CONSTRUCTION MANAGEMENT SERVICES
FY 2014 and 2015

FOR

NASHUA COMMUNITY COLLEGE
NASHUA, NH

Project NCC 13-08

May 13, 2013
REQUEST FOR QUALIFICATIONS
Construction Management/General Contractor
Services for Various Projects at
Nashua Community College

PURPOSE: Nashua Community College (NCC) is seeking qualifications from experienced, capable, interested parties to provide “Construction Management services”, involving project management, design, engineering, and construction.

SERVICE/SCOPE: The successful Construction Manager is to furnish all necessary permits, labor, materials, and equipment necessary to provide construction management services for future undetermined renovations and/or improvement projects in the areas of carpentry, mechanical, electrical, building automated controls, plumbing, masonry, painting, roofing, paving, site/civil work and other trades generally associated with minor construction and renovation projects. Other service requirements to include, but not limited to:

- Provide a verifiable schedule of values (including Construction Management fees) for all work and upon NCC request provide a minimum of 3 lawful quotes for review and acceptance.
- Ability for complete Project Management (permitting, scheduling, bidding cost analysis, monthly reporting logs, supervision of all subcontractors, close-out documents) from inception to close out of each project.
- Ability to procure items such as furniture, fixtures, equipment and provide installation and warranty.
- Provide a schedule of subcontractors for NCC review and approval.
- All designs and product specifications to be reviewed and accepted by NCC.
- Provide guaranteed fee schedule for personnel assigned to NCC.
- Provide appropriate construction bond and insurance for all work.
- Provide a Project Manager that shall meet with NCC at minimal once a week on an as need basis throughout the contract.
- Provide a Superintendent that shall be on campus daily during projects and then on a as need basis throughout the contract.

TERM: Term of contract to be 2 years, starting on or around June 30, 2013 and ending on June 30, 2015 there shall be an option to extend this contract up to two more years.

The Construction Manager will assist NCC in developing plans, performance criteria, specifications, and construction according to NCC and CCSNH requirements (see AIA drafts and exhibits attached), and all applicable code requirements. Applicant team must work with NCC for each project when selecting Architect and Engineers registered in the State of New Hampshire and registered to do business with the State of New Hampshire with $3 million Professional Liability Insurance.
**Proposal Inquires:** All inquiries concerning this request shall be made in writing and shall be submitted to: Community College System of New Hampshire, Attn: Matthew Moore, P.E., 26 College Drive, Concord, N.H. 03301, e-mail memoore@ccsnh.edu, tel: (603) 230-3565, cell (603) 724-5718.

**STEP 1:**

**Interested Construction Managers** must submit their RFQ electronically to Matthew Moore via email: memoore@ccsnh.edu and Three (3) copies must be received by Nashua Community College, ATTN: Amber Wheeler, Nashua, NH 03063, of the following information by 1:00 p.m., Monday, May 20th, 2013:

1. Name, address, a brief history and description of the firm and prime sub consultants.
2. Resumes of key personnel and consultants that will be assigned to this project
3. Related projects/areas of expertise/experience, to include descriptions of other projects designed by this firm that are similar to this project. Include reference contact information.
4. A brief description of the firm’s approach to working with designers, owners, and subcontractors.
5. A description of the quality control and quality assurance programs to be used by the firm

**RFQ Due Date:** The information above to be submitted no **later than 1:00 p.m.**, Monday, May 20th, 2013. Submissions received after that date and time will be marked “late”, will not be eligible for consideration in this process. There will be no exceptions to this requirement.

**Evaluation Process:** All eligible responses will be considered for inclusion on a short list of accepted applicants. The short list of applicants will be determined no later than **2:00 pm on May 22, 2013.**

**STEP 2:**

Short listed applicants will be invited to present their qualifications and an associated program narrative within the project budget to a College Selection Committee.

All firms invited are asked provide a proposal and interview to provide Construction Management services for the projects at Nashua Community College.

**The process to select a Construction Manager Consultant will include the following:**

- Proposals are to be submitted addressing the duties of the Construction Manager as defined in this letter:
  - The Proposals are to be presented to the College on at the time of your interview.
• A site walk can be scheduled with Scott Bienvenue, Director of Facilities Maintenance, Nashua Community College, phone 603-882-6923 ext 1553.
• Interviews of all applicants will be held on Monday, June 3rd, 2013.
• The time and order of the interview will be forwarded under separate cover.
• Preselected scoring criteria will be used by the selection committee to judge and choose the successful applicant. These criteria are attached.
• The Community College System will enter contract discussions with the successful applicant to finalize terms of the Contract. If contract terms cannot be agreed to, the College will terminate discussions and enter into negotiation with the next highest scoring applicant.
• The form of Contract will be a modified AIA 133.

Evaluation and Award of Contract:

The RFQ process is a process allowing the Community College System of New Hampshire to award this contract for Construction Management Services to the candidate whose proposal and qualifications best meet the interest of the College, with the lowest price not being the determining factor in the selection.

We anticipate selecting a Construction Manager shortly after the interview process to work with the design team and we expect to begin NCC’s projects as soon as possible. The construction schedule shall be created and managed with the Nashua Community College team.

The Construction Manager shall not begin work until a fully executed contract has been received and the Construction Manager has received the notice to proceed.

The Construction Management Fee is to be based on a projected construction budget’s estimated of $400,000.00.

Your response to this request should include, as a minimum, the following components:

Fully executed A305 Contractor’s Qualification Statement, with particular emphasis on relevant experience working in a College and Construction Management method.

1. Fully executed A305 Contractor’s Qualification Statement, with particular emphasis on relevant experience.
2. Insurance certificates to match the requirement listed in the attached document.
3. Cost of providing a 100% performance and payment bond.
4. Clearly identify all services and costs included in the Construction Management
   a. Fee and include in the fee proposal. Fee shall be expressed as a lump sum cost.
   b. The Base Contract Fee will not increase if the base Budget exceeds the advertised cost. Fees for Change Orders will compensate the Construction Manager for work that exceeds the base cost.
5. Identify all services and costs that will make up the General Conditions expense.
   This will become a Contract requirement.
6. Based on the outlined scope, identify the realistic performance period for all phases, including design, the Owner can expect once the Contract is awarded. The Projects do not have a strictly defined time frame. Identify scheduling issues and solutions to meet the schedule for completion. Liquidated damages will be applied if the schedule is not met.

7. Identify the Estimating and Scheduling software to be used for the Project.

8. A one year warranty will be required for the Project.

9. Provide three references with college projects and with similar construction management requirements, including those staffed by the proposed Project Manager, Scheduler, Estimator a Superintendent.

The duties of the Construction Management Firm will be as follows:

i) Participation in the design and/or review, procurement, estimating and scheduling of the Project. Attend regularly scheduled design and/or review meetings.

ii) Preparing and updating cost estimates at all phases of design. Track and report costs monthly through the construction process. Design is anticipated to include all standard disciplines, including a selective demolition phase. Management and payment of hazardous materials remediation will be required under the CM Contract.

iii) Preparation of schedules for design and construction. Update design and procurement schedules at all phases of work. Provide scheduling support for all phases of construction. Initial schedules are to include detail for all phases of work, with material and access issues identified. Maintain procurement and construction schedules. Schedule maintenance responsibilities will include identifying activities which impact schedule and recommending and implementing actions to remedy any schedule slippage. All schedules are to be updated monthly.

iv) Design and/or review of Technical specifications for schedule and procurement issues.

v) Preparation of Bid Documents for the approval of the Owner.
   (1) Procurement of all sections will be through competitive bidding. A minimum of three sealed bids for all packages will be required.
   (2) Provide a list of all invited subcontractors to the Owner for approval prior to invitation.
   (3) Construction Manager will receive bids. All Subcontractor bids are to come via sealed proposals. Bids are to be open with the owner in attendance. All bids are to be available to the owner.

vi) Awarding and Enforcement of Subcontractor contracts.
   (1) Form of Contract to be reviewed and acceptable to the Owner.

vii) Overseeing Sub-Contractors work.
Providing management of all Quality Control and Quality assurance issues, Ensuring implementation of quality control and quality assurance programs. This quality control includes:

1. Submittals required of the technical specifications.
2. Testing as required by technical specifications and pertinent codes.
3. Inspection and confirmation that installed materials meet contract requirements.
4. Cost for testing to be carried by the owner, in accordance with Division 1 specifications under an allowance in the Construction Management Contract.
5. QA/QC plans are required for all phases of the work and are to be submitted for review informational purposes to the owner.
6. The CM will co-ordinate procurement and installation of all equipment.
7. The Construction Manager is to provide supervision of all field work. No items of work are to be undertaken by the Construction Manager unless agreed to in writing in advance of the work being done.

All the above mentioned services are to be provided on the basis of a fixed fee. The fee is to include the management services for the term of the project, up to final acceptance and throughout the warranty period as required. Project acceptance is anticipated to be

**Scope:**

The construction budget is projected to be as stated above. Scope of service shall include implementation of all work designed by the Construction Managers or owners Design Consultant contract, unless specifically noted as work by others.

The building will be designed to meet the energy requirements of current Legislation and the State energy code. The client has acknowledged that LEED certification will not be pursued for the existing building projects, but the State Building Code Section 155-A:13 with High Performance Design Standards will be required for all renovations.

**The Fee is to include:**

1. All Overheard and Profit, office costs, travel costs, equipment, salaries and wages for all personnel involved in the project.  
   
   (a) Office personnel to include administrative support staff, a qualified professional estimator, and qualified professional scheduler in addition to the project manager and field staff. Qualified Personnel performing multiple duties could be acceptable, with prior approval of the owner.
   
   (b) Site personnel at the site to be a minimum of one full time qualified superintendent for the construction phase of the project. The Proposal may include additional site personnel. Detail the time and responsibilities the additional personnel would be engaged in.
      
      (i) All Management and supervisory personnel are to be identified in the proposal with sufficient documentation to confirm qualifications.

      Owner reserves the right to approve of the Superintendent and Project Manager, and reserves the right to require replacement of any site personnel, without cause. A
minimum of 3 years field experience with 3 years in a full charge supervisory role is required.

(ii) The project superintendent and/or project manager are not to be replaced without owners approval. Construction Manager agrees to assign Field Superintendent and Project Manager for life of the Contract. Project Manager is to be scheduled for the hours necessary to properly manage the work. The Field Supervisor is to be assigned full time at the time of Contract award. Superintendent duties may be transferred, with owner approval, at the final punch list phase of the work.

(iii) The owner reserves the right to require additional field supervisor when the owner finds that field conditions warrant additional supervision.

(2) The Proposal is to include the Fee for Change Order work. This Fee would not be required to be the same fee as for the base project.
   (a) Provide detail in the proposal if the Change Order fee would be revised depending on the scale or cost of the change.
   (b) Markups allowed by subcontractors on changes to the work will be 10% overhead and 5% profit.

(3) Bonding and Insurance.

The Construction Manager shall not begin work until a fully executed contract has been received and the Construction Manager has received the notice to proceed.

Proposal Inquiries: all inquiries concerning this request shall be made in writing (e-mail acceptable) and shall be submitted to Matthew Moore, P.E., Interim Director of Capital Projects, memoore@ccsnh.edu, 26 College Drive Concord, NH 03301, phone (603) 230-3565, cell (603) 724-5718. If necessary any updated information regarding the RFQ will be posted at www.ccsnh.edu/bidding/.

ADDITIONAL PROJECT REQUIREMENTS:
- CAD based design documents are to be generated for the schematic design, final design and finished (as-built) project. CAD based drawings to become the property of CCSNH for their use.

This Agreement is comprised of the following documents listed below:
1. AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
2. AIA Document A201–2007, General Conditions of the Contract for Construction
4. Scope of the work
5. Cost of the work and Method of Payment
6. Rate sheet for time and material work Construction Management Services FY 2014 2015
7. Forms for partial and final lien waivers
8. Subcontractor/Employee Master List RSA 21-I 81a
(9) Insurance Certificates
(10) Substantial and Final Completion forms
(11) Certificate of Corporate Authority
(12) Scoring Criteria

CONTRACT INFORMATION

FORM OF CONTRACT:
The Construction Manager who is awarded the contract will need to complete an AIA Document A133 -2009 contract (See attached) and provide the required Corporate Resolution (corporations/LLC) or Partnership Certificate of Authority or Sole Proprietor Certification of Authority, whichever applies, to show the individual signing the contract is authorized to do so.

INSURANCE:
The Construction Manager awarded the contract will need to furnish an insurance certificate which includes the following: See Exhibit D for full individual insurance requirements.

CONSTRUCTION MANAGER CERTIFICATIONS:
The Construction Manager, who is awarded the contract must either be duly registered as a vendor authorized to conduct business in the State of New Hampshire or if not will need to submit a completed Alternate W-9 form (no fee) with the contract and must be willing to comply with all terms and conditions of the State of New Hampshire.

CONTRACT TERM:
The term of any resulting contract shall end on or before June 30, 2015.

Nashua Community College shall have the right to terminate the contract at any time by giving the Construction Manager a thirty (30) day written notice.

PAYMENT AND COMPENSATION:
Payment terms: Partial payments are allowed once the work has been invoiced, approved, and accepted by Nashua Community College.

ADDITIONAL INFORMATION:
- Applicants are responsible for having ascertained pertinent local conditions, such as equipment, conditions, locations, accessibility, and general character of the site, knowledge of conditions affecting the work. The act of submitting a proposal is to be considered as full acknowledgment that the applicant inspected the site and is familiar with the conditions and requirements of these specifications.

- The College reserves the right to make a written request for additional information from a Construction Manager to assist in understanding or clarifying a proposal. The responses are to be provided in writing.
• All local, state and federal regulations are to be followed. Any fines assessed to the College due to the lack of these regulations being followed will be the responsibility of the successful Construction Managers Design Firm.

• Shirts are required to be worn at all times on the work site, smoking is allowed only in vehicles.

• After the award, the Construction Managers shall submit a list of all key personnel and sub-consultants.

The College reserves the right to request a criminal background check on any employee of Construction Manager and Subs. The College also in its discretion may decide that anyone with a criminal history, other than traffic violations that have not been annulled, will not be allowed to work at the project site.

COMPLIANCE BY CONSTRUCTION MANAGER/DESIGNER WITH LAWS AND REGULATIONS - EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of the Services, the Construction Managers shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Construction Manager, including, but not limited to, civil rights and equal opportunity laws. In addition, the Construction Manager/Designer shall comply with all applicable copyright laws. During the term of any contract, the Construction Manager shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination. If the contract is funded in any part by monies of the United States, the Construction Manager/Designer shall comply with all the provisions of Executive Order No.11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States shall issue to implement these regulations. The Construction Manager further agrees to permit the State or United States access to any of the Construction Manager’s books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of a proposed contract.

ADDENDUM:

In the event it becomes necessary to add to or revise any part of this RFP prior to the scheduled submittal date, the College will send addenda to your email. Before your submission, always check for any addenda or other materials that may have been issued which would affect the RFQ/RFP.

Any change, correction or deviation to this RFQ/RFP must be addressed in a written addendum. Verbal changes will not be allowed.

The College reserves the right to waive any and all informalities in its best interest.
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

AGREE: made as of the day of in the year 2013
(In words, indicate day, month and year.)

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

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

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

Nashua Community College Construction Management Services Project # NCC 13-08

The Project Manager/Project Manager: (Name, legal status and address)

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

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

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

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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

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

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

ARTICLE 2  CONSTRUCTION MANAGER'S RESPONSIBILITIES
The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager’s Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction
Manager may agree, in consultation with the Project Manager, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

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

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

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

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

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

§ 2.1.5.2 As the Project Manager 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 Project Manager, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Project Manager’s review and the Owner's approval. The Construction Manager shall inform the Owner and Project Manager when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers
The Construction Manager shall develop bidders’ interest in the Project.

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

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

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

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

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

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

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

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

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum

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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 Project Manager. The Guaranteed Maximum Price Amendment shall set forth the agreed-upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

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

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

§ 2.3 Construction Phase
§ 2.3.1 General
§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

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

§ 2.3.2 Administration
§ 2.3.2.1 All work that the Construction Manager does not customarily perform with the Construction Manager’s own personnel with prior written authorization from the Owner shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall not unreasonably restrict any qualified subcontractor from bidding the work and shall deliver such bids to the Project Manager. The Owner shall then determine, with the advice of the Construction Manager and the Project Manager, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

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

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.
§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Project Manager.

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

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

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

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

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

ARTICLE 3 OWNER’S RESPONSIBILITIES
§ 3.1 Information and Services Required of the Owner
§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

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

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

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests; tests for air and water pollution, and tests for hazardous materials.

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

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

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

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

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

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

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
§ 4.1 Compensation
§ 4.1.1 The Construction Manager’s Preconstruction Phase services shall be included as part of the Construction Manager’s base fee.

§ 4.1.2 (Paragraphs deleted)
Intentionally Omitted

§ 4.1.3 The Preconstruction Phase services covered by this Agreement shall be completed within ( ) months of the date of this Agreement.

§ 4.1.4 Intentionally Omitted.
§ 4.2 Payments
§ 4.2.1 Payments are due and payable upon presentation of the Construction Manager's invoice. Charges for late payment will be taken under consideration in accord with the change order process.

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

NONE

(Paragraphs deleted)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:
(States a lump sum, for determining the Construction Manager's Fee.)

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

per proposal

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

ten %

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed eighty-five percent (85 %) of the standard rate paid at the place of the Project.

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Units and Limitations</th>
<th>Price per Unit ($0.00)</th>
</tr>
</thead>
<tbody>
<tr>
<td>To be determined in the Guaranteed Maximum Price</td>
<td></td>
<td></td>
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</table>

§ 5.2 Guaranteed Maximum Price

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

All savings shall be returned to Owner as a reduction in the Guaranteed Maximum Price.

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

§ 5.3 Changes in the Work

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

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.
§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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

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

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

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

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

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. No work is to be performed by the Construction Manager forces without prior written approval.

