplying additional manpower, equipment, and facilities; and (iii) other similar measures (hereinafter referred to as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5 except under those certain conditions explicitly provided in this Agreement. The Owner may exercise the rights furnished to the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the performance of the Work will comply with any Milestone date or completion date set forth in the Contract Documents.

§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of Owner's facilities or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the work affecting operation of Owner's facilities during hours when the facilities are not in operation. Any postponement, rescheduling, or performance of the Work under this Subparagraph 3.10.6 may be grounds for an extension of the time for completion of the Project, if permitted under Subparagraph 8.3.1, and an equitable adjustment in the Contract Sum if: (i) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents; and (ii) such rescheduling or postponement is required for the convenience of Owner.

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The Contractor shall maintain and 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 in addition to job logs, other job reports, attendance sheets, licenses, and permits. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.2 The Contractor shall preserve and maintain all documents and records related to the Project for a period of at least six (6) years following the receipt of final payment from the Owner.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work. Shop Drawings shall be prepared by persons possessing expertise and experience in the trade for which the Shop Drawing is prepared.

§ 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 is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action. The Contractor's approval shall be noted on the submitted item or in its transmittal letter, together with notice of any deviation in the submitted item from the requirements of the Work and of the Contract Documents. In collaboration with the Architect, the Contractor shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action. Further, the Contractor shall:

- .1 Submit the manufacturer's standard printed data sheets, catalog pages, illustrations and instruction sheets, printed specifications, and printed shop drawings for standard manufactured items in sufficient numbers of copies each for checking by the Architect and to allow the Architect to retain 2 copies for its use.
- .2 Submit samples in duplicate. Each sample shall be properly marked with type and brand of material, its place of origin, name of producer, Contractor's name, and name of project for which the material is intended. All packing and shipping charges on samples shall be paid for by the Contractor. The Architect will retain two approved samples.
- .3 Submit three prints of shop drawing submittals.

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

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

§ 3.12.8 The Work shall be in accordance with 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 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 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 and the Architect 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.

§ 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 Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall conduct all activities so as not to cause damage, disturbance, or disruption to surrounding property or to those that own, have an interest in, visit, or utilize such surrounding property. Damage to elevators, patios, roads, walkways and other features on the site and/or adjacent thereto, resulting from hauling, storage of materials, or other activity connected with the Work and caused by the Contractor, its Subcontractors, or anyone for those acts they are responsible, shall be repaired by the Contractor, at Contractor's expense, to satisfaction of the Architect, the Owner, the Owner's landlord and/or the local authorities having jurisdiction over the roadways and/or the Project.

§ 3.13.2 All construction operations, storage of materials, equipment and debris shall be restricted to areas within the Project limits and subject to the Owner's approval. All existing facilities shall be kept clean, unencumbered, and free of debris and excessive dust. Contractor will perform the Work in a manner which minimizes any and all disturbance of tenants or other occupants of the site.

§ 3.13.3 Unless otherwise agreed in writing, the Contractor shall provide all temporary buildings, sanitary facilities and offices and shall arrange for temporary connections and lines for water, electricity, telephones, gas, compressed air, heat and similar services and utilities required for performance of the Work. All such temporary services and utilities shall be secured by the Contractor from public utility companies and other sources at the expense of the Contractor.

§ 3.13.4 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, its consultants, agents, and employees from and against any and all claims, damages, losses and expenses, including, but not limited to attorneys' fees and other costs of defense, arising out of or resulting from the Contractor's, its Subcontractors', their employees or agents, (i) use of or transport of materials or equipment to or from off-site storage or lay-down areas; and (ii) location and identification of utility lines in and around the Project site, any failure to protect such lines, and any claims of interruption of service from such lines. The defense and indemnification obligations accepted by the Contractor under this Subparagraph exist whether the aforesaid claims,

damages, losses and expenses are based on negligence, strict liability in tort, breach of warranty, breach of contract, duty to indemnify or any other basis whatsoever. However, the Contractor shall have no obligation to indemnify the Owner against its own gross negligence or willful misconduct or that of its consultants, agents and employees.

§ 3.14 Cutting and Patching

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

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

§ 3.14.3 The Contractor shall not cut or alter any completed portion of the Work without the prior written approval of the Owner. Any request by the Contractor for such approval shall be in the form of a submission of Shop Drawings. The submission shall show the nature and extent of the cutting or alteration to be performed and the method of restoration of the cut or altered work so that the finished Work will comply in all respects with the Contract Documents. Such submission shall be accompanied by sufficient information to enable the Architect to determine if the proposed cutting or alteration (a) is necessary, (b) will not adversely affect the structural integrity or moisture resistance or watertight integrity of any element of the Project, (c) will not require modification of the Contract Documents or change in other items of the Work, (d) will not result in a cost disadvantage to the Owner, (e) will be protected by guarantees and warranties at least as stringent as those required in the Contract Documents for the Work affected, (f) will not jeopardize, if applicable, the Project's LEED or other energy certification(s), and (g) will be in conformity with the intent of the Contract Documents.

§ 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 from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery, surplus materials and supplies belonging to the Contractor or Subcontractor, and shall leave the premises and Work in good order, vacuum clean, and ready for use. During the progress of the Work, the Contractor shall store materials and equipment in an orderly manner and shall keep the premises free from debris, litter, rubbish and obstruction at all times. The Contractor shall dispose of all materials and waste in accordance with all applicable laws, ordinances, requirements, codes, rules, and regulations.