§ 6.2.2 Intentionally Omitted

§ 6.2.3 Intentionally Omitted

§ 6.2.4 Intentionally Omitted

§ 6.2.5 Intentionally Omitted

§ 6.3 Subcontract Costs

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

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

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

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

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

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site whether rented from Construction Manager or others and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner’s prior approval. The reimbursable "rental charge" of equipment will be equal to market rental rates or eighty-five (85%) percent of the Association of Equipment Distributors Green Book rates established for the then current year for such equipment, whichever is lower. In the event that the aggregate rental payments on any piece of machinery, equipment, tools, and vehicles owned by the Construction Manager or any entity related to, controlling or controlled by, the Construction Manager equal or exceed 75% of its market value as of the commencement of the proposed rental period, the Construction Manager or such related, controlled or controlling entity shall be deemed to have sold such piece of machinery, equipment, tool or vehicle to the Owner, and upon final completion or earlier termination of this Agreement (or, if requested by the Owner upon completion of use of such piece of machinery, equipment, tool, or vehicle on the Project), the Construction Manager shall, at the Owner’s election, either: (i) deliver such piece of machinery, equipment, tools and vehicles, together with a bill of sale transferring title free from all encumbrances and liens to the Owner, or (ii) purchase such piece of machinery, equipment, tool or vehicle from the Owner for an amount equal to the then market value of the same (which amount may, at the Owner’s election, be deducted by the Owner from any amounts due from the Owner to the Construction Manager). The Construction Manager agrees at all times to maintain all such machinery, equipment, tools and vehicles in good working order and condition and, in the event that the Owner elects to take ownership and possession thereof, to deliver it to the Owner in such good working order and condition.

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

§ 6.5.4 Intentionally Omitted

§ 6.5.5 Intentionally Omitted

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

§ 6.6 Miscellaneous Costs

§ 6.6.1 Intentionally Omitted

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

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

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

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

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

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

§ 6.6.8 Intentionally Omitted

§ 6.6.9 Intentionally Omitted

§ 6.7 Other Costs and Emergencies

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

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

§ 6.7.3

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

§ 6.8 Costs Not To Be Reimbursed

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

.1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;

.2 Expenses of the Construction Manager’s principal office and offices other than the site office;

.3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;

.4 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;

.5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;

.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and

.8 Costs for services incurred during the Preconstruction Phase.

.9 Losses or costs chargeable to any Subcontractor pursuant to its Subcontract.

.10 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal unless such fines, penalties, sanctions or impositions are assessed or imposed due to the action or inaction of Owner.

.11 Costs associated with Construction Manager’s failure to obtain any and all permits in a timely manner, including, without limitation, the costs of any delays resulting therefrom.

.12 Costs of accelerating the Work to the extent caused by the negligence or fault of Construction Manager.

.13 Costs resulting from the failure of Construction Manager or any Subcontractor to procure and maintain insurance as required by the Contract Documents.

.14 Overtime required to the extent caused by the negligence or fault of Construction Manager, any Subcontractor or anyone else for whom the Construction Manager is legally responsible.

.15 Travel costs, legal fees and other expenses incurred in connection with the preparation, negotiation and interpretation of this Agreement.
.16 Cost of bonding or securing liens or defending claims filed by Construction Manager’s, Subcontractors or Sub-subcontractors arising directly from a default by Construction Manager in properly making any payment due to a Construction Manager, Subcontractor, Sub-subcontractor, material supplier or laborer, unless such default by Construction Manager is due to the wrongful failure by Owner to make a progress payment to Construction Manager.

.17 Losses or expenses for which Construction Manager is compensated by insurance.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. The Construction Manager shall notify the Owner of the availability of any favorable price arrangements and discount privileges on a timely basis (i.e. so as to enable the Owner to obtain the same). The Construction Manager shall make provisions so that any favorable price arrangements and discounts privileges can be secured for the benefit of the Owner.

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

§ 6.10 Related Party Transactions

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

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

§ 6.11 Accounting Records

§ 6.11.1 The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager’s records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, purchase orders, vouchers, memoranda and other data relating to this Project. 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. The Owner shall have full access to all books and records relating to the Project.

§ 6.11.2 Without limiting the provisions of this Section 6.11, the Owner shall have the right, at any time, upon notice to the Construction Manager, to audit, examine and copy any or all of the Construction Manager’s records, books, correspondence, instructions drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data related to the Project and the Work. All such records shall be preserved for a period of at least three (3) years after Final Completion of the Work, or such longer period as may be required by law. The Construction Manager shall facilitate any such audit by making necessary facilities available to the Owner. If the Owner performs such an audit after Final Completion which discloses that the Construction Manager has been overpaid, the Construction Manager shall pay the Owner upon demand an amount equal to the overcharge, as reimbursement for such overcharge, and shall
also, if the amount of the overcharge exceeds one percent (1%) of the Guaranteed Maximum Price, reimburse the Owner for the reasonable cost of such audit unless such overpayment is the fault of the Owner.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

The Construction Manager shall submit a preliminary "pencil" draft application for payment not later than the 25th day of the month projecting completion through the end of that month. The pencil draft is not an application for payment. The Construction Manager and Owner’s Representative shall jointly review the pencil draft by the last day of the month and Construction Manager shall submit a formal Application for Payment consistent with the joint review of the pencil draft by the fifth day of the next month. Under no circumstances may Construction Manager submit more than one Application for Payment in any one-month period. Upon receipt of the formal Application for Payment, the Project Manager and Owner shall have fifteen (15) days to approve or reject such application, in whole or in part, and issue a certificate for payment in the approved amount.

§ 7.1.3 Provided that an Application for Payment is received by the Project Manager not later than the fifth day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the same month. If an Application for Payment is received by the Project Manager after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Project Manager receives the Application for Payment.

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

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

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

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

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

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be
included as provided in Section 7.3.9 of AIA Document A201–2007 less retainage of ten percent (10%);

2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

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

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

5 Subtract the aggregate of previous payments made by the Owner;

6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and

7 Subtract amounts, if any, for which the Project Manager has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

8 Upon Substantial Completion of the Work, Construction Manager may bill for a reduction of all retainage less a holdback equal to two-hundred percent (200%) of the value of a monetized punchlist prepared by Owner’s Representative.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Subcontract retainage shall be 5% unless the Construction Manager, has received written authorization from the Owner’s Director of Capital Projects, accepting a higher percentage.

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

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

§ 7.1.11 With each Application for Payment, the Construction Manager shall submit partial releases of lien and acknowledgments of payment executed by Construction Manager and Subcontractors and suppliers in the form reasonably acceptable to Owner. Each Application for Payment will also include a monthly status report of the progress of the Work. Such monthly status report shall be current through the date of the preceding Application for Payment. In no event shall the monthly status report with respect to an Application for Payment be submitted to the Owner later than the fifth (5th) day of the month next following the month to which such Application for Payment relates. The parties hereby agree that such report is of significant importance to the Owner in determining whether the Construction Manager is entitled to payment pursuant to such Application for Payment, and failure to deliver such report in its entirety on the date it is due shall be deemed to be just cause for withholding payment. The Owner’s waiver of the requirement of such report (or any portion thereof) in respect of any Application for Payment shall not be deemed to be a waiver of the Owner’s right to require the full status report in respect of any future Application for Payment. This report will include, in addition to the other documentation required pursuant to Article 7, the following: a narrative description of the work performed; a progress bar chart indicating the precedence of the remaining portions of the Work; an updated cost control report in form satisfactory to the Owner; progress photographs; a report of all substantive matters (i.e. pending changes); the number and amount of any Change Orders and a list of key action items which must be addressed by the Owner during the next following thirty (30) day period; a budget comparing: (i) the
actual amount incurred to date and the remaining costs in the Schedule of Values, and (ii) the actual time expended in the performance of the Work and the Work completed and expected date of completion of the Work; and, any other reports requested by the Owner. All reports shall be in forms reasonably satisfactory to the Owner. The Construction Manager, if requested by the Owner, shall furnish a statement accounting for the disbursement of funds received under any prior Application for Payment.

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

1. the Construction Manager has fully performed the Contract except for the Construction Manager’s responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;

2. the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

3. a final Certificate for Payment has been issued by the Project Manager.

The Owner’s final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Project Manager’s final Certificate for Payment.

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

§ 7.2.3 If the Owner’s auditors report the Cost of the Work as substantiated by the Construction Manager’s final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Project Manager’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 Project Manager’s final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner’s request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager’s Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS
For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

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

<table>
<thead>
<tr>
<th>Type of Insurance or Bond</th>
<th>Limit of Liability or Bond Amount ($0.00)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performance and Payment Bond</td>
<td>100% of Contract Value</td>
</tr>
</tbody>
</table>

See Attachment 12.2.8 for NCC Insurance Requirements
ARTICLE 9 DISPUTE RESOLUTION
§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[X ] Litigation in a court of competent jurisdiction

[ ] Other: (Specify)

§ 9.3 Initial Decision Maker
The Project Manager will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase
(Paragraphs deleted)
services. Project Manager

ARTICLE 10 TERMINATION OR SUSPENSION
§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price
§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

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

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

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

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

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

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

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

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as a percentage of the work complete.

§ 10.3 Suspension

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

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.2 Ownership and Use of Documents

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

§ 11.3 Governing Law

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

§ 11.4 Assignment

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

§ 11.5 Other provisions:

§ 11.6 Limitation of Owner's Liability. No trustee, officer, director, beneficiary, employee, or other principals, agents, or representatives (whether disclosed or undisclosed) of the Owner shall be personally liable to the Contractor hereunder, for the Owner's payment obligations or otherwise, the Contractor hereby agreeing to look solely to the interest of the Project for the satisfaction of any liability of the Owner hereunder.

§ 11.7 If the Construction Manager commences the services prior to the Effective Date, all Services performed by the Construction Manager prior to the Effective Date shall be performed at the sole risk of the Construction Manager, and
in the event that this Agreement does not become effective, the Owner shall have no liability to the Construction Manager.

§ 11.8 COMPLIANCE WITH LAWS
§ 11.8.1 In connection with the performance of the Services, the Construction Manager shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Construction Manager shall comply with all applicable copyright laws.

§ 11.8.2 During the term of this Agreement, the Construction Manager shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

§ 11.8.3 If this Agreement is funded in any part by monies of the United States, the Construction Manager shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulation of the United States Department of Labor (41 C.F.R. Part 60), and with any rule, regulation, and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Construction Manager further agrees to permit the State or United States access to any of the Construction Manager’s books, records, and accounts for the purpose of ascertaining compliance with all rules, regulations, and orders, and the covenant, terms, and conditions of this Agreement.

§ 11.9 BACKGROUND CHECKS
§ 11.9.1 The Owner reserves the right to require the Construction Manager to conduct background checks of any and all persons employed or controlled by the Construction Manager or any of its subcontractors or subconsultants, at any time, for any reason. If so request, the Construction Manager shall complete the requested background check to the Owner’s satisfaction within a reasonable time period prescribed by the Owner.

§ 11.10 DATA/CONFIDENTIALITY
§ 11.10.1 Confidentiality of data shall be governed by NH RSA 91-A or other existing law. Disclosure of data requires prior written approval of the Owner.

§ 11.11 THIRD PARTIES
§ 11.11.1 The Parties hereto do not intend to benefit any third party and this Agreement shall not be construed to confer any such benefit.

ARTICLE 12  SCOPE OF THE AGREEMENT
§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:
  .1 AIA Document A133—2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
  .2 AIA Document A201—2007, General Conditions of the Contract for Construction
  .3 AIA Document E201™—2007, Digital Data Protocol Exhibit, if completed, or the following:
  .4 Scope of Work
  .5 Cost of the Work and Method of Payment
  .6 Rate sheet for time and material work Construction Management Services FY 2014 and 2015
  .7 Forms for partial and Final lien waivers
  .8 Subcontractor/Employee Master List RSA 21-I 81a
  .9 Insurance Certificates
  .10 Substantial and Final Completion forms
  .11 Certificate of Corporate Authority
  .12 Scoring Criteria
Other documents:
(List other documents, if any, forming part of the Agreement.)

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

OWNER (Signature)

(Printed name and title)
State of New Hampshire
County of:
Personally appeared before me ________.
Date:
Notary Public

CONSTRUCTION MANAGER (Signature)

(Printed name and title)
State of New Hampshire
County of:
Personally appeared before me ________.
Date:
Notary Public
Additions and Deletions Report for
AIA® Document A133™ – 2009

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

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PAGE 1

AGREEMENT made as of the day of in the year 2011

BETWEEN the Owner: Nashua Community College

Nashua Community College Construction Management Services Project # NCC 13-08

The Architect: Project Manager Project Manager

The Architect's Project Manager Project Manager's Designated Representative

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

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect Project Manager 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.

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The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect-Project Manager, 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.

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

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

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

§ 2.1.5.2 As the Architect-Project Manager 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-Project Manager, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect-Project Manager's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect-Project Manager when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

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

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

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

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

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

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

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

§ 2.3.2.1 Those portions of the Work All work that the Construction Manager does not customarily perform with the Construction Manager's own personnel with prior written authorization from the Owner shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall not unreasonably restrict any qualified subcontractor from bidding the work and shall deliver such bids to the Architect-Project Manager. The Owner shall then determine, with the advice of the Construction Manager and the Architect-Project Manager, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.
§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect-Project Manager.

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

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

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

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

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

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

§ 3.3 Architect-Project Manager
The Owner shall retain an Architect-Project Manager to provide services, duties and responsibilities as described in AIA Document B103™–2007, Standard Form of Agreement Between Owner and Architect-Project Manager (as

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modified by the parties thereto), including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, Project Manager, and any further modifications to the agreement.

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows: The Construction Manager’s Preconstruction Phase services shall be included as part of the Construction Manager’s base fee.

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

Intentionally Omitted

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been shall be 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. Agreement.

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

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§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager’s invoice. Charges for late payment will be taken under consideration in accord with the change order process. (Insert rate of monthly or annual interest agreed upon.)

NONE

§ 4.2.2 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.)

—%.

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

... per proposal

... 100 %
§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed eighty-five percent (85%) of the standard rate paid at the place of the Project.

... To be determined in the Guaranteed Maximum Price

... All savings shall be returned to Owner as a reduction in the Guaranteed Maximum Price.

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

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§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops. No work is to be performed by the Construction Managers forces without prior written approval.

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

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager’s principal or other offices shall be included in the Cost of the Work, identify in Section 11.3, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.) Intentionally Omitted

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

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

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

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§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site whether rented from Construction Manager or others and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner’s prior approval. The reimbursable “rental charge” of equipment will be equal to market rental rates or eighty-five (85%) percent of the Association of Equipment Distributors Green Book rates established for the then current year for such equipment, whichever is lower. In the event that the aggregate rental payments on any piece of machinery, equipment, tools, and vehicles owned by the Construction Manager or any entity related to, controlling or controlled by, the Construction

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Manager equal or exceed 75% of its market value as of the commencement of the proposed rental period, the Construction Manager or such related, controlled or controlling entity shall be deemed to have sold such piece of machinery, equipment, tool or vehicle to the Owner, and upon final completion or earlier termination of this Agreement (or, if requested by the Owner upon completion of use of such piece of machinery, equipment, tool, or vehicle on the Project), the Construction Manager shall, at the Owner’s election, either: (i) deliver such piece of machinery, equipment, tools and vehicles, together with a bill of sale transferring title free from all encumbrances and liens to the Owner, or (ii) purchase such piece of machinery, equipment, tool or vehicle from the Owner for an amount equal to the then market value of the same (which amount may, at the Owner’s election, be deducted by the Owner from any amounts due from the Owner to the Construction Manager). The Construction Manager agrees at all times to maintain all such machinery, equipment, tools and vehicles in good working order and condition and, in the event that the Owner elects to take ownership and possession thereof, to deliver it to the Owner in such good working order and condition.

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

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

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

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

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

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

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

.9 Losses or costs chargeable to any Subcontractor pursuant to its Subcontract.
Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal unless such fines, penalties, sanctions or impositions are assessed or imposed due to the action or inaction of Owner.

Costs associated with Construction Manager’s failure to obtain any and all permits in a timely manner, including, without limitation, the costs of any delays resulting therefrom.

Costs of accelerating the Work to the extent caused by the negligence or fault of Construction Manager.

Costs resulting from the failure of Construction Manager or any Subcontractor to procure and maintain insurance as required by the Contract Documents.

Overtime required to the extent caused by the negligence or fault of Construction Manager, any Subcontractor or anyone else for whom the Construction Manager is legally responsible.

Travel costs, legal fees and other expenses incurred in connection with the preparation, negotiation and interpretation of this Agreement.

Cost of bonding or securing liens or defending claims filed by Construction Manager’s Subcontractors or Sub-subcontractors arising directly from a default by Construction Manager in properly making any payment due to a Construction Manager, Subcontractor, Sub-subcontractor, material supplier or laborer, unless such default by Construction Manager is due to the wrongful failure by Owner to make a progress payment to Construction Manager.

Losses or expenses for which Construction Manager is compensated by insurance.

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§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. The Construction Manager shall notify the Owner of the availability of any favorable price arrangements and discount privileges on a timely basis (i.e., so as to enable the Owner to obtain the same). The Construction Manager shall make provisions so that any favorable price arrangements and discounts privileges can be secured for the benefit of the Owner.

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

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

§ 6.11.2 Without limiting the provisions of this Section 6.11, the Owner shall have the right, at any time, upon notice to the Construction Manager, to audit, examine and copy any or all of the Construction Manager’s records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data related to the Project and the Work. All such records shall be preserved for a period of at least three (3) years after Final Completion of the Work, or such longer period as may be required by law. The Construction Manager shall facilitate any such audit by making necessary facilities available to the Owner. If the Owner performs such an audit.
after Final Completion which discloses that the Construction Manager has been overpaid, the Construction Manager shall pay the Owner upon demand an amount equal to the overcharge, as reimbursement for such overcharge, and shall also, if the amount of the overcharge exceeds one percent (1%) of the Guaranteed Maximum Price, reimburse the Owner for the reasonable cost of such audit unless such overpayment is the fault of the Owner.