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

§ 3.16 Access to Work

§ 3.16.1 The Contractor shall provide the Owner, Architect public authorities, others who may need to inspect the Work, and their respective representatives, employees, agents, consultants, and designees with access to the Work in preparation and progress wherever located. and shall at all times facilitate the inspection of the Work by such persons or entities.

§ 3.16.2 Contractor shall provide to Owner complete copies of all assignments, agreements and subcontracts entered into with respect to the prosecution of any of its Work. Such assignments, agreements and subcontracts shall be required to adopt and contain any and all material terms and conditions of this Contract.

§ 3.16.3 Contractor shall cooperate with Owner in the creation, storage, and retrieval of all documents applicable to the Project; Owner shall have access to all Contractors' documents applicable to the Project upon request and no later than after twenty-four (24) hours Notice.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify and hold the Owner and Architect harmless from 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 or Architect. 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.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, reimburse, and hold harmless the Owner, Architect, Architect's consultants, and other representatives, 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: (i) injuries to or death of any person, including, but not limited to, employees of Owner or Contractor, and/or loss of or damage to any property, including, but not limited to, the property, other than the Work itself, of Owner or Contractor in any way sustained or alleged to have been sustained, directly or indirectly, by reason of or in connection with: (a) the performance of the Work by the Contractor, its employees, agents, Subcontractors and/or Sub-subcontractors/Suppliers or their employees, including, but not limited to, the use of any equipment or material furnished by the Owner, and/or (b) the presence of the Contractor, its employees, agents, Subcontractors, Sub-subcontractors/Suppliers or their employees on the premises of the Owner; (ii) the performance of the Work where such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property caused by the negligent acts or omissions of the Contractor, its Subcontractor or anyone directly or indirectly employed by it or anyone for whose acts it may be liable; (iii) the actions or omissions of the Contractor, its employees, agents, Subcontractors or other persons acting under the Contractor's direction or control in connection with the performance of the Work; (iv) the presence of any defects or deficiencies in connection with the Work; (v) the breach by the Contractor of any agreement or representation set forth in this Agreement; and (vi) the violation by the Contractor of any applicable laws. The defense and indemnification obligations accepted by the Contractor under this Subsection exist whether the aforesaid claims, damages, losses and expenses are based on negligence, strict liability in tort, breach of warranty, breach of contract, duty to indemnify or any other basis whatsoever. This indemnity includes, but is not limited to, indemnification by Contractor of acts of negligence by Owner or its agents or employees against employees of Contractor. However, the Contractor shall have no obligation to indemnify the Owner against its own willful misconduct, or that of its consultants, agents or employees. In the event that the Contractor fails or refuses to indemnify or defend an indemnitee under this Paragraph, in addition to all other obligations and upon adjudication in favor of an indemnitee and against the indemnitor, the Contractor shall be responsible for any and all costs associated with bringing such action, including reasonable attorneys' fees. 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 The Contractor shall promptly give written notice to the Owner, after the Contractor has knowledge, of any claim arising from the construction of the Project and/or the Work against the Contractor or Owner or any investigation by any governmental agency of any activity conducted on or in the Owner's premises or other work Site or related to the Project and/or the Work unless knowledge of such investigation has been declared confidential by judicial order or of the commencement of any legal proceeding against the Owner as to such claim or investigation. The Contractor shall not, in the defense of any such claim, investigation, or litigation consent to the entry of any judgment or enter into any settlement (except with the written consent of the Owner), that does not include as an unconditional term thereof, the giving by the claimant or the plaintiff to the Owner of a complete release from all liability in respect of any claim or litigation subject to the provisions of subparagraph 3.18.1. This provision is not intended to compromise the availability of insurance on this Project, but is only intended to insure compliance with provisions of subparagraph 3.18.1.

ARTICLE 4 ARCHITECT

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

§ 4.2 Administration of the Contract

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

§ 4.2.2 The Architect 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. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor 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 Contractor otherwise relating to the Project. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized or are reasonable under the circumstances, 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, and communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

§ 4.2.6 The Owner and Architect have authority to reject Work that does not conform to the Contract Documents. Whenever the Owner or Architect considers it necessary or advisable, the Owner or Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Owner or Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner or Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

§ 4.2.8 The Owner or Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect may, upon the Owner's request investigate and make determinations and recommendations regarding concealed and unknown conditions.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10. The cost of the Architect's review to determine Substantial Completion (referred to in Section 9.8.2) after the initial review and the first re-review shall be borne by the Contractor, and will be billed hourly by the Architect to the Owner and deducted from the retainage.

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

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness, so as not to delay the progress of the Work.

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A "Subcontractor" is a person or entity who has a direct contract with the Contractor to: (1) perform, furnish labor/skills, and/or supervise a portion of the Work at the site and/or (2) otherwise haul and/or supply building materials, supplies, fixtures, machinery and/or equipment for the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A "Sub-subcontractor" is a person or entity of any tier (and also includes a supplier) who has a direct or indirect contract with a Subcontractor to: (1) perform, furnish labor/skills, and/or supervise a portion of the Work at the site and/or (2) otherwise haul and/or supply building materials, supplies, fixtures, machinery and/or equipment for the Work. 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 Owner 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. Within 14 days of receipt of the information, the Architect or Owner may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect 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 or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

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

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

§ 5.3.3 The Contractor agrees to obtain and provide to Owner and Architect an executed "Waiver and Release Upon Progress Payment" form (in a form acceptable to or provided by Owner) from each Subcontractor after each and every payment made by the Contractor to such Subcontractor. In addition, Contractor agrees that the Owner and/or Architect may, at its option, contact any and all Subcontractors to (a) inquire about status of payments for the Work, (b) request copies of Waiver and Release Upon Progress Payment forms, and (c) pay the Subcontractors directly, should the Owner believe that payments to the Subcontractors are delinquent (in which case, the Contractor agrees to immediately reimburse Owner for one and all such direct payments made).