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

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

Construction Manager shall submit a preliminary "pencil" draft application for payment not later than the 25th day of the month projecting completion through the end of that month. The pencil draft is not an application for payment. The Construction Manager and Owner's Representative shall jointly review the pencil draft by the last day of the month and Construction Manager shall submit a formal Application for Payment consistent with the joint review of the pencil draft by the fifth day of the next month. Under no circumstances may Construction Manager submit more than one Application for Payment in any one-month period. Upon receipt of the formal Application for Payment, Project Manager and Owner shall have fifteen (15) days to approve or reject such application, in whole or in part, and issue a certificate for payment in the approved amount.

§ 7.1.3 Provided that an Application for Payment is received by the Architect-Project Manager not later than the fifth day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the same month. If an Application for Payment is received by the Architect-Project Manager after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect-Project Manager receives the Application for Payment.

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

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

... Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201—2007, A201—2007 less retainage of ten percent (10%).

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

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

Subtract amounts, if any, for which the Architect-Project Manager has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

Upon Substantial Completion of the Work, Construction Manager may bill for a reduction of retainage less a holdback equal to two-hundred percent (200%) of the value of a monetized punchlist prepared by Owner’s Representative.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Subcontract retainage shall be 5% unless the Construction Manager, has received written authorization from the Owner’s Director of Capital Projects, accepting a higher percentage.

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

§ 7.1.11 With each Application for Payment, the Construction Manager shall submit partial releases of lien and acknowledgments of payment executed by Construction Manager and Subcontractor and suppliers in the form reasonably acceptable to Owner. Each Application for Payment will also include a monthly status report of the progress of the Work. Such monthly status report shall be current through the date of the preceding Application for Payment. In no event shall the monthly status report with respect to an Application for Payment be submitted to the Owner later than the fifth (5th) day of the month next following the month to which such Application for Payment relates. The parties hereby agree that such report is of significant importance to the Owner in determining whether the Construction Manager is entitled to payment pursuant to such Application for Payment, and failure to deliver such report in its entirety on the date it is due shall be deemed to be just cause for withholding payment. The Owner’s waiver of the requirement of such report (or any portion thereof) in respect of any Application for Payment shall not be deemed to be a waiver of the Owner’s right to require the full status report in respect of any future Application for Payment. This report will include, in addition to other documentation required pursuant to Article 7, the following: a narrative description of the work performed; a progress bar chart indicating the precedence of the remaining portions of the Work; an updated cost control report in form satisfactory to the Owner; progress photographs; a report of all substantive matters (i.e., pending changes); the number and amount of any Change Orders and a list of key action items which must be addressed by the Owner during the next following thirty (30) day period; a budget comparing: (1) the actual amount incurred to date and the remaining costs in the Schedule of Values, and (2) the actual time expended in the performance of the Work and the Work completed and expected date of completion of the Work; and, any other reports requested by the Owner. All reports shall be submitted in forms reasonably satisfactory to the Owner. The Construction Manager, if requested by the Owner, shall furnish a statement accounting for the disbursement of funds received under any prior Application for Payment.
a final Certificate for Payment has been issued by the Architect-Project Manager.

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

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

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

Performance and Payment Bond

See Attachment 12.2.8 for NCC Insurance Requirements

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[X] Litigation in a court of competent jurisdiction

The Architect-Project Manager will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint 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.)

services Project Manager

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

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

§11.6 Limitation of Owner’s Liability. No trustee, officer, director, beneficiary, employee, or other principals, agents, or representatives (whether disclosed or undisclosed) of the Owner shall be personally liable to the Contractor hereunder, for the Owner’s payment obligations or otherwise, the Contractor hereby agreeing to look solely to the interest of the Owner in the Project for the satisfaction of any liability of the Owner hereunder.

§ 11.7 If the Construction Manager commences the services prior to the Effective Date, all Services performed by the Construction Manager prior to the Effective Date shall be performed at the sole risk of the Construction Manager, and in the event that this Agreement does not become effective, the Owner shall have no liability to the Construction Manager.

§ 11.8 COMPLIANCE WITH LAWS
§ 11.8.1 In connection with the performance of the Services, the Construction Manager shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Construction Manager shall comply with all applicable copyright laws.

§ 11.8.2 During the term of this Agreement, the Construction Manager shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

§ 11.8.3 If this Agreement is funded in any part by monies of the United States, the Construction Manager shall comply with all the provisions of Executive Order No. 11246 (“Equal Employment Opportunity”), as supplemented by the regulations of the United States Department of Labor (41 C.F.R., Part 60), and with any rule, regulation, and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Construction Manager further agrees to permit the State or United States access to any of the Construction Manager’s books, records, and accounts for the purpose of ascertaining compliance with all rules, regulations, and orders, and the covenant, terms, and conditions of this Agreement.

§ 11.9 BACKGROUND CHECKS
§ 11.9.1 The Owner reserves the right to require the Construction Manager to conduct background checks of any and all persons employed or controlled by the Construction Manager or any of its subcontractors or subconsultants, at any time, for any reason. If so request, the Construction Manager shall complete the requested background check to the Owner’s satisfaction within a reasonable time period prescribed by the Owner.

§ 11.10 DATA/CONFIDENTIALITY
§ 11.10.1 Confidentiality of data shall be governed by NH RSA 91-A or other existing law. Disclosure of data requires prior written approval of the Owner.

§ 11.11 THIRD PARTIES
§ 11.11.1 The Parties hereto do not intend to benefit any third part and this Agreement shall not be construed to confer any such benefit.
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5. Other documents:

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AIA Document A201™ – 2007

General Conditions of the Contract for Construction

the following PROJECT: NCC 13-08 Nashua Community College – Construction Management Services FY 2014 and 2015
(Name and location or address)
Master Owner Document SORAV 1-5-12

THE OWNER:
(Name and address)

THE ARCHITECT:
(Name and address)

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

§ 1.1.2  THE CONTRACT
The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. Except as provided in section 3.18, nothing contained in the Contract Documents shall be construed to create a contractual relationship (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.

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

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

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

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

§ 1.1.7  INSTRUMENTS OF SERVICE
Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

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

§ 1.1.9 NUMBER AND GENDER
The pronouns "they," "them," and "their" are used with a singular antecedent that is indefinite or that does not specify gender, in lieu of the masculine singular and feminine singular pronouns "he," "she," "him," "her," "his," and "her," and accordingly "they," "them," and "their" may be singular or plural depending on their antecedents and the context.
§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. All Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others.

§ 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.

§ 1.2.4 In the event of conflicts or discrepancies among the Contract Documents, the documents shall be interpreted on the basis of the follow priorities: First, Modifications or Change Orders to the Contract Documents, those of later date having precedence over those of earlier date; Second, the Agreement between Owner and Contractor; Third, these General Conditions as modified; Fourth, Addenda to Specifications and Drawings, with later date having greater priority; Fifth, Specifications and Drawings.

Larger scale drawings shall take precedence over smaller scale drawings. Should Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quality of the Work unless otherwise directed by written addendum to the Contract.

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

§ 1.2.6 Where codes, standards, requirements and publications of public and private parties are referred to in the Contract Documents, references shall be understood to be to the latest revision prior to the date bids are received or negotiations are concluded, except otherwise indicated.

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

§ 1.2.8 Where the Work is to fit with existing conditions or Work to be performed by others, the Contractor shall fully and completely join the Work with such conditions or Work, unless otherwise specified.

§ 1.2.9 Exact locations of fixtures and outlets shall be obtained from the Architect before the Work is roughed in. Work installed without such information from the Architect shall be relocated at the Contractor’s expense.

§ 1.2.10 Existing condition plans and information included with the Contract Documents or otherwise made available to the Contractor were obtained by the Owner for use by the Architect in the design of the Project. The Owner does not hold out such information to the Contractor as an accurate or approximate indication of subsurface conditions, and no claim for extra cost or extension of time resulting from a reliance by the Contractor on such information shall be except allowed as provided in Section 3.7.4.

§ 1.2.11 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be consistent with the quality of the surrounding Work and of the construction of the Project generally.

§ 1.2.12 Certain drawings (including mechanical, electrical and fire protection drawings) are diagrammatic only, and are not intended to show the alignment, physical locations or configurations of such Work. Such Work shall be installed without additional cost to the Owner to clear all obstructions, permit proper clearances for the Work of other trades, and present an orderly appearance where exposed. Prior to beginning such Work, the Contractor shall prepare coordination drawings showing the exact alignment, physical location and configuration of the components of the
§ 1.3 CAPITALIZATION
Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, (3) the titles of other documents published by the American Institute of Architects, or (4) defined elsewhere in the Contract Documents.

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

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

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

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

ARTICLE 2 OWNER
§ 2.1 GENERAL
§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner’s authorized representative.

§ 2.1.2 Intentionally omitted.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER
§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall, with the Contractor's cooperation when requested, secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
§ 2.2.3 The Owner shall endeavor to furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Owner does not hold out such information to the Contractor as accurate, and no claim for extra cost or extension of time resulting from a reliance by the Contractor on such information shall be allowed except as provided in section 3.7.4.

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

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. The Contractor shall arrange for the reproduction of the additional Contract Documents as necessary, and the cost of such reproduction shall be included within the Contract Sum. The Owner shall cause the Architect to deliver electronic files with the Drawings to the Contractor which can be used by the Contractor to print additional sets (subject to any reasonable conditions imposed by the Architects).

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK
If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.5 Extent of Owner Approval or Consent
Owner is relying on the Architect to exercise the appropriate standard of care in connection with the design of the Work and the Contractor for execution of the Work, including all construction means, methods and techniques. Notwithstanding anything else set forth in the Contract Documents, any "approval" or "consent" by Owner in the context of the design of the Work means only approval of programmatic and/or aesthetic design intent. In the context of execution of the Work, "approval" by Owner of schedules and/or work plans means that the Owner acknowledges such activities or events for purposes of timing or coordination only.

§ 2.6 Owner-Furnished Materials, Equipment or Fixtures
If the Contract Documents require that, as part of the Work, that Contractor shall install or incorporate into the completed construction materials, equipment or fixtures furnished by Owner, Contractor's obligations under this agreement extend to such materials, equipment and fixtures on the same basis as the rest of the Work. Contractor's obligations to correct defective or non-conforming Work extends to and includes any and all materials, equipment, and fixtures furnished by Owner and to the installation thereof by the Contractor and the Subcontractors as fully as if such products had been purchased directly by Contractor or a Subcontractor for incorporation into the Work. The Contractor acknowledges that it has received and approved all information and specifications for any such Owner-furnished products sufficient so as to permit the Contractor to make this agreement. Such specifications for
Owner-furnished materials, equipment or fixtures shall be considered a part of the Contract Documents and such items, upon delivery to, and acceptance by, Contractor, shall become a part of the Work.

ARTICLE 3 CONTRACTOR
§ 3.1 GENERAL
§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR
§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. Before starting the Work, and at frequent intervals during the progress thereof, the Contractor shall carefully study and compare the Contract Documents with each other and with the information furnished by the Owner pursuant to section 2.2 and shall at once report to the Architect any error, inconsistency or omission the Contractor may discover. Any necessary change shall be ordered as provided in Article 7, subject to the requirements of sections 1.2 and other provisions of the Contract Documents. If the Contractor proceeds with the Work without such notice to the Architect, having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents the Contractor should have discovered such, the Contractor shall bear all costs arising therefrom.

§ 3.2.1.1 The Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify all measurements at the building site, and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of differences between the actual measurements and the dimensions indicated on the Drawings, except to the extent such differences are attributable to errors and omissions in the Contract Documents prepared by the Architect of which the Contractor is not aware (unless the Contractor should have been aware of such errors and omissions in connection with its exercise of the standard of care exercised by a reasonable contractor experienced in the type of work required) and for which correction would constitute a material change in the Work per the process set forth in Section 7.1.4 below. All differences which may be found shall be reported in writing to the Architect for consideration before proceeding with the Work. The Contractor shall give the Architect timely notice of any additional Drawings, Specifications, or instructions required to define the Work in greater detail, or to permit the proper progress of the Work.

§ 3.2.2.1 The Contractor shall not proceed with any Work not clearly and consistently defined in detail in the Contract Documents, but shall request additional Drawings or instructions from the Architect. If the Contractor proceeds with such Work without obtaining further Drawings, Specifications, or instructions, the Contractor shall correct Work performed incorrectly at the Contractor's own cost and expense.

§ 3.2.3 Intentionally omitted.

§ 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 Section 3.2.2, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Section...
3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 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 (including all safety precautions and programs) 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, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor believes that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall (a) give timely written notice to the Owner and Architect of the specific means, methods, techniques or procedures referred to in the Contract Documents that the Contractor believes are not safe or suitable; (b) participate in discussions with the Owner and the Architect regarding the specific means, methods, techniques or procedures referred to in the Contract Documents that the Contractor believes are not safe or suitable and (c) shall not proceed with that portion of the Work until the Owner, the Architect and the Contractor have agreed upon specific means, methods, techniques or procedures that the Contractor agrees are safe and suitable for the Work. The Contractor shall remain solely responsible for and have control over the means, methods, techniques or procedures that are employed by the Contractor for the Work, notwithstanding that such construction means, methods, techniques, sequences or procedures are (i) referred to, indicated or implied by the Contract Documents or (ii) agreed to by the Architect or Owner. In no event shall the Contractor employ construction means, methods, procedures and techniques that violate (x) requirements of any warranties applicable to the Work or (y) laws, ordinances, regulations, rules and orders which bear upon the Contractor’s performance of the Work.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. Nothing contained in this section shall alter the relationship between the Contractor and each Subcontractor under the applicable subcontract with respect to each such Subcontractor’s obligation for safety for persons or property.

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

§ 3.3.4 The Contractor shall coordinate and supervise the Work performed by Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, as a result of improper coordination or supervision, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of Work and the storage of materials.

§ 3.3.5 The Contractor shall arrange for and attend job meetings with the Owner and the Architect and such other persons as the Architect or Owner may from time to time wish to have present. The Contractor shall be represented by a principal, project manager, general superintendent or other authorized main office representative, as well as by the Contractor’s own superintendent. An authorized representative of any Subcontractor or lower tier subcontractor shall attend such meetings if the representative’s presence is required by the Owner or the Architect. Such representatives of the Contractor and the Subcontractors shall be empowered to making binding commitments on all matters to be discussed at such meetings, including costs, payments, change orders, time schedules and manpower. Any notices required under the Contract may be served on such representatives.

§ 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. The word "provide" shall mean furnish and install complete, including connections, unless otherwise specified.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. If the Contractor desires to substitute a product or method in lieu of what has been specified or shown in the Contract Documents, the Contractor may propose to do so in a written request to the Architect setting forth the following: (1) full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information for the original specified item and the proposed substitution as necessary for a complete evaluation of the substitution; (2) reasons why the substitution is advantageous or necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (3) the adjustment, if any, in the Contract Sum in the event that substitution is acceptable; and (4) the adjustment, if any, in the Contract Time in the event that substitution is acceptable. Proposals for substitutions shall be submitted to the Architect, with a copy to the Owner, not later than 30 days prior to the time of such substitute product or method would be incorporated in the Work or, if to be used or incorporated within 30 days of the commencement of the Work, immediately upon execution of the Agreement. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein. Approval of a proposed substitution shall be at the sole discretion of the Owner (after consulting with the Architect).

§ 3.4.2.1 By making a request for substitution, the Contractor: (1) represents that the Contractor has investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified; (2) represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified; (3) certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect’s redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and (4) will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

§ 3.4.2.2 The Contract Documents are intended to produce a build-out of consistent character and quality of design. All components of the building, including visible items of mechanical and electrical equipment, have been selected to have a coordinated design in relation to the overall appearance of the building. The Architect shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Architect will not approve as equal to materials specified proposed substitutes which, in the Architect’s opinion, would be out of character, obtrusive, or otherwise inconsistent with the character and quality of design of the Project. In order to permit coordinated design of color and finishes, the Contractor shall, if required by the Architect, furnish the substituted material in any color, finish, texture, or pattern which would have been available from the manufacturer originally specified, at no additional cost to the Owner.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Owner may require removal of any workers from the Project that it deems unfit or not beneficial to the Project. The Owner reserves the right to require the Contractor to perform a background check of any worker employed by the Contractor or any of its subcontractors. If so request, the Contractor shall perform the background check to the Owner’s satisfaction and shall provide the results to the Owner within a reasonable time period established by the Owner.

§ 3.4.4 All manufactured materials shall be ordered to be delivered in the manufacturer’s original, unbroken packages, containers or bundles, bearing the name of the manufacturer and brand name of other designation, and all materials shall be handled, stored, installed, cleaned and protected in accordance with the manufacturer’s directions, unless otherwise indicated in the Contract Documents.

§ 3.4.5 Any product, material or equipment specified in the Contract Documents by reference to the number, symbol or title of a specified standard, such as a commercial standard, federal specification, trade association standard, or other similar or related construction industry standard, shall comply with requirements in the latest revision thereof as of the date the Owner and the Contractor execute the Agreement.

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§ 3.4.6 In all cases in which a manufacturer's name, trade name or other property designation is used in the Contract Documents in connection with a material, equipment or product to be furnished thereunder, the Contractor shall furnish the material, equipment or product of the named manufacturer(s) unless a written request for substitution is made in accordance with section 3.4.2 and the substitution is approved in writing by the Owner.

§ 3.4.7 The Contractor and all Subcontractors shall make all provisions necessary to avoid any disputes with labor unions and shall be responsible for any delays, damages or extra costs incurred as a result of such disputes. The Contractor shall be responsible for the maintenance of harmonious labor relations among its employees and the employees of its Subcontractors in such manner as will provide for harmony as far as practical among workers at the Project site. Prior to contracting with any Subcontractor, the Contractor will require such Subcontractor to certify its willingness to cooperate with not only the other Subcontractors hired by the Contractor, but also with the Owner, Architect, any other contractors hired by the Owner, and their subcontractors. Any Subcontractor not cooperating shall, at the Owner's reasonable discretion, be dismissed by the Contractor and a qualified replacement subcontractor shall be hired at the Contractor's expense.

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

§ 3.5.2 The Contractor shall be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. The Architect may require the Contractor to produce reasonable evidence that materials used meet such requirements, such as certified reports or past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the Architect, would lead to a reasonable certainty that any material used, or proposed to be used, in the Work meets the requirements of the Contract Documents. All such data shall be furnished at the Contractor's expense.

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

§ 3.5.4 The Contractor hereby assigns to the Owner, effective at the time of Substantial Completion of the Work, any and all manufacturer's warranties required by the Contract Documents relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve all such manufacturer's warranties.

§ 3.5.5 The Contractor shall procure and deliver to the Architect, prior to final payment, all special warranties required by the Contract Documents. Delivery by the Contractor shall constitute the Contractor's guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions.

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

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS
§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall apply for required licenses, permits, inspections and/or approvals sufficiently in advance of the time required to allow the Contractor and/or the Architect to respond to any municipal comments, conditions or requests (including, without limitation, changes to the Work) without delaying the progress of the Work.
§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

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

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

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

§ 3.7.6 The Contractor shall be responsible for familiarizing itself with the regulatory requirements governing the disposal of material, including material containing pollutants, from the site. The Owner will not recognize claims for additional disposal costs that could reasonably have been anticipated at the time of bidding.

§ 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

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

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

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. The Contractor shall remove the superintendent if requested to do so in writing by the Owner, and shall promptly replace him with a competent person reasonably acceptable to the Owner.

§ 3.9.4 The superintendent shall keep a daily log of the progress of the Work and make it available to the Owner at all times. A copy of the log shall be submitted to the Owner upon completion of the Project. Additionally, daily field reports recording work activities, labor force and other information as required by the Owner shall be prepared daily by the Contractor and each subcontractor and submitted to the Owner.

§ 3.9.5 The Contractor shall furnish to both the Owner and the Architect the names, addresses and telephone numbers of the project manager, the superintendent, the superintendent's immediate supervisor, the superintendents of all subcontractors, and at least two other of their and their subcontractor's authorized representatives, indicating where they can be contacted at times other than normal working hours in case of emergency.

§ 3.9.6 The Contractor’s superintendent shall not be assigned to, or become involved in, any project other than that of this Contract. He/she shall remain in attendance at the site, and, except for illness or other reason excusable to the Owner, shall be present at all times when Work of any kind is being done, including Work done during overtime. If absent for illness or other reason excusable to the Owner, a replacement having full authority and responsibility of the full-time superintendent shall be provided.

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

§ 3.10 CONTRACTOR’S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, or in the case of a GMP as part of the GMP Proposal, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work (the "Schedule"). The Schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expedient and practicable execution of the Work.

§ 3.10.1.1 The Schedule shall utilize the Critical Path Method of scheduling within a format acceptable to the Owner and shall be submitted in digital and hardcopy (paper or vellum) formats. The Schedule shall be developed with and shall be subject to approval by the Owner and shall: (i) comply with and include any the Milestone Dates required by the Contract Documents, including but not limited to Substantial Completion and Final Completion for each phase of Work, along with any other Milestone Dates as required by the Owner; (ii) show the Contractor's overall approach to the planning, scheduling and execution of the Work, including schedule activities for all Work components ("Activities"); Notice to Proceed, procurement of permits, shop drawing submittals, review and approval, anticipated design submittals, material and equipment procurement and delivery, third party interfaces (e.g., utility work), and closeout and commissioning; (iii) include only Activities with durations equal to or less than ten (10) calendar days; (iv) include logic relationships between Activities reflecting the Contractor’s as-planned sequencing of Work: and (v) identify any planned overtime.

§ 3.10.1.2 The Contractor shall monitor the progress of the Work for conformance with the requirements of the Schedule and shall promptly advise the Owner of any actual delays or potential delays. The Contractor shall deliver a written report to the Owner each month (or more frequently if requested by the Owner or the Architect) setting forth the actual progress of the Work and highlighting discrepancies between the actual progress of the Work and the Schedule (such updates are sometimes referred to in these General Conditions as "Progress Reports"). In the event any progress report indicates delays in achievements of any Milestone Date, the Contractor shall propose in written form
an affirmative plan (the "Corrective Plan") to correct the delay, including overtime, re-sequencing of Work and/or additional labor, if necessary, which Corrective Plan shall indicate the date by which the progress of the work will comply with the Schedule, and shall be subject to the approval of the Owner. In no event shall any progress report or Corrective Plan constitute an adjustment in the Schedule, Contract Time or any Milestone Date unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

§ 3.10.1.3 In the event (i) that the performance of the Work as of a Milestone Date has not progressed or reached the level of completion required by the Schedule, and (ii) the Contractor fails to submit a Corrective Plan that is approved by the Owner or the progress of the Work is not brought back into compliance with the Schedule on the date proposed by an approved Corrective Plan, the Owner shall have the right to order the Contractor to take corrective measures to expedite the progress of the work, including, without limitation, (1) supplying additional shifts or overtime, (2) supplying the additional manpower, equipment, and facilities, (3) re-sequencing of Work, and (4) other similar measures (hereinafter referred to collectively 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 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 Section 3.10.1. The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.1 as frequently as reasonably necessary to ensure that the Contractor's performance of the work complies with the Schedule.

§ 3.10.1.4 In conjunction with the monthly Schedule submission, the Contractor shall draft and submit to the Owner a narrative explaining in detail all changes to the previous Schedule, lack of progress, delays, slippage or accelerations. The Owner at any time may require the Contractor to develop and submit an additional written mitigation plan based on feasible field actions that shall address and correct such delays, progress impediments, schedule slippage or missed Milestone Dates.

§ 3.10.1.5 Float or slack time associated with any one chain of activities is defined as the amount of time between the earliest start date and the latest start date or between the earliest finish date and the latest finish date for such activities, as set forth in the Schedule required under this Agreement, including any revisions or updates thereto. The Owner shall retain all beneficial rights to all schedule float including all resulting from any schedule or actual completion in less than the Contract Time. The Contractor shall in no way be entitled to any compensation for any Claims for interference with or denial of an "early finish" or "early completion" of the Work. Extensions of time for performance will be granted only to the extent that the equitable time adjustments for the activity or activities affected exceed the total float along the activity chain involved at the time the change was ordered or the delay occurred. Notwithstanding the above, the Contractor shall only be entitled to an extension of time for an excusable delay to the critical path of the Work.

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

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction (the "As-built Documents"), and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. The markup to the As-built Documents shall consist of record information including: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on the Drawings; (iv) the actual installed position of equipment, piping conduits, light switches, electric fixtures, circulating, ducts, dampers, access panels, control values, drains, openings, and stub-outs; and (v) such other information as the Owner may reasonably request. The Architect and/or the Owner's Representative (a) make routine edits and updates to the Drawings prepared by or on

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behalf of the Architect that are normal in the course of construction administration at mutually acceptable times during
collection of the Project and (b) deliver such updated Drawings to the Contractor (in printed and electronic form) for
use by the Contractor in preparing the Record Documents (subject to any reasonable conditions imposed by the
Architect or Owner’s Representative). Upon completion of the Work, the Contractor shall deliver to the Architect the
marked As-Built Documents and reproducible transparencies thereof. Approval by the Architect, Owner’s
Representative, and the Owner of As-Built Documents prepared by the Contractor and its Subcontractors and
suppliers shall be a condition precedent to the Owner’s obligation to make final payment to the Contractor. The
Contractor shall also deliver to the Architect all operations manuals for equipment as a condition precedent to final
payment by 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.

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

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

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

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

§ 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. The
accuracy of all such information is the responsibility of the Contractor. In reviewing Shop Drawings, Product Data,
Samples, and similar submittals, the Architect shall be entitled to rely upon the Contractor’s presentation that such
information is correct and accurate.

§ 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. The portions of the Work that are the subject of the approved submittal shall be completed
in accordance with such approved submittal.

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

§ 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. Unless
such written notice has been given, the Architect’s approval of resubmitted Shop Drawing, Product Data, Sample, or similar submittal shall not constitute approval of any changes not requested on the prior submittal.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor’s responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional’s written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE
The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times in the Owner. The Contractor’s right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine the Contractor’s apparatus, the storage of materials, and the operations of the Contractor’s workers to limits indicated by law, ordinances, the Contract Documents and permits and/or directions of the Architect and/or the Owner and shall not unreasonably encumber the premises with the Contractor’s materials. The Owner shall not be liable to the Contractor, Subcontractors, their employees or anyone else with respect to the condition of the premises. The Owner shall have the right to refuse admittance to the site to any agent or employee of the Contractor or Subcontractors whose presence the Owner deems hostile to the Owner’s interest.

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor’s consent to cutting or otherwise altering the Work. Existing work that is cut, damaged, disturbed or otherwise interfered with by the Contractor, a Subcontractor, or anyone for whom they are responsible shall be fully, properly and carefully repaired by the responsible Contractor or Subcontractor. All such repairs shall be completed in a first-class manner to the satisfaction of the Architect, and shall match similar existing adjoining work.

§ 3.15 CLEANING UP
§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor’s tools, construction equipment, machinery and surplus materials from and about the Project. Immediately prior to the Architect’s inspection for Substantial Completion, the Contractor shall completely clean the premises. Concrete and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, waxed and buffed. Woodwork shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window

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cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense.

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

§ 3.16 ACCESS TO WORK
The Contractor shall provide the Owner and Architect safe access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS
The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

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

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

§ 3.19 LIENS
§ 3.19.1 In the event that any Subcontractor, supplier or any other party for whom the Contractor is responsible establishes a lien against the Work and/or the Project site, the Contractor shall, within five days of receipt of notice from the Owner regarding such lien, cause the lien to be discharged (either by obtaining and recording a lien discharge bond from a surety and in a form acceptable to the Owner or otherwise) at no cost to the Owner, except to the extent that the lien is directly and solely attributable to a failure by the Owner to pay undisputed amounts to the Contractor as and when due under the Contract Documents. If the Contractor fails to cause the lien to be discharged within such five day period, the Owner shall have the right to withhold all further payments to the Contractor until the lien is discharged. The Owner may either (a) apply amount so withheld to discharging such lien or (b) retain such amounts until such lien is discharged or released by the Contractor or the licor, 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. The Contractor agrees to indemnify and hold harmless the Owner from all costs and expenses incurred by the Owner in connection with such liens. For purposes of this Section 3.19.1, the term "lien" shall mean any instrument filed with the applicable land title records which creates or perfects a lien under any lien law.

§ 3.20 PROTECTION FROM WATER DAMAGE
§ 3.20.1 In performing the Work, the Contractor shall exercise diligent efforts to protect the building and to cause all materials, supplies, systems and equipment which are delivered to the Project site from exposure to, and damage from, water. Without limiting the generality of the foregoing, the Contractor shall (a) install temporary barriers adequate to prevent water entry to the building from openings in the roof, exterior walls or other applicable building
elements to the extent related to the Work, (b) cause all materials, supplies, systems and equipment which are delivered to the Project site to be stored in a safe and secure location, packaged in a watertight manner where possible, and stored in a manner which protects such items from inclement weather, the elements (including, without limitation, rain, snow and water damage) and other damage until such items are incorporated into the work, and (c) ensure that all plumbing components and exterior elements included within the Work are constructed and installed in accordance with the Contract Documents so as not to allow water leaks or penetration.

§ 3.20.2 In addition to (and not in limitation of) the indemnification obligations of Contractor set forth in Section 3.18 above, Contractor shall defend, indemnify and hold harmless the parties indemnified under Section 3.18.1 above to the fullest extent permitted by law from all Claims arising out of or resulting from the failure of Contractor (or any subcontractor of any tier) to comply with the provisions of this Section 3.20. The foregoing indemnification shall include, without limitation, any Claim attributable to (i) bodily injury, sickness, disease or death arising out of or relating to, and (ii) the costs of any abatement, clean-up, removal and disposal (to the satisfaction of Owner) of any mold, fungal growth, spores or the like which occurs at the Project site as a result of any failure by Contractor (or any subcontractor of any tier) to comply with the provisions of this Section 3.20.

ARTICLE 4 ARCHITECT
§ 4.1 GENERAL
§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT
§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents 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, except as provided in Section 3.3.1.

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION
Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.
§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

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

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, 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, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4 not involving an adjustment in the Contract Sum or an extension of the Contract Time. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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

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

§ 4.2.12.1 The Architect may, as the Architect judges desirable, issue additional drawings or instructions indicating in greater detail the construction or design of the various parts of the Work; such drawings or instructions may be effected by field order or other notice to the Contractor, and provided such drawings or instructions are reasonably consistent with the previously existing Contract Documents, the Work shall be executed in accordance with such additional drawings or instructions without additional cost or extension of the Contract Time. If the Contractor claims additional cost or time on account of such additional drawings or instructions, the Contractor shall give the notice provided in Article 15.
§ 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 and the agreement of the owner.

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

ARTICLE 5 SUBCONTRACTORS
§ 5.1 DEFINITIONS
§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

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

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK
§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 days 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 and of complying with bonding, insurance and other applicable requirements under the Contract Documents, 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 responsibly in submitting names as required.

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

§ 5.2.5 The form and content of each subcontract shall be submitted to the Owner for its approval, which shall not be unreasonably withheld or delayed. Each subcontract shall expressly provide for the contingent assignment referred to in Section 5.4.1.

§ 5.3 SUBCONTRACTUAL RELATIONS
By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including without limitation the responsibility for safety of the Subcontractor's Work and the obligations set forth in Section 3.18, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies...
and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Each subcontract agreement shall state that (1) the Subcontractor agrees that the Contractor’s rights under the subcontract agreement may (a) be assigned to the Owner, subject to the conditions of Section 5.4.1 of these General Conditions, (b) include agreements to mediate consistent with those in the Contract Documents and (c) be terminated without penalty or premium if the Contractor’s services are terminated. By entering into a subcontract for any portion of the Work, a Subcontractor shall be deemed to have agreed to the terms of the preceding sentence as if such terms were included in its subcontract agreement, and (2) the Subcontractor shall be required to perform its Work in accordance with all applicable laws, statutes, ordinances, building codes, rules and regulations without any adjustment to the subcontract amount or time for performance.

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

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

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

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

§ 5.5 Contractor will require each Subcontractor to employ a competent superintendent or trade foreman who shall be in attendance at the Project site during the progress of Subcontractor’s Work.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
§ 6.1 OWNER’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS
§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.1.1 Notwithstanding anything to the contrary, the Owner shall have the right to install fixed and loose furniture, furnishings, fixtures, data communications lines, equipment and other items during the Contractor’s performance of the Work or portion(s) thereof. The Owner and the Contractor shall cooperate in scheduling and coordinating any such activities by or on behalf of the Owner. Any such installation or activities by or on behalf of the Owner shall not be deemed as acceptance of any part of any Work not completed in accordance with the Contract Documents.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Contractor” in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner’s own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Intentionally omitted.

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.3 OWNER’S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.1.4 If, subsequent to execution of the Agreement, the Architect issues any proposal requests, supplemental instructions, sketches and other materials intended to further define, clarify or modify the Contract Documents (collectively, the "Supplemental Material") Contractor shall, within ten (10) days of receiving any Supplemental Material, notify the Architect and Owner’s Representative in writing of any error, inconsistency or discrepancy that the Contractor discovers between the Supplemental Materials and the Contract Documents and indicate whether the Supplemental Material have any impact upon the Contract Sum and/or the Contract Time. Failure of the Contractor to
provide such notice is hereby deemed to mean: (1) such Supplemental Materials are consistent with the Contract Documents; (2) do not require a change in the Contract Sum and/or Contract Time; and (3) Contractor is willing and able to perform all of the Work for the Contract Sum, and in accordance with all the requirements of the Contract Documents. If the Contractor notifies the Owner’s Representative and Architect that it believes the Supplemental Materials are either inconsistent with the Contract Documents and/or represent added Work or will delay performance in accordance with the Project schedule, the Owner’s Representative and Architect will review the Contractor’s response and provide the Owner with recommendations for approval or disapproval, and the Owner shall have one or more of the following options:

(a) The Owner may direct the Architect to modify that aspect of the Supplemental Materials to which the Contractor objects. The Contractor shall cooperate with the Owner, Owner’s Representative and the Architect during the modification effort and shall make recommendations appropriate to correct such portions of the Supplemental Materials. The Architect shall submit to the Contractor the revised Supplemental Materials as approved by the Owner. The Contractor shall promptly reexamine such revised Supplemental Materials as described in Section 7.1.4;

(b) If, upon review of the Contractor’s notice, the Owner (after consultation with the Architect and Owner’s Representative) believes that the portion of the Work described therein does not constitute a material change in the Work, or disagrees as to the impact claimed by the Contractor to the Contract Sum or Contract Time, as applicable, the Owner may so advise the Contractor through the Owner’s Representative or Architect. If such disagreement is not promptly resolved, the Work subject to disagreement shall be identified in a schedule (the “Disputed Work Schedule”). Whenever possible, the Owner and the Contractor shall resolve items set forth in the Disputed Work Schedule confirming such resolution in Change Orders. Items in the Disputed Work Schedule that are not resolved by the Owner and the Contractor shall be subject to the dispute resolution procedures set forth in Article 15. During the pendency of such dispute resolution procedures, all items remaining in the Disputed Work Schedule shall be performed by the Contractor as required by the Contract Documents and a tentative adjustment shall be made to the Contract Sum to the extent of any undisputed aspect of the item. No adjustment shall be made to the Contract Sum for any disputed item or portion of an item. For each remaining item in the Disputed Work Schedule, the Contractor shall keep a specific, detailed accounting of the time and materials required to complete such item. Adjustments to the Schedule shall not be permitted on a tentative basis; or

(c) If, upon review of such notice from Contractor, the Owner agrees that all or a portion of the Work therein entitles the Contractor to Change Order and the Owner elects not to direct the Architect to modify the Supplemental Materials, the Owner and the Contractor shall enter into a written Change Order providing for such agreed changes to the Contract Sum and/or Contract Time, as applicable.