§ 5.3.4 Contractor agrees to include the requirements of Sections 3.6.3 and 3.19, in full, in any contracts with subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

§ 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. Each subcontract shall specifically provide that Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to Owner's exercise of any rights under this conditional assignment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors. .

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

§ 6.1.3 Unless the Owner directs the Contractor otherwise, the Contractor shall coordinate the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, and shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Owner and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Owner and Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work.

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

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor, or any Subcontractor or Sub-subcontractor causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and 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, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor.

§ 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. Except as permitted in Paragraph 7.3, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealing between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or additions to the Work, whether or not there is, in fact, any unjust enrichment, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided in the Contract Document.

§ 7.2 Change Orders

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

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

§ 7.2.2 A Change Order once executed is final. Each Change Order shall constitute a final settlement between the Owner and the Contractor with respect to all matters relating to the change in the work which is the subject of such Change Order, including but not limited to, any and all direct or indirect costs associated with such change; the cumulative effect of such changes and all previous changes in the Work, the Contract Sum or the Contract Time, including any and all costs and schedule impacts resulting from or associated with loss of labor productivity; and any and all adjustments to the Contract Sum or the Contract Time.

§ 7.3 Construction Change Directives

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

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

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

- .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 Architect 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 Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 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 Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 Minor Changes in the Work

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 Architect 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 Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

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. The date shall not be postponed by the acts or omissions of the Contractor or by persons or entities for whom the Contractor is responsible.

§ 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 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. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the critical path of the Work and such delay is directly due to strikes, lockouts, tornados, hurricanes, earthquakes, governmental restrictions, enemy acts, unavoidable fire or other casualty, which are beyond the Contractor's control, then performance shall excused for the period of such delay and the Contract Time shall be extended for a period equivalent to the period of such delay. The Contractor acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent that such delay (1) is not caused or could not have been anticipated by the Contractor or its Subcontractors, (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, and (3) has a duration not less than one (1) day.

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

§ 8.3.3 Notwithstanding anything contained in the Contract Documents to the contrary, the Contractor's sole and exclusive remedy for any delays, regardless of the cause, shall be an extension of time only in which to complete the Work. In no event shall Contractor be entitled to recover any payment, compensation or damages (including but not limited to, extended home office overhead, lost opportunity costs, profit, loss of profit, anticipated profits, labor inefficiencies, consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities or insolvency, and/or any additional costs or mark-up for and/or associated with the Contractor's fee) for any delays or hindrances from any cause whatsoever in the progress of the Work, notwithstanding whether such delays be avoidable or unavoidable. In consideration of this grant of a time extension, the Owner and Architect shall not be held responsible for any loss or damage or increased costs sustained by the Contractor through any delays caused by the Owner or Architect or Separate Contractor or any other Contractor or on account of the aforesaid causes or any other cause of delay.

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

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect 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 Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 Within the time provided in the Agreement between the Owner and the Contractor, the Contractor shall submit to the Architect and the Owner 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 or Architect require, such as lien waivers and copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders. Such applications may not include requests for payment of amounts that the Contractor does not intend to pay a Subcontractor or Sub-subcontractor because of a dispute or other reason.

§ 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.

§ 9.3.1.3 The Contractor is also required to submit with each Application for Payment a current copy of the change order/proposal log in a form approved by Owner and a current construction schedule that clearly defines the progress or percentage complete for each portion of the work. Any additional coordination of this procedure will occur in the preconstruction meeting upon the award of the contract.

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, 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.

§ 9.3.4 If the Contractor's Application for Payment is subject to audit, or if Owner has any doubt as to the validity or accuracy of the content of Contractor's Application for Payment, then Contractor's right to payment for the disputed amount or any amount necessarily relating to disputed Work or the completion of disputed work may, in Owner's sole discretion, be denied by Owner. Such denial shall not, under any circumstances, be the basis for Contractor's suspension, delay or abandonment of the work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 If the Contractor disputes any determination by the Architect with regard to any Certificates of Payment, Contractor shall nevertheless expeditiously continue to prosecute the Work.

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, or the Owner otherwise has reason to doubt that a Subcontractor or Sub-subcontractor will be properly paid, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or Sub-subcontractor (including any supplier) to whom the

Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. In addition, the Owner may, at its sole option, make payments directly to such Subcontractors or Sub-subcontractors if the Contractor is out of business or otherwise reasonably considered unavailable to endorse or process a joint check. If the Owner makes payments by joint check or directly to a Subcontractor or Sub-subcontractor, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment. All such payments made by the Owner will be credited against the Contract Sum. No such payment by the Owner shall create any express or implied duty on the part of the Owner to any Subcontractor or Sub-subcontractor.

§ 9.5.5 Owner shall not be deemed to be in breach of this Contract by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided the Architect has approved Owner's action or the Work in question shall have been rejected by any governmental authority, provided that payment for any undisputed amount is made to the Contractor and that rejection of the Work is not a result of design errors.

§ 9.6 Progress Payments

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

§ 9.6.1.1 The Owner may withhold payment for any of the reasons listed in Section 9.5.1, and may offset from any payment any damages or other amounts properly owed by the Contractor.