§ 7.1.5 Unless otherwise agreed to by the Owner, the aggregate limitation on the amount of profit and overhead that the Contractor, each Subcontractor and all lower tier subcontractors and suppliers can charge for Work performed pursuant to Change Orders and Construction Change Directives shall be as follows: (a) for the Contractor for Work performed by the Contractor’s own forces, ten percent (10%) of the cost of the Work; (b) for the Contractor for Work performed by Subcontractors, five percent (5%) of the cost of such Work; (c) for each Subcontractor for Work performed by such Subcontractor’s own forces, ten percent (10%) of the cost of such Work for overhead and for profit; and (d) for each Subcontractor for Work performed by lower tier subcontractors, five percent (5%) of the cost of such Work for overhead and for profit. This aggregate combined profit and overhead amount shall include all other markups and non-direct costs.

§ 7.2 CHANGE ORDERS

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

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

§ 7.2.2 Unless expressly reserved therein, an executed Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and
indirect costs associated with such change, any adjustments to the Contract Sum or GMP and any adjustments to the Schedule, Contract Time and/or Milestone Dates.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

§ 7.3.3 If the Construction Change 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 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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

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

§ 7.3.7 Failure of the Contractor to notify the Owner of any disagreement with any proposed adjustment to the Contract Sum or Contract Time, as applicable, or method for determining them set forth in a Construction Change Directive within ten days after the date of receipt by the Contractor of such Construction Change Directive shall be deemed to be an agreement by the Contractor to the proposed adjustment to the Contract Sum or Contract Time or method for determining them set forth in such Construction Change Directive. If the Contractor disagrees in writing on a timely basis with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit in accordance with Section 7.1.5 above. In such case, and also under Section 7.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data.

(Paragraphs deleted)

If the Owner and the Contractor fail to agree on the adjustment to the Contract Sum or Contract Time, as applicable, or method for determining them arising from any Construction Change Directive, (a) the adjustment to the Contract Sum shall be the net increase or decrease in the Cost of the Work attributable to the Construction Change Directive plus mark-up per Section 7.1.5 and (b) the adjustment to the Contract Time shall be equal to the net increase or decrease (if any) in the time required to perform the entire Work attributable to the Construction Change Directive. As used in this Section, the term "Cost of the Work" for Contractor shall mean the Cost of the Work as defined in the Agreement and for Subcontractors as defined in Section 7.6 below. Any disagreement as to the determination of such items that are not resolved by the Owner and the Contractor shall be subject to the dispute resolution procedures set forth in Article 15 of these General Conditions of the Contract.
§ 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 has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

§ 7.5 BACK-UP FOR CHANGE ORDERS
§ 7.5.1 Lump Sum Proposal: The Contractor, Subcontractor or lower tier subcontractor's proposal covering the extra Work or change will be itemized for the various components or Work and segregated by labor, material and equipment in a detailed format satisfactory to the Owner. Such format will include a material and labor quantity take-off and related pricing information and extensions (by drawing, if applicable). The Contractor will furnish his itemized lump sum proposal and the similarly detailed proposals of any Subcontractors, lower tier subcontractors or material suppliers.

§ 7.5.2 Time and Material: Should the Owner elect to have the extra Work or change performed on a time and material basis, and so notify the Contractor in writing, the Contractor, Subcontractor or lower tier subcontractor shall perform the Work in such manner. Records supporting the actual cost of the Work (as defined in the Section 7.6) performed must be kept and forwarded to the Owner's representative. Such records include, but are not limited to, material tickets for all actual material used, daily time sheets itemizing workmen's names and hours worked for all actual labor costs, and such other evidence as the Owner's representative may reasonably request. Owner may require authentication of all time sheets and material tickets. If so requested, the failure to provide such authentication may constitute a waiver of any rights to payment of the Contractor, Subcontractor or any lower tier subcontractor for the extra Work or change performed.

§ 7.5.3 Unit Prices: The Contractor, Subcontractor or lower tier subcontractor's proposal shall itemize the quantities of each item of Work for which there is an applicable unit price. The quantities must be itemized in relation to each specific Contract Drawing.

§ 7.6 ACTUAL COST OF THE WORK FOR SUBCONTRACTORS
§ 7.6.1 If performed on a time and material basis, the Actual Cost of the Work for a Subcontractor shall comprise the following elements:

§ 7.6.1.1 Direct Job Costs for Labor: The number of hours, hourly payroll cost, labor burden (as defined in 7.6.1.2) and extended totals for each item of Work to arrive at the cost for direct jobsite labor including working foremen. All other administration, clerical expense and supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) shall be considered covered by the Subcontractor's mark-up per Section 7.1.5.

§ 7.6.1.2 Labor Burden: The employer's net actual cost of payroll taxes (FICA, SUTA, FUTA), net actual cost of union benefits, and net actual cost for workers' compensation insurance, taking into consideration adjustments for
experience modifiers, premium discounts, dividends, rebates, etc. Labor burden shall not be considered to include costs of Commercial General Liability Insurance, auto insurance or umbrella insurance which shall be considered covered by the Subcontractor’s mark-up per Section 7.1.5.

§ 7.6.1.3 Direct Job Costs for Materials & Equipment: The quantity, price and extended totals for each item of Work to arrive at the costs of direct material and equipment. Appropriate amounts may be included for the rental of major equipment (defined as tools and equipment with individual purchase costs of more than $1,000) specifically needed to perform the extra Work or change. Use of small tools (defined as tools and equipment with individual purchase costs of less than $1,000) is considered covered by the mark-up percentage to be added to the direct cost of the extra work or change. Cost, for construction equipment, shall be the lower of the total expected rental cost or ownership cost equivalent including transportation charges and all applicable taxes.

§ 7.6.2 If performed on a unit price basis, the Actual Cost of Work shall comprise the following elements:

§ 7.6.2.1 Unit prices are for Work complete, measured in place (i.e., actual quantity installed) and cover profit and all other costs and expenses of the Contractor, Subcontractor or lower tier subcontractor. Unit prices include, without limit, all conditions of the Contract and all general requirements such as layout, reproduction of Drawings and Specifications, testing and inspection, shop drawing and sample coordination, supervision (field and home office), small tools and expendable items, insurance, taxes, temporary facilities and services, including access and safety provisions, “as-built” drawings, and general and administrative overhead and profit.

§ 7.6.2.2 Unit Price Application: For unit price items, additions and deletions of like items shall be algebraically summed and then multiplied by the applicable unit prices.

§ 7.6.3 Any changes undertaken without the Architect’s or the Owner’s authorization will not be recognized as a basis for a Claim for extra cost at a later date. If the Contractor claims that any instructions or orders, whether oral, written, by drawings, or otherwise, involve extra cost or time, and such instructions or orders are not accompanied by a written acknowledgement by the Owner or the Architect that extra payment will be made or time extended, they shall promptly so notify the Architect in writing and should not proceed with the Work until they have received a further written order to proceed, except in cases of emergency affecting life or property. No claim for extra cost or time on account of such instructions shall be valid unless the Contractor has so notified the Architect, before proceeding, that they claim extra cost and time and has received the further written order form the Owner’s representative to proceed.

ARTICLE 8 TIME
§ 8.1 DEFINITIONS
§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

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

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

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

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.
§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work; or by area-wide labor disputes not directed expressly at Contractor or any Subcontractor, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Construction Change Directive for such reasonable time as the Architect may determine. The Contractor acknowledges and agrees that (a) no adjustments to the Contract Time shall be made unless the events described above shall have the effect of actually delaying completion of components of the Work on the critical path indicated in the Schedule and (b) adjustments to Milestone Dates and/or the Contract Time will be permitted in connection with any such delay only to the extent such delay (i) is not caused, or could not have been avoided, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, (iii) has an impact of at least one (1) day and (iv) has no concurrent or contributing cause for which the Contractor would not be entitled to an extension of the Contract Time. Notwithstanding anything to the contrary, the Contractor shall not be entitled to any extension in the Contract Time for delays in receiving required licenses, permits, inspections or approvals unless the Owner is required to provide or obtain such licenses, permits, inspections or approvals.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15 and this section 8.3.2 through section 8.3.8 below. Contractor's written Claim for extension of Contract Time shall be accompanied by detailed dates, correspondence, notices, and any other data which provides proof of the events which are the basis for the Claim, including a network analysis justifying the time extension. Said network analysis shall specifically detail the extension of the critical path of the Project caused by the events which underlie the time extension request.

§ 8.3.3 Should the Contractor be delayed in the performance of the Work, the Contractor shall (a) notify the Owner and the Architect in writing within three (3) days following the event or occurrence causing such delay and (b) notify the Owner and the Architect of the estimated extent of the delay and the cost, if any, which may be incurred as result of the delay within twenty-one (21) days following the event or occurrence causing such delay. If the Contractor fails to so notify the Owner and the Architect, the Contractor shall be barred from asserting any claim for compensation, expense or damages with respect to such delay.

§ 8.3.4 No claim for delay shall be allowed on account of failure of the Architect to furnish Drawings, Specifications or instructions, or to return Shop Drawings or Samples until a reasonable period of time (but in any event not less than fifteen days or such longer period as may be agreed to among the Architect, the Contractor and the Owner) after receipt by the Architect of written demand for such instructions, Drawings, or Samples, and not then unless the Contractor shows that the Architect's delay has materially interfered with the progress of the Work.

§ 8.3.5 Notwithstanding anything to the contrary in any of the Contract Documents, the Contractor acknowledges and agrees that no extension of time shall be granted on account of weather conditions except as provided for in this Section 8.3.5. A Claim by the Contractor for an increase in the Contract Time on account of weather shall only be granted if all the following conditions are met: (1) the weather during any calendar month (or pro rata portions of partial months at the beginning and end of the Contract Time) is "abnormal," as defined below; (2) the Contractor demonstrates that such abnormal weather had the effect of delaying completion of components of Work on the critical path indicated in the Construction Schedule; and (3) such Claim is made by written notice. "Abnormal weather" shall, for purposes of this Section, be limited to circumstances in which adverse weather conditions significantly exceed those which have historically been encountered, or may reasonably be expected to be encountered, at the Project site.

§ 8.3.6 If any of events described in this Section 8.3 of the General Conditions of the Contract entitle the Contractor to an extension of the Contract Time, the sole remedy of the Contractor shall be such extension of the Contract Time and the Contractor shall not be entitled to any adjustment of the Contract Sum, except as otherwise provided in the following sentence. If and to the extent that the Contract Time is extended by more than ten (10) business days solely on account of fault or neglect of the Owner or Architect, the Contract Sum shall be increased by the Contractor's reasonable and verified additional direct out of pocket costs of performing the Work to the extent directly and solely attributable to extensions of the Contract Time on account of the fault or neglect of the Owner or Architect in excess of ten (10) business days.
§ 8.3.7 The Owner and Contractor agree that it is the intent of the Contract Documents that the Contractor shall have responsibility to achieve Substantial Completion of the Work within the Contract Time with an adequate work force, irrespective of any labor dispute (other than those of general applicability not directed at the Project, the Contractor or anyone for whom the Contractor is responsible), including picketing at or near the Project site, whether or not the Contractor is the primary employer involved in the labor dispute or a neutral employer, and whether or not the Contractor has a collective bargaining relationship with the union(s) involved in the labor dispute. Notwithstanding anything to the contrary in any of the Contract Documents, the Contractor acknowledges and agrees that no extension of time shall be granted on account of a labor dispute (other than those of general applicability not directed at the Project, the Contractor, or anyone for whom the contractor is responsible).

§ 8.3.8 If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

ARTICLE 9 PAYMENTS AND COMPLETION
§ 9.1 CONTRACT SUM
The Contract Sum is stated in the Agreement and, including authorized adjustments, is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contractor shall provide to the Owner, throughout the course of the Work, reports projecting the cash flow needs of the Contractor. This report shall be prepared and delivered monthly, projecting the anticipated needs for the balance of the Project.

§ 9.2 SCHEDULE OF VALUES
Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner and Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require and shall be revised if later found by the Architect to be inaccurate. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor’s Applications for Payment. Each item in the schedule of values shall be exclusive of the Contractor’s Fee. The proper share of the Contractor’s Fee for each item shall be listed in a separate line or column.

§ 9.3 APPLICATIONS FOR PAYMENT
§ 9.3.1 At the time or times established in the Agreement for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. The format and number of copies of such Applications for Payment shall be as directed by the Owner. Such application shall be notarized, if required, and supported by such data substantiating the Contractor’s right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Contractor’s lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, together with similar sworn statements from all such Subcontractors and material suppliers: (ii) duly executed waivers of mechanics’ and material suppliers’ liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment: (iii) proof of compliance with insurance and surety provisions as outlined in this Agreement: (iv) an updated Schedule that accurately reflects the current status of the Project: and (v) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect.

§ 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 when such Construction Change Directives have set forth an adjustment to the Contract Sum.
§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, 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, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 Contractor shall maintain record drawings as required by the Contract Documents, including for the mechanical and electrical trades, and shall review and inspect such drawings on a monthly basis. Contractor shall, on a monthly basis provide to Owner written confirmation that the record drawings are current.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, 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 Contractor, including subcontractor and/or supplier lien claims which have not been dissolved by bond or operation of law by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a separate contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

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

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor’s portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 Intentionally omitted.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, sub-subcontractor, or vendor.

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

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

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

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

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and only minor items which can be corrected or completed without any material interference with the Owner’s use of the Work which remains to be corrected or completed. Further, the following items are required from the Contractor prior to the Owner’s issuance of the Certificate of Substantial Completion: (i) the Owner and Architect agree that the Project is ready for the use intended without any concurrent Work that will disrupt the Owner’s activities; (ii) the Owner and the Architect agree that the Work has been completed in accordance with the Contract Documents, specifications, plans, drawings and all Change Orders; (iii) all HVAC systems included in the Work are functioning in accordance with the Contract Documents and a satisfactory test and balance report for said systems has been received by the Architect; (iv) all life safety systems included in the Work are functioning in accordance with the Contract Documents; (v) receipt by the Architect of the list of all outstanding Work that shall become the Punch List; and (vi) receipt by the Owner of all required final certifications and/or approvals from the governmental authorities having jurisdiction over the Work.

§ 9.8.2 Intentionally omitted.

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. § 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 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. Such partial occupancy or use may begin whether or not the portion is substantially complete, provided the respective responsibilities of Owner and Contractor for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have been established in writing. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor’s written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect
§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) waivers of liens, in the form provided by the Owner, from the Contractor and all Subcontractors and suppliers who performed portions of the Work or supplied materials or equipment in connection with the Work, (6) the expiration of time within which any Contractor, Subcontractor or supplier could file a lien under law, (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (8) to the extent that final certificates(s) of occupancy for the Project and the certificates of inspection and operating permits described in Section 13.5.4 are required by governmental authorities to use and occupy the Project as intended, and to the extent that such items were not delivered to the Owner as a condition to Substantial completion of the Work, the final certificate(s) of occupancy for the Project and the certificates of inspection and operating permits described in Section 13.5.4, (9) the As-Built Documents and reproducible transparencies thereof, in accordance with Section 3.11, (10) all special warranties required by the Contract Documents, endorsed by the Contractor and in a form reasonably acceptable to the Architect and the Owner, and (11) all manufacturers’ catalogs, instructions, and other similar data, including the necessary graphic cuts, diagrams, value charts, and the like, covering all mechanical and manually operated devices furnished and/or installed in any permanent structure. All of the foregoing items shall be submitted to the Owner in a single binder (the “Project Binder”), and the Contractor shall submit to the Owner four (4) copies of the Project Binder. As an additional condition to be satisfied prior to final payment, the Contractor’s personnel or Subcontractors’ or suppliers’ personnel, as appropriate, shall provide the property management and operations personnel at the Property with training in the operation and maintenance of building systems and controls installed as part of the Work. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys’ fees.

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

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

1. liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
2. failure of the Work to comply with the requirements of the Contract Documents; or
3. terms of special warranties required by the Contract Documents.
4. any Claim which has not been waived in accordance with this Agreement shall be deemed to have accrued upon discovery by the Owner of the condition or breach upon which such Claim is based, for the purpose of any applicable statute of limitation.
§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10  PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS
The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

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

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

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

§ 10.2.8 The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the Work or by the local fire chief or fire marshal. The area within the site limits, including all storage areas, shall be kept orderly and clean, and all combustible rubbish shall be promptly removed from the site.

§ 10.2.9 The Contractor is responsible for maintaining the area within the site limits free of all debris and food-related trash that may harbor and/or attract rodents. The Contractor shall provide secure refuse containers for all food-related trash. The containers shall be heavy-duty refuse containers with tight-fitting domed lids, with a spring loaded flap, and
no opening that allow access by rodents. The Contractor shall notify the Owner immediately whenever rodents or signs of rodents (e.g., burrows, droppings) are observed.

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

§ 10.2.11 The Contractor shall take reasonable precautions to prevent loss or damage caused by vandalism, theft, burglary, pilferage or unexplained disappearance of property of the Owner, whether or not forming part of the Work, located within those areas of the Project to which the Contractor has control.

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

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

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

§ 10.3.3 Intentionally omitted.
§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site.

§ 10.3.4.1 Hazardous waste that is generated by the Contractor as part of the Work shall be stored and disposed of in accordance with all applicable Federal, State and local regulations. Hazardous waste storage requirements include, but are not limited to, secondary containment, proper labeling, segregation of incompatible materials and routine inspection of storage areas. In addition, all hazardous waste containers shall be constructed of a material that is compatible with the waste, shall be in sound condition, and shall be kept securely closed at all times.

§ 10.3.4.2 The Contractor is responsible for the proper removal and disposal of all surplus chemicals (e.g., paints, lubricants, cleaning products) that they bring on-site as part of the Work. The Contractor shall not use any drain, pipe or plumbing fixture for the disposal of any waste materials. No chemicals that the Contractor brings on-site shall remain on the Project site at the completion of the Work.
§ 10.3.4.3 To ensure that construction activities and the use of heavy equipment does not increase the risk of release of oil or hazardous materials to the environment, the Contractor shall have and implement a Spill Plan that reflects all regulatory standards. The Contractor shall immediately report all spills/releases to the Owner. The Contractor shall coordinate with the Owner regarding reporting and follow-up documentation to outside regulatory agencies.

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

§ 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 outside the scope of its Work solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.3.7 Notwithstanding anything to the contrary, the Contractor acknowledges and agrees that the Work will likely require the removal and/or remediation of soil, debris and other items containing hazardous materials or contaminants to the extent disclosed in reports or materials previously delivered to the Contractor. All such Work shall be performed, and all such materials shall be removed and disposed of, by qualified and licensed (where required) parties engaged by the Contractor in compliance with all applicable legal requirements.

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

ARTICLE 11 INSURANCE AND BONDS
§ 11.1 CONTRACTOR’S LIABILITY INSURANCE
§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies acceptable to Owner and lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims which may arise out of or result from the Contractor’s operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be
(Paragraphs deleted)
liable. Such insurance shall include, at a minimum, the following:

§ 11.1.1.1

The Contractor shall maintain the insurance coverages set out in this Section, insuring the Contractor and its employees, agents, and designees, which insurance shall be by policies that are subject to the Owner’s approval:

a. Workers’ Compensation Insurance to cover full liability under the Workers’ Compensation laws of the state or jurisdiction in which the Project is located at the statutory limits required in said jurisdiction, including coverage for the benefits provided under United States Longshoremen’s & Harbor Workers’ Act, if applicable.

b. Employers’ Liability Insurance (with limits of not less than $500,000 per accident for Bodily Injury by accident, $500,000 each employee - by disease and $500,000 policy limit - by disease), covering operations of the Contractor.

c. Commercial General Liability ("CGL") Insurance for operations of the Contractor with coverage written at least as broad as that of the standard Commercial General Liability Insurance policy (Occurrence Form) including hazards of operations (including explosions, collapse, and underground operations), with contractual liability coverage and personal injury liability coverage for claims arising out of this Agreement. The insurance required by this subsection (c) shall be written for not less than limits of liability as follows: $1,000,000 each occurrence for bodily injury and property damage; $2,000,000 general aggregate; and $2,000,000 aggregate products/completed operations. CGL coverage shall be written on ISO Occurrence Form CG 00 01 (10 01) or a substitute form providing

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equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products, completed operations, and personal and advertising injury.

d. Automobile Liability Insurance covering all owned non-owned and hired automobiles, trucks, and trailers of the Contractor. Such insurance coverage shall be written at least as broad as that of the Standard Commercial Automobile Liability policy and shall be written for not less than a $1,000,000 limit of liability per occurrence for bodily injury and property damage.

e. Should aircraft or watercraft of any kind be used by Contractor, any tier of Subcontractor or by anyone else on their behalf, Contractor or Subcontractor shall maintain or cause the operator of the aircraft/watercraft to maintain Aircraft/Watercraft Public Liability Insurance including bodily injury, property damage, and passenger liability, with respect to any aircraft/watercraft owner, used, operated or hired in connection with the Work the Contractor, Subcontractor or anyone else written for not less than a $5,000,000 limit of liability per occurrence for bodily injury and property damage.

f. Should the performance of this Agreement require the Contractor, any tier of subcontractor or anyone else on their behalf to conduct any activities in the vicinity of a railroad, the Contractor or Subcontractor shall maintain such Railroad Protective Insurance as may be required by the affected railroad written for not less than the limits required by such railroad. The Contractor’s Railroad Protective Insurance shall be written on the policy form required by the affected railroad.

g. Excess or Umbrella Liability Insurance with coverage written at least as broad as those of the primary policies required by this Subsections (b), (c), (d) and (e) above and written for not less than a $10,000,000 limit of liability per occurrence

§ 11.1.1.2 Each insurance policy to be maintained under the prior Section, subparts 1 (b), (c), (d), (e), (f), and (g), shall be endorsed to name as Additional Insureds: the Owner, Owner’s Representative, Architect and the trustees, directors, officers, agents, consultants, servants and employees of each of them and all other interests as may be reasonably required by the Owner. Such parties shall be included as Additional Insureds on the CGL and Umbrella using ISO Additional Insured Endorsement CG 20 10 (11 85) or CG 20 33 (10 01) AND CG 20 37 (10 01) or an endorsement providing equivalent coverage to the additional insureds. This insurance for the Additional Insureds shall be as broad as the coverage provided for the named insured. Such insurance shall apply as primary and non-contributing insurance before any other insurance or self insurance, including any deductible, maintained by, or provided to, the Additional Insured. If the Additional Insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis and apply to the Additional Insureds only. The amount of Contractor’s insurance shall not be reduced by the existence of such other insurance. All Subcontractors shall provide endorsements naming the Contractor, the Owner, Owner’s Representative, Architect, and any lenders of Owner and all other parties required by this Agreement as "Additional Insureds" on their CGL and Umbrella policies using the same ISO forms or combinations of forms. Contractor and all Subcontractors shall maintain CGL and Umbrella coverage for themselves and all additional insureds for the duration of the Work and maintain Completed Operations coverage for themselves and the Additional Insureds for at least six (6) years after Substantial Completion of the Work.

§ 11.1.1.3 Prior to the date on which Contractor commences the performance of the Work, the Contractor shall cause to be furnished to the Owner the Certificate of Insurance for the coverages required by this Agreement to be maintained by Contractor with insurance carriers acceptable to the Owner. As and when the Owner may direct, copies of the actual insurance policies or renewals or replacements thereof shall be submitted to the Owner. All copies of policies, if any, and Certificates of Insurance submitted to the Owner shall be in form and content acceptable to the Owner. In the event Contractor maintains insurance with limits exceeding the limits required hereunder, the Certificate of Insurance shall state the full extent of the coverage available to the above Additional Insureds. Such excess liability coverage will inure to the benefit of the Additional Insureds in the event of loss in excess of the minimum insurance required herein. Contractor will obtain and maintain copies of Certificates of Insurance from all Subcontractors.

§ 11.1.1.4 Contractor shall require all policies of insurance that are secured and maintained by Contractor to include clauses providing that each carrier shall waive all of its rights of recovery, under subrogation or otherwise, against the Owner, Owner’s Representative, Architect and their affiliates. In addition, Contractor waives all rights of recovery
against the Owner, Owner's Representative and/or Architect it may have or acquire because of deductible clauses in or inadequacy of limits of any policies of insurance that are in any way related to the Work or activities of Contractor. Nothing contained herein shall relieve contractor from its obligations to exercise due care in the performance of its duties in under this Contract. If the Contractor fails to furnish and maintain the required insurance, the Owner may, at its option, purchase such insurance on behalf of the Contractor, and Contractor shall pay the cost thereof to the Owner upon demand and shall furnish to the Owner any information needed to obtain such insurance.

§ 11.1.2 Intentionally omitted.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. These certificates shall set forth evidence of all coverage required by Section 11.1.1. The form of certificates shall be the ACCORD form. Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending limits of coverage.

§ 11.1.4 Intentionally omitted.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. The Owner's property insurance will not cover hoists, tools, or other equipment belonging to the Contractor or any Subcontractor.

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

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles unless such loss is due to the fault or neglect of Contractor or a party for whom Contractor is responsible.
§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

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

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

§ 11.3.3 LOSS OF USE INSURANCE
The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused to the extent covered by insurance.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

(Paragraph deleted)
§ 11.3.5 Intentionally omitted.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION
The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner in good faith and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgage clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 Intentionally omitted.
§ 11.3.10 The Owner shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner’s exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND
§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The cost of all bonds shall be included in the Construction Managers Fee. If the construction manager requires bonding of subcontractors, this cost shall be noted as a separate cost item on the subcontractors bid and contract. The owner shall have the right to reject the bond cost for subcontractors as a cost of the work and require the construction manager to carry the cost as part of the base fee.

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

§ 11.5.1.1 In addition, should anyone claiming by, through or under Contractor assert a mechanic’s lien on the Project alleging non-payment for work, labor and materials or other similar claims regarding the Project, Contractor shall be obligated to obtain a bond pursuant to applicable law, or if acceptable to Owner, other lawful and satisfactory security, to discharge said lien and to clear the title of the Project.

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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner’s expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor’s expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK
§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION
The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect’s services and expenses made necessary thereby, and any cost, expenses, loss or damages to the Owner resulting from such failure or defect, shall be at the Contractor’s expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION
§ 12.2.2.1 In addition to the Contractor’s obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. This obligation under the Section 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract.

§ 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. This obligation under this Section 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract.

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to 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, but in such event, the Owner’s acceptance shall not be deemed a waiver of any other rights the Owner has hereunder. 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.

§ 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; provided, however, that either party may assign this Agreement or any rights acquired hereunder without the other party’s consent if such assignment is to any corporation or entity which may hereafter become the party’s successor-in-interest or which purchases all or substantially all of the party’s assets. In the event an assignment is approved, the assignee must expressly assume all obligations and liabilities of the assignor hereunder, and such assignment will not relieve the assignor of its obligations hereunder. Any attempt at assignment without the consent of the other party as provided herein shall be deemed null and void and a material breach of this Agreement. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 written notice
Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 rights and remedies
§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS
§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

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

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

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

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

§ 13.6 INTEREST
Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS
The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT
§ 14.1 TERMINATION BY THE CONTRACTOR
§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

2. An act of government, such as a declaration of national emergency that requires all Work to be stopped;
3. Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

4. The Owner has failed to furnish to the Contractor promptly, upon the Contractor’s request, reasonable evidence as required by Section 2.2.1.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days’ written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

1. repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

2. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

3. repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

4. otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

1. Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

2. Accept assignment of subcontracts pursuant to Section 5.4; and

3. Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.
§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent
1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE
§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall
1. cease operations as directed by the Owner in the notice;
2. take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work in place.

ARTICLE 15 CLAIMS AND DISPUTES
§ 15.1 CLAIMS
§ 15.1.1 DEFINITION
A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question by the Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the Contractor.

§ 15.1.2 NOTICE OF CLAIMS
Claims by either the Contractor must be initiated by written notice containing a clear statement of the basis of the Claim and the relief sought by the Contractor, and such notice shall be provided to the Owner and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later; provided that, in the case of a Claim based upon delay to the Contractor, as a condition precedent to any Claim, the Contractor shall first provide initial notice of a delay within 3 days of the event giving rise to the delay, and then provide a Claim within such 21 day period thereafter; and further provided, however, that the Contractor shall use its best efforts to furnish the Architect and the Owner, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized, and shall cooperate with the Architect and the Owner in an effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. THE CONTRACTOR EXPRESSLY AGREES THAT FAILURE OF THE CONTRACTOR TO INITIATE A CLAIM WITHIN THE TIME LIMITS SPECIFIED IN THIS SECTION 15.1.2 SHALL RESULT IN SUCH CLAIM BEING WAIVED

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE
Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments that are not in dispute in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST
If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided in Section 15.1.2 shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.
§ 15.1.5 CLAIMS FOR ADDITIONAL TIME
§ 15.1.5.1 Contractor shall advise the Owner and Architect in writing of any known delay within three (3) days of its knowledge of the same (including delays in the receipt of drawings or designs from designer or Architect), and shall include an identification of the delay, its anticipated duration and its anticipated effect on the prosecution and completion of the Work. If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in Section 15.1.2 shall be given. The Contractor’s Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. The Contractor shall have the burden of demonstrating the effect of the claimed delay on the Contract Time, and shall furnish the Owner and Architect with such documentation relating thereto as they may reasonably require. The Contractor shall take all prudent steps necessary to minimize the delay, and shall diligently proceed to complete the Work as required by the Contract Documents. Notwithstanding the foregoing, time for performance of a party’s obligations hereunder shall not be tolled unless and until the party claiming such excuse has provided the other party with written notice of the event.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Claims arising from adverse weather conditions shall be subject to the provisions of Section 8.3.5.

§ 15.1.6 Intentionally omitted.

(Paragraph deleted)

§ 15.1.7 No extension of time shall be granted to the Contractor for delays occurring to parts of the Work that have no measurable impact on the completion of the Milestone Dates; nor shall any extension of time be granted for delays to parts of the Work that are not located on the critical path. The Contractor acknowledges and agrees that an excusable delay in a portion of the Work or schedule activity does not necessarily result in a delay of equal duration in the completion of the entire Project.

§ 15.1.8 Direct Negotiation. Any dispute arising at any time during or after the construction of the Project shall be resolved, if possible, by negotiations between duly authorized representatives of the Contractor and the Owner. If such duly authorized representatives are unable to resolve any dispute within ten (10) days after written notice of such dispute together with all relevant supporting documentation is given by either party to the other, the matter may be submitted by either party to the dispute resolution process set forth below.

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

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

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner’s expense.
§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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

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

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

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

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

§ 15.3 MEDIATION
§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with the Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a civil action but, in such event, mediation shall proceed in advance of such civil action, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

§ 15.4 LITIGATION AND ARBITRATION
§ 15.4.1 Any dispute that is not resolved by negotiation or mediation or arbitration shall be resolved by litigation in state or federal court. Contractor assents to jurisdiction in the state or federal courts of New Hampshire and agrees that the sole venue of any litigation between Contractor and Owner shall be Hillsborough County, New Hampshire. To the extent, the parties have agreed in the Owner-Contractor Agreement that claims below a certain dollar threshold shall be decided by binding arbitration, such arbitration shall be conducted and the arbitrator(s) selected in accordance with the Construction Industry Rules of the American Arbitration Association then pertaining unless the parties mutually agree otherwise.
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The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not, except as provided in section 3.18, nothing contained in the Contract Documents shall 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.

§ 1.1.9 NUMBER AND GENDER

The pronouns "they," "them," and "their" are used with a singular antecedent that is indefinite or that does not specify gender, in lieu of the masculine singular and feminine singular pronouns "he," "she," "him," "her," "his," and "her," and accordingly "they," "them," and "their" may be singular or plural depending on their antecedents and the context.
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. All Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others.

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§ 1.2.4 In the event of conflicts or discrepancies among the Contract Documents, the documents shall be interpreted on the basis of the follow priorities: First, Modifications or Change Orders to the Contract Documents, those of later date having precedence over those of earlier date; Second, the Agreement between Owner and Contractor; Third, these General Conditions as modified; Fourth, Addenda to Specifications and Drawings, with later date having greater priority; Fifth, Specifications and Drawings.

Larger scale drawings shall take precedence over smaller scale drawings. Should Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quality of the Work unless otherwise directed by written addendum to the Contract.

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

§ 1.2.6 Where codes, standards, requirements and publications of public and private parties are referred to in the Contract Documents, references shall be understood to be to the latest revision prior to the date bids are received or negotiations are concluded, except otherwise indicated.

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

§ 1.2.8 Where the Work is to fit with existing conditions or Work to be performed by others, the Contractor shall fully and completely join the Work with such conditions or Work, unless otherwise specified.

§ 1.2.9 Exact locations of fixtures and outlets shall be obtained from the Architect before the Work is roughed in. Work installed without such information from the Architect shall be relocated at the Contractor's expense.

§ 1.2.10 Existing condition plans and information included with the Contract Documents or otherwise made available to the Contractor were obtained by the Owner for use by the Architect in the design of the Project. The Owner does not hold such information to the Contractor as an accurate or approximate indication of subsurface conditions, and no claim for extra cost or extension of time resulting from a reliance by the Contractor on such information shall be except allowed as provided in Section 3.7.4.

§ 1.2.11 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be consistent with the quality of the surrounding Work and of the construction of the Project generally.

§ 1.2.12 Certain drawings (including mechanical, electrical and fire protection drawings) are diagrammatic only, and are not intended to show the alignment, physical locations or configurations of such Work. Such Work shall be installed without additional cost to the Owner to clear all obstructions, permit proper clearances for the Work of other trades, and present an orderly appearance where exposed. Prior to beginning such Work, the Contractor shall prepare coordination drawings showing the exact alignment, physical location and configuration of the components of the mechanical, electrical, and fire protection and other allied systems and demonstrating to the Architect's satisfaction that the installation of such systems will comply with the preceding sentence. The Contractor shall be solely liable and responsible for any such costs and/or delays resulting from the Contractor's failure to coordinate such installations.
Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or articles, (3) the titles of other documents published by the American Institute of Architects, Architects, or (4) defined elsewhere in the Contract Documents.

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

... 

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

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

§ 2.2.3 The Owner shall endeavor to furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Owner does not hold out such information to the Contractor as accurate, and no claim for extra cost or extension of time resulting from a reliance by the Contractor on such information shall be allowed except as provided in section 3.7.4.

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

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. The Contractor shall arrange for the reproduction of the additional Contract Documents as necessary, and the cost of such reproduction shall be included within the Contract Sum. The Owner shall cause the Architect to deliver electronic files with the Drawings to the Contractor which can be used by the Contractor to print additional sets (subject to any reasonable conditions imposed by the Architects).