§ 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.

§ 9.6.3 INTENTIONALLY DELETED.

§ 9.6.4 The Owner has the right to request 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 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, and 9.6.4.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors 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, 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

§ 9.6.9 Contractor acknowledges that, pursuant to 49 P.S. § 1501.3, the Pennsylvania Mechanics Lien Law of 1963, as amended, a "Notice of Commencement" (as defined in and pursuant to the Pennsylvania Mechanics Lien Act) is required to be filed on the Department of General Services public accessible internet website in accordance with the Pennsylvania Mechanics' Lien Law of 1963, and a certified copy of such Notice of Commencement is to be conspicuously posted at the Project Site before work begins on the Project. Contractor, as authorized agent of Owner, shall file and post such Notice of Commencement and otherwise comply with all requirements of the

Pennsylvania Mechanics Lien Law. Prior to the date on which work at the Project commences, the Contractor shall post a copy of the Notice of Commencement for each Contract at the Project site and shall ensure that each Notice of Commencement remains posted and visible at all times. The Contractor shall incorporate the following language (the “Notice of Furnishing Language”) into each of its subcontracts for the Project:

A subcontractor that fails to file a Notice of Furnishing on the Department of General Services publicly accessible Internet website as required by the act of August 24 1963 (P.L. 1175, No. 497), known as the Mechanics’ Lien Law of 1963, may forfeit the right to file a mechanics lien. It is unlawful for a searchable project owner, searchable project owner’s agent, contractor or subcontractor to request, suggest, encourage or require that a subcontractor not file the required notice as required by the Mechanics’ Lien Law of 1963.

The Contractor shall include the Notice of Commencement as a contract document for, and the Notice of Furnishing Language in, any Project-related contract to which the Contractor is a party. The Contractor shall also take whatever steps necessary to require all Subcontractors to also require the entities with whom they contract or subcontract for the Project to make any applicable Notice of Commencement a contract document to their respective subcontracts for the Project and include the Notice of Furnishing Language in any such subcontract.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor’s Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount that is properly owed under the Contract, then the Contractor may, upon fourteen additional days’ notice to the Owner and Architect and opportunity to cure, 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. The Contractor shall not stop Work as a result of any payment or portion thereof that is properly withheld by the Owner under any provision of the Contract, and if the Contractor does so, it shall be liable for damages for delay or otherwise which may be caused by such stoppage.

§ 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 and all necessary unconditional certificates of occupancy and other required permits have been issued so that the Owner can occupy or utilize the Work for its intended use. In no event shall the Work or any portion thereof be considered substantially complete until any governmental approvals necessary for the Work to be occupied and utilized have been obtained. Substantial completion shall require, at a minimum, a permanent certificate of occupancy to be obtained, unless all of the following conditions are met: (1) the Owner can legally occupy and utilize the Work without such certificate; (2) the Contractor has fulfilled all duties and correctly performed all Work required by the Contract to obtain such certificate; and (3) the inability to obtain such certificate is not due to the fault of the Contractor, any Subcontractor or Sub-subcontractor, or anyone else for whose acts and omissions the Contractor is responsible.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete and all necessary unconditional certificates of occupancy and other required permits have been issued, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected within thirty (30) days following submission of the punchlist, subject to any additional items that may be added thereto by the Architect or Owner upon notice to the Contractor, 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. The Architect and Owner shall not be obligated to inspect the Work until such punchlist is provided.

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

by the Architect or the Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect and the Owner to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, and all conditions for Substantial Completion have been met, the Architect will prepare 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. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage as set forth in the Agreement between the Owner and the Contractor. Such payment shall be adjusted in accordance with the Agreement for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.5.1 Until the Punchlist work is completed and accepted by the Architect, Owner may withhold 200% of the value of the items set forth in the Punchlist (or such greater amount of retainage as may be specified elsewhere in the Contract Documents).

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance, all necessary permits for the use and occupancy thereof have been issued, and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect and Owner find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect, subject to the Owner's approval, will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect and the Owner as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by Owner.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and the Owner the following, in addition to such further documentation as may be specified elsewhere in the Contract Documents: (1) an affidavit that payrolls, bills for materials and equipment, and other

indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (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, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, (6) all required approvals from governmental entities and (7) 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. 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 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or its Subcontractors or Sub-subcontractors or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, 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 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 Intentionally Deleted

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver, release and discharge of the Owner of all claims and all liability to that payee for all things done or furnished, related to, or arising from the Work, including but not limited to unapproved Change Orders or extras and any act or neglect of Owner relating to or arising from the contract, except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 Contractor shall protect its Work until Final Completion and Final Acceptance of the Work by Owner, and Contractor shall make good or replace at no expense to Owner any damage to its Work from whatever cause which may occur prior to Final Acceptance by Owner, except as covered by applicable Builder's Risk Insurance.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

§ 10.2.3 The Contractor shall 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 adjacent to the Project and improvements to such adjacent property. Any damage to such property or improvements caused by the Contractor shall be the financial responsibility of the Contractor who shall notify the Owner of any such damage within forty-eight (48) hours and advise the Owner on its plans for any correction or remedy along with associated timetable.

§ 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 indemnify and hold harmless Owner and Architect from and against any and all claims, losses, damages, fines, penalties, costs, and expenses including attorneys' fees incurred by Owner or Architect as a result of any actual or alleged noncompliance and shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is solely attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. In conjunction with these obligations, the Owner shall not be responsible for any lost or stolen materials, and the Contractor shall promptly replace such materials at no additional cost to the Owner. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, 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.