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§ 2.5 Extent of Owner Approval or Consent
Owner is relying on the Architect to exercise the appropriate standard of care in connection with the design of the Work and the Contractor for execution of the Work, including all construction means, methods and techniques. Notwithstanding anything else set forth in the Contract Documents, any "approval" or "consent" by Owner in the context of the design of the Work means only approval of programmatic and/or aesthetic design intent. In the context of execution of the Work, "approval" by Owner of schedules and/or work plans means that the Owner acknowledges such activities or events for purposes of timing or coordination only.
§ 2.6 Owner-Furnished Materials, Equipment or Fixtures
If the Contract Documents require that, as part of the Work, that Contractor shall install or incorporate into the completed construction materials, equipment or fixtures furnished by Owner, Contractor's obligations under this agreement extend to such materials, equipment and fixtures on the same basis as the rest of the Work. Contractor's obligations to correct defective or non-conforming Work extends to and includes any and all materials, equipment, and fixtures furnished by Owner and to the installation thereof by the Contractor and the Subcontractors as fully as if such products had been purchased directly by Contractor or a Subcontractor for incorporation into the Work. The Contractor acknowledges that it has received and approved all information and specifications for any such Owner-furnished products sufficient so as to permit the Contractor to make this agreement. Such specifications for Owner-furnished materials, equipment or fixtures shall be considered a part of the Contract Documents and such items, upon delivery to, and acceptance by, Contractor, shall become a part of the Work.

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§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a result of information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Before starting the Work, at frequent intervals during the progress thereof, the Contractor shall carefully study and compare the Contract Documents with each other and with the information furnished by the Owner pursuant to Section 2.2 and shall at once report to the Architect any error, inconsistency or omission the Contractor may discover. Any necessary change shall be ordered as provided in Article 7, subject to the requirements of Section 1.2 and other provisions of the Contract Documents. If the Contractor proceeds with the Work without such notice to the Architect, having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents the Contractor should have discovered such, the Contractor shall bear all costs arising therefrom.

§ 3.2.1.1 The Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify all measurements at the building site, and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of differences between the actual measurements and the dimensions indicated on the Drawings, except to the extent such differences are attributable to errors and omissions in the Contract Documents prepared by the Architect of which the Contractor is not aware (unless the Contractor should have been aware of such errors and omissions in connection with its exercise of the standard of care exercised by a reasonable contractor experienced in the type of work required) and for which correction would constitute a material change in the Work per the process set forth in Section 7.1.4 below. All differences which may be found shall be reported in writing to the Architect for consideration before proceeding with the Work. The Contractor shall give the Architect timely notice of any additional Drawings, Specifications, or instructions required to define the Work in greater detail, or to permit the proper progress of the Work.

§ 3.2.1.2 The Contractor shall not proceed with any Work not clearly and consistently defined in detail in the Contract Documents, but shall request additional Drawings or instructions from the Architect. If the Contractor proceeds with such Work without obtaining further Drawings, Specifications, or instructions, the Contractor shall correct Work performed incorrectly at the Contractor's own cost and expense.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any non-conformity discovered by or made known to the Contractor as a result of information in such form as the Architect may require. Intentionally omitted.
§ 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, Section 3.2.2, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, Section 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures (including all safety precautions and programs) and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect of the specific means, methods, techniques or procedures referred to in the Contract Documents that the Contractor believes are not safe or suitable; (b) participate in discussions with the Owner and the Architect regarding the specific means, methods, techniques or procedures referred to in the Contract Documents that the Contractor believes are not safe or suitable; and (c) shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of change proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those means, methods, techniques, sequences or procedures until the Owner, the Architect and the Contractor have agreed upon specific means, methods, techniques or procedures that the Contractor agrees are safe and suitable for the Work. The Contractor shall remain solely responsible for and have control over the means, methods, techniques or procedures that are employed by the Contractor for the Work, notwithstanding that such construction means, methods, techniques, sequences or procedures are (i) referred to, indicated or implied by the Contract Documents or (ii) agreed to by the Architect or Owner. Nothing contained in this section shall alter the relationship between the Contractor and each Subcontractor under the applicable subcontract with respect to each such Subcontractor’s obligation for safety for persons or property.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. Nothing contained in this section shall alter the relationship between the Contractor and each Subcontractor under the applicable subcontract with respect to each such Subcontractor’s obligation for safety for persons or property.

§ 3.3.4 The Contractor shall coordinate and supervise the Work performed by Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, as a result of improper coordination or supervision, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of Work and the storage of materials.

§ 3.3.5 The Contractor shall arrange for and attend job meetings with the Owner and the Architect and such other persons as the Architect or Owner may from time to time wish to have present. The Contractor shall be represented by a principal, project manager, general superintendent or other authorized main office representative, as well as by the Contractor’s own superintendent. An authorized representative of any Subcontractor or lower tier subcontractor shall attend such meetings if the representative’s presence is required by the Owner or the Architect. Such representatives of the Contractor and the subcontractors shall be empowered to make binding commitments on all matters to be
discussed at such meetings, including costs, payments, change orders, time schedules and manpower. Any notices required under the Contract may be served on such representatives.

§ 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. The word "provide" shall mean furnish and install complete, including connections, unless otherwise specified.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.6 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. If the Contractor desires to substitute a product or method in lieu of what has been specified or shown in the Contract Documents, the Contractor may propose to do so in a written request to the Architect setting forth the following: (1) full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information for the original specified item and the proposed substitution as necessary for a complete evaluation of the substitution; (2) reasons why the substitution is advantageous or necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (3) the adjustment, if any, in the Contract Sum in the event that substitution is acceptable; and (4) the adjustment, if any, in the Contract Time in the event that substitution is acceptable. Proposals for substitutions shall be submitted to the Architect, with a copy to the Owner, not later than 30 days prior to the time of such substitute product or method would be incorporated in the Work or, if to be used or incorporated within 30 days of the commencement of the Work, immediately upon execution of the Agreement. No substitutions will be considered or allowed without the Contractor’s submittal of complete substantiating data and information as stated herein. Approval of a proposed substitution shall be at the sole discretion of the Owner (after consulting with the Architect).

§ 3.4.2.1 By making a request for substitution, the Contractor: (1) represents that the Contractor has investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified; (2) represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified; (3) certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect’s redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and (4) will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

§ 3.4.2.2 The Contract Documents are intended to produce a build-out of consistent character and quality of design. All components of the building, including visible items of mechanical and electrical equipment, have been selected to have a coordinated design in relation to the overall appearance of the building. The Architect shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Architect will not approve as equal to materials specified proposed substitutes which, in the Architect’s opinion, would be out of character, obstructive, or otherwise inconsistent with the character and quality of design of the Project. In order to permit coordinated design of color and finishes, the Contractor shall, if required by the Architect, furnish the substituted material in any color, finish, texture, or pattern which would have been available from the manufacturer originally specified, at no additional cost to the Owner.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Owner may require removal of any workers from the Project that it deems unfit or not beneficial to the Project. The Owner reserves the right to require the Contractor to perform a background check of any worker employed by the Contractor or any of its subcontractors. If so requested, the Contractor shall perform the background check to the Owner’s satisfaction and shall provide the results to the Owner within a reasonable time period established by the Owner.

§ 3.4.4 All manufactured materials shall be ordered to be delivered in the manufacturer’s original, unbroken packages, containers or bundles, bearing the name of the manufacturer and brand name of other designation, and all materials.
shall be handled, stored, installed, cleaned and protected in accordance with the manufacturer’s directions, unless otherwise indicated in the Contract Documents.

§ 3.4.5 Any product, material or equipment specified in the Contract Documents by reference to the number, symbol or title of a specified standard, such as a commercial standard, federal specification, trade association standard, or other similar or related construction industry standard, shall comply with requirements in the latest revision thereof as of the date the Owner and the Contractor execute the Agreement.

§ 3.4.6 In all cases in which a manufacturer’s name, trade name or other property designation is used in the Contract Documents in connection with a material, equipment or product to be furnished thereunder, the Contractor shall furnish the material, equipment or product of the named manufacturer(s) unless a written request for substitution is made in accordance with section 3.4.2 and the substitution is approved in writing by the Owner.

§ 3.4.7 The Contractor and all Subcontractors shall make all provisions necessary to avoid any disputes with labor unions and shall be responsible for any delays, damages or extra costs incurred as a result of such disputes. The Contractor shall be responsible for the maintenance of harmonious labor relations among its employees and the employees of its Subcontractors in such manner as will provide for harmony as far as practical among workers at the Project site. Prior to contracting with any Subcontractor, the Contractor will require such Subcontractor to certify its willingness to cooperate with not only the other Subcontractors hired by the Contractor, but also with the Owner, Architect, any other contractors hired by the Owner, and their subcontractors. Any Subcontractor not cooperating shall, at the Owner’s reasonable discretion, be dismissed by the Contractor and a qualified replacement subcontractor shall be hired at the Contractor’s expense.

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§ 3.5.2 The Contractor shall be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. The Architect may require the Contractor to produce reasonable evidence that materials used meet such requirements, such as certified reports or past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the Architect, would lead to a reasonable certainty that any material used, or proposed to be used, in the Work meets the requirements of the Contract Documents. All such data shall be furnished at the Contractor’s expense.

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

§ 3.5.4 The Contractor hereby assigns to the Owner, effective at the time of Substantial Completion of the Work, any and all manufacturer’s warranties required by the Contract Documents relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve all such manufacturer’s warranties.

§ 3.5.5 The Contractor shall procure and deliver to the Architect, prior to final payment, all special warranties required by the Contract Documents. Delivery by the Contractor shall constitute the Contractor’s guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions.

§ 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. The Contractor shall apply for required licenses, permits, inspections and/or approvals sufficiently in advance of the time required to allow the Contractor and/or the Architect to respond to any municipal comments, conditions or requests (including, without limitation, changes to the Work) without delaying the progress of the Work.
§ 3.7.6 The Contractor shall be responsible for familiarizing itself with the regulatory requirements governing the disposal of materials, including material containing pollutants, from the site. The Owner will not recognize claims for additional disposal costs that could reasonably have been anticipated at the time of bidding.

... .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.

... .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.

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

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner’s consent, which shall not unreasonably be withheld or delayed. The Contractor shall remove the superintendent if requested to do so in writing by the Owner, and shall promptly replace him with a competent person reasonably acceptable to the Owner.

§ 3.9.4 The superintendent shall keep a daily log of the progress of the Work and make it available to the Owner at all times. A copy of the log shall be submitted to the Owner upon completion of the Project. Additionally, daily field reports recording work activities, labor force and other information as required by the Owner shall be prepared daily by the Contractor and each subcontractor and submitted to the Owner.

§ 3.9.5 The Contractor shall furnish to both the Owner and the Architect the names, addresses and telephone numbers of the project manager, the superintendent, the superintendent’s immediate supervisor, the superintendents of all subcontractors, and at least two other of their and their subcontractor’s authorized representatives, indicating where they can be contacted at times other than normal working hours in case of emergency.

§ 3.9.6 The Contractor’s superintendent shall not be assigned to, or become involved in, any project other than that of this Contract. He/she shall remain in attendance at the site, and, except for illness or other reason excusable to the Owner, shall be present at all times when Work of any kind is being done, including Work done during overtime. If absent for illness or other reason excusable to the Owner, a replacement having full authority and responsibility of the full-time superintendent shall be provided.

§ 3.9.7 The Contractor shall coordinate and supervise the Work performed by Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of Work and the storage of materials.
§ 3.10.1 The Contractor, promptly after being awarded the Contract, or in the case of a GMP as part of the GMP Proposal, shall prepare and submit for the Owner’s and Architect’s information a Contractor’s construction schedule for the Work. The schedule Work (the "Schedule"). The Schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.1.1 The Schedule shall utilize the Critical Path Method of scheduling within a format acceptable to the Owner and shall be submitted in digital and hardcopy (paper or vellum) formats. The Schedule shall be developed with and shall be subject to approval by the Owner and shall; (i) comply with and include any the Milestone Dates required by the Contract Documents, including but not limited to Substantial Completion and Final Completion for each phase of Work, along with any other Milestone Dates as required by the Owner; (ii) show the Contractor’s overall approach to the planning, scheduling and execution of the Work, including schedule activities for all Work components ("Activities"). Notice to Proceed, procurement of permits, shop drawing submittals, review and approval, anticipated design submittals, material and equipment procurement and delivery, third party interfaces (e.g., utility work), and closeout and commissioning; (iii) include only Activities with durations equal to or less than ten (10) calendar days; (iv) include logic relationships between Activities reflecting the Contractor’s as-planned sequencing of Work; and (v) identify any planned overtime.

§ 3.10.1.2 The Contractor shall monitor the progress of the Work for conformance with the requirements of the Schedule and shall promptly advise the Owner of any actual delays or potential delays. The Contractor shall deliver a written report to the Owner each month (or more frequently if requested by the Owner or the Architect) setting forth the actual progress of the Work and highlighting discrepancies between the actual progress of the Work and the Schedule (such updates are sometimes referred to in these General Conditions as "Progress Reports"). In the event any progress report indicates delays in achievements of any Milestone Date, the Contractor shall propose in written form an affirmative plan (the "Corrective Plan") to correct the delay, including overtime, re-sequecing of Work and/or additional labor, if necessary, which Corrective Plan shall indicate the date by which the progress of the work will comply with the Schedule, and shall be subject to the approval of the Owner. In no event shall any progress report or Corrective Plan constitute an adjustment in the Schedule, Contract Time or any Milestone Date unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

§ 3.10.1.3 In the event (i) that the performance of the Work as of a Milestone Date has not progressed or reached the level of completion required by the Schedule, and (ii) the Contractor fails to submit a Corrective Plan that is approved by the Owner or the progress of the Work is not brought back into compliance with the Schedule on the date proposed by an approved Corrective Plan, the Owner shall have the right to order the Contractor to take corrective measures to expedite the progress of the Work, including, without limitation, (1) supplying additional shifts or overtime, (2) supplying the additional manpower, equipment, and facilities, (3) re-sequence of Work, and (4) other similar measures (hereinafter referred to collectively 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 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 Section 3.10.1. The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.1 as frequently as reasonably necessary to ensure that the Contractor’s performance of the work complies with the Schedule.

§ 3.10.1.4 In conjunction with the monthly Schedule submission, the Contractor shall draft and submit to the Owner a narrative explaining in detail all changes to the previous Schedule, lack of progress, delays, slippage or accelerations. The Owner at any time may require the Contractor to develop and submit an additional written mitigation plan based on feasible field actions that shall address and correct such delays, progress impediments, schedule slippage or missed Milestone Dates.

§ 3.10.1.5 Float or slack time associated with any one chain of activities is defined as the amount of time between the earliest start date and the latest start date or between the earliest finish date and the latest finish date for such activities, as set forth in the Schedule required under this Agreement, including any revisions or updates thereto. The Owner shall retain all beneficial rights to all schedule float including that resulting from any scheduled actual completion in less than the Contract Time. The Contractor shall in no way be entitled to any compensation for any Claims for interference with or denial of an "early finish" or "early completion" of the Work. Extensions of time for performance

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will be granted only to the extent that the equitable time adjustments for the activity or activities affected exceed the
total float along the activity chain involved at the time the change was ordered or the delay occurred. Notwithstanding
the above, the Contractor shall only be entitled to an extension of time for an excusable delay to the critical path of the
Work.

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

The work of the As-Built Documents shall consist of record information including: (i) deviations from the Working Drawings
made during construction; (ii) details in the Work not previously shown; (iii) changes to
established conditions or existing conditions found to differ from those shown on the Drawings; (iv) the actual installed
position of equipment, piping conduits, light switches, electrical fixtures, circuiting, ducts, dampers, access panels,
control valves, drains, openings, and sub-outs; and (v) such other information as the Owner may reasonably request.
The Architect and/or the Owner's Representative (a) make routine edits and updates to the Drawings prepared by or on
behalf of the Architect that are normal in the course of construction administration at mutually acceptable times during
correction of the Project and (b) deliver such updated Drawings to the Contractor (in printed and electronic form) for
use by the Contractor in preparing the Record Documents (subject to any reasonable conditions imposed by the
Architect or Owner's Representative). Upon completion of the Work, the Contractor shall deliver to the Architect the
marked As-Built Documents and reproducible transparencies thereof. Approval by the Architect, Owner's
Representative, and the Owner of As-Built Documents prepared by the Contractor and its Subcontractors and
suppliers shall be a condition precedent to the Owner's obligation to make final payment to the Contractor. The
Contractor shall also deliver to the Architect all operations manuals for equipment as a condition precedent to final
payment by Owner.

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§ 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. The
accuracy of all such information is the responsibility of the Contractor. In reviewing Shop Drawings, Product Data,
Samples, and similar submittals, the Architect shall be entitled to rely upon the Contractor's presentation that such
information is correct and accurate.

§ 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. The portions of the Work that are the subject of the approved submittal shall be completed
in accordance with such approved submittal.

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

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The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes,
rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably
encumber the site with materials or equipment, right of possession of the premises and the improvements made thereon
by the Contractor shall remain at all times in the Owner. The Contractor’s right to entry and use thereof arises solely
from the permission granted by the Owner under the Contract Documents. The Contractor shall confine the Contractor’s apparatus, the storage of materials, and the operations of the Contractor’s workers to limits indicated by law, ordinances, the Contract Documents and permits and/or directions of the Architect and/or the Owner and shall not unreasonably encumber the premises with the Contractor’s materials. The Owner shall not be liable to the Contractor, Subcontractors, their employees or anyone else with respect to the condition of the premises. The Owner shall have the right to refuse admittance to the site to any agent or employee of the Contractor or Subcontractors whose presence the Owner deems hostile to the Owner’s interest.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor’s consent to cutting or otherwise altering the Work. Existing work that is cut, damaged, disturbed or otherwise interfered with by the Contractor, a Subcontractor, or anyone for whom they are responsible shall be fully, properly and carefully repaired by the responsible Contractor or Subcontractor. All such repairs shall be completed in a first-class manner to the satisfaction of the Architect, and shall match similar existing adjoining work.

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor’s tools, construction equipment, machinery and surplus materials from and about the Project. Immediately prior to the Architect’s inspection for Substantial Completion, the Contractor shall completely clean the premises. Concrete and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, waxed and buffed. Woodwork shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor’s expense.