§ 10.2.9 Contractor is fully responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and Work Site including general Project site conditions. Contractor acknowledges and agrees that it is fully responsible for the supervision and control of the Work and of Contractor's employees, Subcontractors/Suppliers and the manner in which the Work is performed. Contractor acknowledges that most on-the-job accidents resulting in personal injury or property damage are related to the use of scaffolding, accidents relating to elevations, ladders, construction staging or to the noncompliance by personnel to the OSHA rules, regulations or standards regarding wearing of hard hats, safety helmets and safety eye-wear. Contractor shall fully comply with all safety regulations, rules and standards which may have application to the Work relating to the use of scaffolding, ladders, elevations and construction staging and to the proper use of hard hats, safety helmets and safety eye-wear, and Contractor agrees that it shall be Contractor's sole responsibility to insure that each of its employees, subcontractors and suppliers are also fully aware of and in compliance with all such rules, regulations and standards at all times.

§ 10.2.10 Contractor shall fully protect, defend, indemnify and save harmless Owner against all liability, judgments damages, costs and expenses arising from the failure, omission, or neglect of Contractor or Contractor's employees, agents, Subcontractors and suppliers to comply with the requirements of this Paragraph 10.2 and with the Occupational Safety and Health Act of 1970, as amended, other federal and state and local safety requirements, and

Owner's safety policy. Contractor's obligation to defend, indemnify and save Owner harmless will extend to any citations(s) and proposed penalty(ies) issued to any entity by OSHA or other governmental agency arising out of performance of the Contract by Contractor, its employees or any Subcontractor or supplier of Contractor.

§ 10.2.11 In order to enforce Contractor's obligations under the Contract with respect to the safety precautions and procedures, Owner shall have the right to impose a fine against Contractor for any violation of the requirements as set forth herein.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 As between the Owner and the Contractor, the Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. The Contractor shall not use, introduce, or store any hazardous materials on the Project site, except that the Contractor may use hazardous materials if specifically required by the Contract. In addition, the Contractor may fuel and other petroleum-based products necessary for the use and operation of the Contractor's trucks and equipment, provided that: (a) such use and storage is in accordance with all applicable laws, ordinances, rules, regulations, and other legal requirements; (b) upon final completion of the Project, the Contractor certifies in writing to the Owner that to the best of the Contractor's knowledge, such products have been removed from the Project site and that no damage has been caused to the Project as a result of them. If the Contractor encounters a hazardous material or substance not specifically 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 and Architect of the condition as soon as possible, and in no event more than two (2) days of first notice.

§ 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 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 and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional direct costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, and provided that the Contractor complies with the requirements of the Contract concerning hazardous materials, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are specifically required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances specifically required by the Contract Documents, provided that the Contractor has complied with the requirements of the Contract pertaining to such materials or substances, and that the Contractor is not negligent or otherwise at fault with respect to the use, handling, or disposal of such materials or substances. .

§ 10.3.5 If the Contractor does not comply with the Contract Documents regarding hazardous materials, if the Contractor uses, introduces, or stores any hazardous materials on the Project site other than petroleum-based

products in accordance with Section 10.3.1 of these General Conditions, or if the Contractor is negligent or otherwise at fault regarding the use, handling or disposal of any hazardous materials that are permitted, then the Contractor shall, to the fullest extent permitted by law, indemnify, hold harmless, and reimburse the Owner, the Architect, and their respective consultants, agents, and employees from and against any and all claims, damages, losses, and expenses, including but not limited to fines, penalties, judgments, remediation expenses, and attorneys' fees, arising out of or related to such hazardous materials.

§ 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 For purposes of this Contract, a hazardous material or substance shall include (a) any chemical, material, element, compound, solution, mixture, substance, or other matter of any kind whatsoever, which is defined, classified, listed, designated, or regulated as hazardous, toxic, or radioactive by any federal, state, or local statute, ordinance, regulation, order, judgment, rule, ruling, directive, or other determination by any governmental or quasi-governmental entity, agency, department, board, commission, council, body, or division of any nature having jurisdiction; (b) PCBs or asbestos or materials containing PCBs or asbestos; (c) petroleum or petroleum based chemicals or substances; and (d) urea formaldehyde.

§ 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 and its Subcontractors (as applicable) shall purchase and maintain during the term of this Agreement, at its own expense, the following types of insurance. Copies of all required policies and excess liability policies, with premium, exposure and unrelated Project information redacted shall be provided to Owner upon demand. Such policies shall: (i) be provided by reputable insurers authorized to do business in the Commonwealth of Virginia, with current AM Best ratings of not less than A-; (ii) provide limits no less than as indicated; (iii) be written on an occurrence basis, with the exception of pollution insurance and professional liability insurance. The Contractor shall maintain the required insurance without interruption from the date of commencement of the Work until the expiration of the period for correction of Work as set forth in Section 12.2.2.1 of the Agreement, or termination of any coverage required to be maintained after final payment.:

§ 11.1.1.1 Commercial General Liability on an occurrence basis, and such coverage shall be no less broad than the most recent version of ISO CG 00 01. No exclusionary endorsements material to Contractor's obligations in the Contract may be attached. Products and completed operations coverage shall be maintained for six (6) years after the expiration or termination of the Contract. Throughout the six (6) year period, Contractor shall submit renewal insurance certificates, including the additional insured endorsements, to evidence coverage is being maintained. Such insurance shall cover the legal liability of the Contractor, for acts and omissions of it and its Architect, Contractors, Subcontractors, Consultants and agents (hereafter referred to as "Contractor Party(ies)") who may be engaged in performing any Work or other activities under or in connection with the Contract, for claims or damages arising from bodily injuries or for death resulting therefrom, or for damage to property (other than to Work itself), arising out of the Work or activities of a Contractor Party. Coverage shall have policy limits of not less than « _____ » (\$ « _____ ») for each occurrence and « _____ » (\$ « _____ ») in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 blanket contractual liability applicable to the Contractor's obligations for liability assumed under the Agreement.

§ 11.1.1.2 Commercial Automobile Liability covering all vehicles owned by the Contractor and non-owned and hired vehicles used by the Contractor with policy limits of not less than « [REDACTED] » (\$ « [REDACTED] ») per claim and « [REDACTED] » (\$ « [REDACTED] ») in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section, along with any other statutorily required automobile coverage.

§ 11.1.1.3 Excess Umbrella Liability of not less than \$ [REDACTED] per occurrence and \$ [REDACTED] in the aggregate to cover over both General Liability and Automobile liability policies. required under Sections 11.1.1.1 and 11.1.1.2.

§ 11.1.1.4 Statutory workers compensation coverage compliant with the jurisdiction in which the Contract will be performed (including other states endorsement), and with any jurisdictions in which workers are residents, or through which they may travel in the course of the Contract.

§ 11.1.1.5 Employers' Liability with policy limits as provided below:

\$ [REDACTED] bodily injury for each accident;
\$ [REDACTED] bodily injury by disease for each employee; and
\$ [REDACTED] bodily injury disease aggregate.

§ 11.1.1.6 Pollution Liability Insurance applicable to bodily injury; property damage, including loss of use; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims; all in connection with any loss arising from the Contract. Coverage under this policy shall include coverage for asbestos and mold and shall have limits of liability of not less than \$ [REDACTED] each occurrence with no sunset clause. If coverage is written on a claims-made basis, it shall be maintained for six (6) years after the expiration or termination of the Contract. Throughout the six (6) year period, the Contractor shall submit renewal insurance certificates, including the additional insured endorsements, to evidence coverage is being maintained.

§ 11.1.1.7 All Risk" Builders Risk/Installation Insurance, including collapse coverage, with limits no less than the Total Project Value. "Total Project Value" shall include construction of building, value of equipment to be installed prior to transfer of ownership, and land. Policy shall also include:

- 1) an Endorsement adding Soft Costs, Rental Value, and Loss of Earnings included in all Builder Risk policies.
- 2) a Delay of Occupancy or Use Endorsement.

§ 11.1.2 Contractors and its Subcontractors, if any, shall be responsible for the payment and maintenance of adequate property and/or inland marine insurance coverage for all Contractor and its Subcontractors' construction equipment, used under this Agreement. Owner will neither procure nor maintain any insurance with respects to any items of property/equipment owned or furnished by Contractor and its Subcontractors used for its construction activities.

§ 11.1.3 If Contractor and/or its Subcontractors fail to maintain the insurance, as set forth herein, the Owner shall have the right, but not the obligation, to purchase said insurance at Contractor's and/or Subcontractor's expense.

§ 11.1.4 All liability insurance policies must be endorsed by ISO endorsement number CG 25 04 or similar endorsement that allows Contractor or Subcontractor, as applicable, to specify the application of a separate liability limit as specified in this Agreement.

§ 11.1.5 Contractor and its Subcontractors shall require all policies of insurance that are in any way related to the Work and that are secured and maintained by the Contractor or its Subcontractors, to include clauses providing that each underwriter shall waive all of its rights of recovery, under subrogation or otherwise, against Owner.

§ 11.1.6 Contractor waives all right of recovery against Owner, which the Contractor may have or acquire because of deductible clauses or inadequacy of limits of any policies of insurance that are in any way related to the Work and that are secured and maintained by the Contractor.

§ 11.1.7 Certificates of insurance, and if requested by Owner, copies of policies required to be carried hereunder, shall be provided to Owner 5 days prior to the commencement of any work.

§ 11.1.8 Contractor must provide Owner at least 30 days advance written notice of cancellation or material change in any of the foregoing insurance policies, and no less than sixty (60) days written notice if any of the foregoing insurance policies is nonrenewable or if any limits or coverages are reduced.

§ 11.1.9 Contractor shall make the Owner an additional insured under all applicable insurance policies, including but not limited to, Contractor's Commercial General Liability insurance policy and the Umbrella policy applicable to the Work. Said Commercial General Liability and Umbrella policies must be dedicated exclusively to the Work and not require contribution by insurance policies of the Owner. All Subcontractors must name the Owner as an additional insurance party on their Commercial General Liability policies.

§ 11.1.10 The Contractor's Commercial General Liability Insurance shall include premises-operation (including explosion, collapse and underground coverage), elevators, independent Subcontractors, completed operations and blanket contractual liability on all written contracts, all including broad form property damage coverage.

§ 11.1.11 Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.

§ 11.1.12 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.

§ 11.1.13 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 to the Owner 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 be responsible for purchasing and maintaining the Owner's usual liability insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights of recovery and subrogation against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) 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 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 Architect, Architect's consultants, 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.

§ 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..

§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 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 Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the 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 Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, 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 or After Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of 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 condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the right to require correction specifically by the Contractor but does not waive any other rights and remedies, including, without limitation, the right to enforce other warranties which are the part of the Contract Documents. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5 and the Owner's performance of such corrective work shall not be the basis for the Contractor to void its warranty.

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

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

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate 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 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, 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.

§ 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, or an affiliated entity of the Owner, if the lender or affiliated entity 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 Unless otherwise provided in the Contract, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and

remedies otherwise imposed or available by law or in equity, and any such rights and remedies shall survive acceptance of the Work.

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

§ 13.4 Tests and Inspections

§ 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 Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded and are not necessitated by the fault of the Contractor, its agents or employees..

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, 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 Architect's services and expenses, shall be at the Contractor's expense.

§ 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 Architect.

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

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

§ 13.4.7 No inspection or approval by the Owner or Architect, nor any order or certification by the Owner or the Architect, nor payment shall operate as a waiver or any provision of the Contract.

§ 13.5 Interest

Unless provided otherwise in the Contract Documents, Payments from the Owner to Contractor, which are not in dispute and are due and unpaid under the Contract Documents shall bear interest of six percent (6%) per annum from one hundred and twenty days (120 days) from the invoice or Certification of Payment date.

§ 13.6 MECHANICS' LIENS

§ 13.6.1 The Contractor is required to post a Labor and Material Payment Bond in the amount of 100% of the Guaranteed Maximum Price. The Contractor and Owner have agreed that to the fullest extent permitted by applicable law, no mechanic's liens or claims will be entered and filed against the Project or any part thereof by the Contractor's Subcontractors, material suppliers and laborers or anyone claiming by, through or under the Contractor, its Subcontractors, and Suppliers, for any work, labor or materials supplied in connection with the performance of the Work. Contractor shall, prior to commencement of the Work, execute and deliver to the Owner for filing with the appropriate court of competent jurisdiction a waiver of and limitation on any and all mechanics' lien rights and claims on behalf of Contractor, its Subcontractors, its material suppliers and its laborers in substantially the form as Exhibit ___.

§ 13.6.2 Contractor at Contractor's cost, shall, to the fullest extent permitted by law, protect, defend, hold harmless and indemnify the Project, any property on which the Project is located, and the Owner from and against any and all claims, demands, actions, liabilities, liens, damages, losses, costs, expenses, attorneys' fees, professional fees, expert fees, and other court and/or taxable costs resulting from or in any manner arising out of or in connection with any liens or mechanics' liens noticed, claimed, filed, asserted or otherwise brought against Owner, any property on which the Project is located and/or the Project by any person or entity providing labor and/or materials to Contractor or any Subcontractor, or any lower-tier Subcontractor, material supplier or laborer of Contractor ("Lien Claims"). In addition, and to the fullest extent permitted by applicable law, Contractor shall, upon written notice from the Owner, and within fourteen (14) days of the date of said notice, commence proceedings to immediately challenge and/or discharge any Lien Claims, including, without limitation, any attempted Lien Claims, against the property on which the Project is located and/or any interest in the Project and, at Owner's option and direction, as applicable, Contractor shall post cash, bond or other court-approved security to remove, satisfy and discharge of record any and all such Lien Claims. The requirements hereunder are in addition to and not in lieu of any and all obligations and requirements of the Contractor to Owner under the Agreement and/or any applicable law.

§ 13.6.3 The Owner shall have the right to withhold 105% of the Lien Claim until the lien is discharged. In the event the Contractor fails to cause the lien to be discharged within the period as set forth above, the Owner may either (a) apply amounts so withheld to discharging such lien or (b) retain such amounts until such lien is discharged or released by the Contractor or the lienor, and shall thereafter credit to the Contractor any amounts remaining after payment of the fees and expenses the Owner incurs in connection with such lien.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, 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;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Owner has failed to make payment that is properly owed on a Certificate for Payment.

§ 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' written notice to the Owner and Architect, and opportunity for cure terminate the Contract and recover as its sole remedy, payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination as well as all costs associated with non-cancelable material orders provided said materials are delivered to the Owner. The compensation provided herein shall be the full and final payment of all amounts due to the Contractor and the Contractor's sole and exclusive remedy for termination under Section 14.1.3. In no event shall Contractor be entitled to any other amounts, payments or damages, including, without limitation, overhead or profit on unexecuted Work, anticipated profits, consequential damages or damages concerning any other project. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum..

§ 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 or entities 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 and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to timely supply a sufficiency of properly skilled workmen, of equipment or of materials of the proper quality or to perform any if its obligations hereunder with, in Owner's sole judgment, sufficient diligence to insure completion of the Work within the time specified;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, rules, regulations orders or permits of a public authority having jurisdiction;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 fails to obtain necessary or required licenses or permits to perform the work;
- .6 becomes insolvent, adjudicated bankrupt or shall file a petition for voluntary bankruptcy, reorganization or other relief pursuant to Federal bankruptcy laws, or makes an assignment for the benefit of creditors (In this regard, Contractor shall be required, upon Owner's request and at any time, to provide Owner with reasonable documentation as to its financial condition.);
- .7 has a receiver or liquidator appointed for Contractor or any of its property and such receiver or liquidator shall not be dismissed within twenty (20) days after such appointment, or the proceedings in connection therewith shall not be stayed upon appeal within the said twenty (20) days; or
- .8 is prosecuting the work in a manner with which the Owner becomes dissatisfied for just cause.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption as provided in the Contract Documents.

§ 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 Contractor shall be entitled to receive payment as provided in Section 14.1.3 above, which constitutes the Contractor's sole and exclusive recovery for such termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, 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 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 INTENTIONALLY DELETED

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents of amounts not in dispute.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, (including, without limitation, any Claim for an equitable adjustment), the Contractor shall give the Owner written notice thereof within five (5) days after the first observance of the condition giving rise to such Claim (except for an emergency, in which case the Contractor shall give reasonable notice under the circumstances). No such Claim shall be valid unless so made. In addition, before proceeding with any work which may result in a Claim for an increase in the Contract Sum, the Contractor must first obtain a written Construction Change Directive or Change Order signed by the Owner, or else the Contractor waives any Claim for an increase in the Contract Sum, and waives any other Claim for additional compensation or damages, however characterized. The Contractor shall have a duty to attempt to mitigate reasonably the effects of any condition or event which gives rise to or is likely to give rise to any increase in the Contract Sum. Notwithstanding any other provision of the Contract, the Contractor shall not be entitled to any increase in the Contract Sum for any event or condition which was caused by the Contractor's or a Subcontractor's or Sub-subcontractor's negligence or failure to perform its contractual obligations pertaining to the Work. In no event shall an increase in material or labor prices serve as the basis for an increase in the Contract Sum

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, the Contractor shall give the Owner written notice thereof within five (5) days after the first observance of the condition giving rise to such Claim, or else the Contractor waives an increase in the Contract Time. Such notice shall include an estimate of cost and of probable effect of delay on progress of the Work, which estimate shall be seasonably updated by the Contractor. No such Claim shall be valid unless so made. In no event shall the Contractor be entitled to an increase in the Contract Time for any delay that does not affect the critical path of the Project. The Contractor shall have a duty to attempt to mitigate reasonably the effects of any condition or event which gives rise to or is likely to give rise to any increase in the Contract Time. Notwithstanding any other provision of the Contract, the Contractor shall not be entitled to any increase in the Contract Time for any event or condition which was caused by the Contractor's

or a Subcontractor's or Sub-subcontractor's negligence or failure to perform its contractual obligations pertaining to the Work.

§ 15.1.7 Waiver of Claims for Consequential Damages

To the fullest extent not prohibited by law, Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Agreement, including damages for lost profits, lost revenues or lost business opportunities. Notwithstanding anything to the contrary contained herein, this Section 15.1.7 shall not: (i) limit a party's obligation to indemnify the other party, (ii) apply to the gross negligence or willful misconduct of the Contractor and/or its Subcontractors and their respective, agents, servants, officers, directors and employees, (iii) apply to any actual damages to the extent such actual damages are covered by the insurance required to be carried by the Contractor and/or Owner under this Agreement, (iv) preclude damages for actual costs incurred by Owner in correcting or otherwise remedying defects in the Work, or (v) preclude the obligation of Contractor to reimburse Owner for any fines from governmental entities or additional costs and expenses for the Owner's consultants or Separate Contractors arising out of any act or omission of Contractor. 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 or direct damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INTENTIONALLY DELETED

§ 15.3 INTENTIONALLY DELETED .

§ 15.4 Arbitration

§ 15.4.1 Any dispute that is not settled to the mutual satisfaction of the Parties within the applicable notice or cure periods (if any) provided in this Agreement shall be resolved by arbitration between the Parties conducted in Pittsburgh, Pennsylvania in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect on the date that a Party files its demand for arbitration under this Section. The submitting Party shall submit such Dispute to arbitration by filing a written demand for arbitration with the American Arbitration Association and providing a copy to the other Party. Within ten (10) days after initiating arbitration, the Party initiating arbitration shall advise the other Party in writing of the name of its arbitrator. The other Party shall supply in writing the name of its arbitrator within ten (10) days. These two arbitrators shall together appoint a third arbitrator. If a Party fails to name its arbitrator within the designated time, or if the two arbitrators are unable within ten (10) days to agree on a third arbitrator, the arbitrator or arbitrators in question shall be appointed by the American Arbitration Association in accordance with its Rules. .

§ 15.4.1.1 The Parties agree that no dispute, lawsuit, arbitration and/or proceeding between Contractor and any other party, including Contractor's subcontractors or vendors shall stay or delay any arbitration and/or proceeding between Owner and Contractor.

§ 15.4.2 The arbitration panel shall conduct a hearing for as long as the arbitrators deem reasonably necessary and the Parties shall be entitled to submit expert testimony and/or written documentation in such arbitration proceeding. The hearing must take place within six (6) months of the filing of the arbitration demand. The decision of the arbitrators shall be final and binding upon the Parties and shall be set forth in a written reasoned opinion, and any award may be enforced by either Party in a court of competent jurisdiction. For purposes of enforcement of the award, the Parties consent to the personal jurisdiction and venue of the State and Federal Courts within Allegheny County, Pennsylvania. Any award of the arbitrators shall include interest from the date of any damages incurred for breach or other violation of this Contract, and from the date of the award until paid in full, at the rate of one percent (1%) per month compounded monthly.

§ 15.4.3 The Parties agree that the prevailing Party in such arbitration shall be awarded its reasonable attorney's fees, expert fees, expenses and costs incurred in connection with the Dispute. The cost of the arbitration, however, including the fees and expenses of the arbitrator, shall initially be shared equally by the Parties, subject to reimbursement of such arbitration costs and attorney's fees and costs to the prevailing Party.

§ 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). Contractor expressly agrees to include in all of its subcontracts with its subcontractors and vendors a clause providing that the subcontractor or vendor agrees and consents to being joined to any arbitration and/or proceeding between Owner and Contractor.

§ 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.

§ 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.