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

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

§ 3.19 LIENS

§ 3.19.1 In the event that any Subcontractor, supplier or any other party for whom the Contractor is responsible establishes a lien against the Work and/or the Project site, the Contractor shall, within five days of receipt of notice from the Owner regarding such lien, cause the lien to be discharged either by obtaining and recording a lien discharge...
bond from a surety and in a form acceptable to the Owner or otherwise) at no cost to the Owner, except to the extent that the lien is directly attributable to a failure by the Owner to pay undisputed amounts to the Contractor and when due under the Contract Documents. If the Contractor fails to cause the lien to be discharged within such five day period, the Owner shall have the right to withhold all further payments to the Contractor until the lien is discharged. The Owner may either (a) apply the amount 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. The Contractor agrees to indemnify and hold harmless the Owner from all costs and expenses incurred by the Owner in connection with such liens. For purposes of this Section 3.19.1, the term "lien" shall mean any instrument filed with the applicable land title records which creates or perfects a lien under any lien law.

§ 3.20 PROTECTION FROM WATER DAMAGE
§ 3.20.1 In performing the Work, the Contractor shall exercise diligent efforts to protect the building and to cause all materials, supplies, systems and equipment which are delivered to the Project site from exposure to, and damage from, water. Without limiting the generality of the foregoing, the Contractor shall (a) install temporary barriers adequate to prevent water entry to the building from openings in the roof, exterior walls or other applicable building elements to the extent related to the Work, (b) cause all materials, supplies, systems and equipment which are delivered to the Project site to be stored in a safe and secure location, packaged in a watertight manner where possible, and stored in a manner which protects such items from inclement weather, the elements (including, without limitation, rain, snow and water damage) and other damage until such items are incorporated into the work, and (c) ensure that all plumbing components and exterior elements included within the Work are constructed and installed in accordance with the Contract Documents so as not to allow water leaks or penetration.

§ 3.20.2 In addition to and not in limitation of the indemnification obligations of Contractor set forth in Section 3.18 above, Contractor shall defend, indemnify and hold harmless the parties indemnified under Section 3.18.1 above to the fullest extent permitted by law from all Claims arising out of or resulting from the failure of Contractor (or any subcontractor or any tier) to comply with the provisions of this Section 3.20. The foregoing indemnification shall include, without limitation, any Claim attributable to (i) bodily injury, sickness, disease or death arising out of or relating to, and (ii) the costs of any abatement, clean-up, removal and disposal (to the satisfaction of Owner) of any mold, fungal growth, spores or the like which occurs at the Project site as a result of any failure by Contractor (or any subcontractor or any tier) to comply with the provisions of this Section 3.20.

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§ 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 Final Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 4.4-7.4 not involving an adjustment in the Contract Sum or an extension of the Contract Time. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

...
§ 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 and the agreement of the owner.

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§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no 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 and of complying with bonding, insurance and other applicable requirements under the Contract Documents, 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.

... 

§ 5.2.5 The form and content of each subcontract shall be submitted to the Owner for its approval, which shall not be unreasonably withheld or delayed. Each subcontract shall expressly provide for the contingent assignment referred to in Section 5.4.1.

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including without limitation the responsibility for safety of the Subcontractor's Work, Work and the obligations set forth in Section 3.18, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Each subcontract agreement shall state that (1) the Subcontractor agrees that the Contractor's rights under the subcontract agreement may (a) be assigned to the Owner, subject to the conditions of Section 5.4.1 of these General Conditions, (b) include agreements to mediate consistent with those in the Contract Documents and (c) be terminated without penalty or premium if the Contractor's services are terminated. By entering into a subcontract for any portion of the Work, a Subcontractor shall be deemed to have agreed to the terms of the preceding sentence as if such terms were included in its subcontract agreement and (2) the Subcontractor shall be required to perform its Work in accordance with all applicable laws, statutes, ordinances, building codes, rules and regulations without any adjustment to the subcontract amount or time for performance.

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§ 5.5 Contractor will require each Subcontractor to employ a competent superintendent or trade foreman who shall be in attendance at the Project site during the progress of Subcontractor's Work.

... 

§ 6.1.1.1 Notwithstanding anything to the contrary, the Owner shall have the right to install fixed and loose furniture, furnishings, fixtures, data communications lines, equipment and other items during the Contractor's performance of the Work or portion(s) thereof. The Owner and the Contractor shall cooperate in scheduling and coordinating any such activities by or on behalf of the Owner. Any such installation or activities by or on behalf of the Owner shall not be deemed as acceptance of any part of any Work not completed in accordance with the Contract Documents.

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

...

§ 7.1.4 If, subsequent to execution of the Agreement, the Architect issues any proposal requests, supplemental instructions, sketches and other materials intended to further define, clarify or modify the Contract Documents (collectively, the "Supplemental Material") Contractor shall, within ten (10) days of receiving any Supplemental Material, notify the Architect and Owner's Representative in writing of any error, inconsistency or discrepancy that the Contractor discovers between the Supplemental Materials and the Contract Documents and indicate whether the Supplemental Material have any impact upon the Contract Sum and/or the Contract Time. Failure of the Contractor to provide such notice is hereby deemed to mean: (1) such Supplemental Materials are consistent with the Contract Documents; (2) do not require a change in the Contract Sum and/or Contract Time; and (3) Contractor is willing and able to perform all of the Work for the Contract Sum, and in accordance with all the requirements of the Contract Documents. If the Contractor notifies the Owner's Representative and Architect that it believes the Supplemental Materials are either inconsistent with the Contract Documents and/or represent added Work or will delay performance in accordance with the Project schedule, the Owner's Representative and Architect will review the Contractor's response and provide the Owner with recommendations for approval or disapproval, and the Owner shall have one or more of the following options:

(a) The Owner may direct the Architect to modify that aspect of the Supplemental Materials to which the Contractor objects. The Contractor shall cooperate with the Owner, Owner's Representative and the Architect during the modification effort and shall make recommendations appropriate to correct such portions of the Supplemental Materials. The Architect shall submit to the Contractor the revised Supplemental Materials as approved by the Owner. The Contractor shall promptly reexamine such revised Supplemental Materials as described in Section 7.1.4;

(b) If, upon review of the Contractor's notice, the Owner (after consultation with the Architect and Owner's Representative) believes that the portion of the Work described therein does not constitute a material change in the Work, or disagrees as to the impact claimed by the Contractor to the Contract Sum or Contract Time, as applicable, the Owner may advise the Contractor through the Owner's Representative or Architect. If such disagreement is not promptly resolved, the Work subject to permanent shall be identified in a schedule (the "Disputed Work Schedule"). Whenever possible, the Owner and the Contractor shall resolve items set forth in the Disputed Work Schedule confirming such resolution in Change Orders. Items in the Disputed Work Schedule that are not resolved by the Owner and the Contractor shall be subject to the dispute resolution procedures set forth in Article 15. During the pendency of such dispute resolution procedures, all items remaining in the Disputed Work Schedule shall be performed by the Contractor as required by the Contract Documents and a tentative adjustment shall be made to the Contract Sum to the extent of any undisputed aspect of the item. No adjustment shall be made to the Contract Sum for any disputed item or portion of an item. For each remaining item in the Disputed Work Schedule, the
Contractor shall keep a specific, detailed accounting of the time and materials required to complete such item. Adjustments to the Schedule shall not be permitted on a tentative basis; or

(c) If, upon review of such notice from Contractor, the Owner agrees that all or a portion of the Work therein entitles the Contractor to a Change Order and the Owner elects not to direct the Architect to modify the Supplemental Materials, the Owner and the Contractor shall enter into a written Change Order providing for such agreed changes to the Contract Sum and/or Contract Time, as applicable.

§ 7.1.5 Unless otherwise agreed to by the Owner, the aggregate limitation on the amount of profit and overhead that the Contractor, each Subcontractor and all lower-tier subcontractors and suppliers can charge for Work performed pursuant to Change Orders and Construction Change Directives shall be as follows: (a) for the Contractor for Work performed by the Contractor’s own forces, ten percent (10%) of the cost of the Work; (b) for the Contractor for Work performed by Subcontractors, five percent (5%) of the cost of such Work; (c) for each Subcontractor for Work performed by such Subcontractor’s own forces, ten percent (10%) of the cost of such Work for overhead and for profit; and (d) for each Subcontractor for Work performed by lower-tier subcontractors, five percent (5%) of the cost of such Work for overhead and for profit. This aggregate combined profit and overhead amount shall include all other markups and non-direct costs.

§ 7.2.2 Unless expressly reserved therein, an executed Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any adjustments to the Contract Sum or GMP and any adjustments to the Schedule, Contract Time and/or Milestone Dates.

§ 7.3.7 If the Contractor does not respond promptly or disagrees, Failure of the Contractor to notify the Owner of any disagreement with any proposed adjustment to the Contract Sum or Contract Time, as applicable, or method for determining them set forth in a Construction Change Directive within ten days after the date of receipt by the Contractor of such Construction Change Directive shall be deemed to be an agreement by the Contractor to the proposed adjustment to the Contract Sum or Contract Time or method for determining them set forth in such Construction Change Directive. If the Contractor disagrees in writing on a timely basis with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount in accordance with Section 7.1.5 above. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

1. Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers’ compensation insurance;
2. Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
3. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
4. Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
5. Additional costs of supervision and field office personnel directly attributable to the change. If the Owner and the Contractor fail to agree on the adjustment to the Contract Sum or Contract Time, as applicable, or method for determining them arising from any Construction Change Directive, (a) the adjustment to the Contract Sum shall be the net increase or decrease in the Cost of the Work attributable to the Construction Change Directive plus mark-up per Section 7.1.5 and (b) the adjustment to the Contract Time shall be equal to the net increase or decrease (if any) in the time required to perform the entire Work attributable to the Construction Change Directive. As used in this Section,
the term "Cost of the Work" for Contractor shall mean the Cost of the Work as defined in the Agreement and for Subcontractors as defined in Section 7.6 below. Any disagreement as to the determination of such items that are not resolved by the Owner and the Contractor shall be subject to the dispute resolution procedures set forth in Article 15 of these General Conditions of the Contract.

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§ 7.5 BACK-UP FOR CHANGE ORDERS
§ 7.5.1 Lump Sum Proposal: The Contractor, Subcontractor or lower tier subcontractor’s proposal covering the extra Work or change will be itemized for the various components or Work and segregated by labor, material and equipment in a detailed format satisfactory to the Owner. Such format will include a material and labor quantity take-off and related pricing information and extensions (by drawing, if applicable). The Contractor will furnish his itemized lump sum proposal and the similarly detailed proposals of any Subcontractors, lower tier subcontractors or material suppliers.

§ 7.5.2 Time and Material: Should the Owner elect to have the extra Work or change performed on a time and material basis, and so notify the Contractor in writing, the Contractor, Subcontractor or lower tier subcontractor shall perform the Work in such manner. Records supporting the actual cost of the Work (as defined in the Section 7.6) performed must be kept and forwarded to the Owner’s representative. Such records include, but are not limited to, material tickets for all actual material used, daily time sheets itemizing workmen’s names and hours worked for all actual labor costs, and such other evidence as the Owner’s representative may reasonably request. Owner may require authentication of all time sheets and material tickets. If so requested, the failure to provide such authentication may constitute a waiver of any rights to payment of the Contractor, Subcontractor or any lower tier subcontractor for the extra Work or change performed.

§ 7.5.3 Unit Prices: The Contractor, Subcontractor or lower tier subcontractor’s proposal shall itemize the quantities of each item of Work for which there is an applicable unit price. The quantities must be itemized in relation to each specific Contract Drawing.

§ 7.6 ACTUAL COST OF THE WORK FOR SUBCONTRACTORS
§ 7.6.1 If performed on a time and material basis, the Actual Cost of the Work for a Subcontractor shall comprise the following elements:

§ 7.6.1.1 Direct Job Costs for Labor: The number of hours, hourly payroll cost, labor burden (as defined in 7.6.1.2) and extended totals for each item of Work to arrive at the cost for direct jobsite labor including working foremen. All other administration, clerical expense and supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) shall be considered covered by the Subcontractor’s mark-up per Section 7.1.5.

§ 7.6.1.2 Labor Burden: The employer’s net actual cost of payroll taxes (FICA, SUTA, FUTA), net actual cost of union benefits, and net actual cost for workers’ compensation insurance, taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, etc. Labor burden shall not be considered to include costs of Commercial General Liability Insurance, auto insurance or umbrella insurance which shall be considered covered by the Subcontractor’s mark-up per Section 7.1.5.

§ 7.6.1.3 Direct Job Costs for Materials & Equipment: The quantity, price and extended totals for each item of Work to arrive at the costs of direct material and equipment. Appropriate amounts may be included for the rental of major equipment (defined as tools and equipment with individual purchase costs of more than $1,000) specifically needed to perform the extra Work or change. Use of small tools (defined as tools and equipment with individual purchase costs of less than $1,000) is considered covered by the mark-up percentage to be added to the direct cost of the extra work or change. Cost for construction equipment, shall be the lower of the total expected rental cost or ownership cost equivalent including transportation charges and all applicable taxes.

§ 7.6.2 If performed on a unit price basis, the Actual Cost of Work shall comprise the following elements:

§ 7.6.2.1 Unit prices are for Work complete, measured in place (i.e., actual quantity installed) and cover profit and all other costs and expenses of the Contractor, Subcontractor or lower tier subcontractor. Unit prices include, without limit, all conditions of the Contract and all general requirements such as layout, reproduction of Drawings and
Specifications, testing and inspection, shop drawing and sample coordination, supervision (field and home office), small tools and expendable items, insurance, taxes, temporary facilities and services, including access and safety provisions, "as-built" drawings, and general and administrative overhead and profit.

§ 7.6.2.2 Unit Price Application: For unit price items, additions and deletions of like items shall be algebraically summed and then multiplied by the applicable unit prices.

§ 7.6.3 Any changes undertaken without the Architect's or the Owner's authorization will not be recognized as a basis for a Claim for extra cost at a later date. If the Contractor claims that any instructions or orders, whether oral, written, by drawings, or otherwise, involve extra cost or time, and such instructions or orders are not accompanied by a written acknowledgement by the Owner or the Architect that extra payment will be made or time extended, they shall promptly so notify the Architect in writing and should not proceed with the Work until they have received a further written order to proceed, except in cases of emergency affecting life or property. No claim for extra cost or time on account of such instructions shall be valid unless the Contractor has so notified the Architect, before proceeding, that they claim extra cost and time and has received the further written order from the Owner's representative to proceed.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, area-wide labor disputes not directed expressly at Contractor or any Subcontractor, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order Construction Change Directive for such reasonable time as the Architect may determine. The Contractor acknowledges and agrees that (a) no adjustments to the Contract Time shall be made unless the events described above shall have the effect of actually delaying completion of components of the Work on the critical path indicated in the Schedule and (b) adjustments to Milestone Dates and/or the Contract Time will be permitted in connection with any such delay only to the extent such delay (i) is not caused, or could not have been avoided, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, (iii) has an impact of at least one (1) day and (iv) has no concurrent or contributing cause for which the Contractor would not be entitled to an extension of the Contract Time. Notwithstanding anything to the contrary, the Contractor shall not be entitled to any extension in the Contract Time for delays in receiving required licenses, permits, inspections or approvals unless the Owner is required to provide or obtain such licenses, permits, inspections or approvals.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 45-15 and this section 8.3.2 through section 8.3.8 below. Contractor's written Claim for extension of Contract Time shall be accompanied by detailed dates, correspondence, notices, and any other data which provides proof of the events which are the basis for the Claim, including a network analysis justifying the time extension. Said network analysis shall specifically detail the extension of the critical path of the Project caused by the events which underlie the time extension request.

§ 8.3.3 This Section 8.3.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Should the Contractor be delayed in the performance of the Work, the Contractor shall (a) notify the Owner and the Architect in writing within three (3) days following the event or occurrence causing such delay and (b) notify the Owner and the Architect of the estimated extent of the delay and the cost, if any, which may be incurred as result of the delay within twenty-one (21) days following the event or occurrence causing such delay. If the Contractor fails to so notify the Owner and the Architect, the Contractor shall be barred from asserting any claim for compensation, expense or damages with respect to such delay.

§ 8.3.4 No claim for delay shall be allowed on account of failure of the Architect to furnish Drawings, Specifications or instructions, or to return Shop Drawings or Samples until a reasonable period of time (but in any event not less than fifteen days or such longer period as may be agreed to among the Architect, the Contractor and the Owner) after receipt by the Architect of written demand for such instructions, Drawings, or Samples, and not then unless the Contractor shows that the Architect's delay has materially interfered with the progress of the Work.
§ 8.3.5 Notwithstanding anything to the contrary in any of the Contract Documents, the Contractor acknowledges and agrees that no extension of time shall be granted on account of weather conditions except as provided for in this Section 8.3.5. A Claim by the Contractor for an increase in the Contract Time on account of weather shall only be granted if all the following conditions are met: (1) the weather during any calendar month (or pro rata portions of partial months at the beginning and end of the Contract Time) is "abnormal," as defined below; (2) the Contractor demonstrates that such abnormal weather had the effect of delaying completion of components of Work on the critical path indicated in the Construction Schedule; and (3) such Claim is made by written notice. "Abnormal weather" shall, for purposes of this Section, be limited to circumstances in which adverse weather conditions significantly exceed those which have historically been encountered, or may reasonably be expected to be encountered, at the Project site.

§ 8.3.6 If any of the events described in this Section 8.3 of the General Conditions of the Contract entitle the Contractor to an extension of the Contract Time, the sole remedy of the Contractor shall be such extension of the Contract Time and the Contractor shall not be entitled to any adjustment of the Contract Sum, except as otherwise provided in this Section. If, and to the extent that the Contract Time is extended by more than ten (10) business days solely on account of fault or neglect of the Owner or Architect, the Contract Sum shall be increased by the Contractor's reasonable and verified additional direct costs of performing the Work to the extent directly and solely attributable to extensions of the Contract Time on account of the fault or neglect of the Owner or Architect in excess of ten (10) business days.

§ 8.3.7 The Owner and Contractor agree that it is the intent of the Contract Documents that the Contractor shall have responsibility to achieve Substantial Completion of the Work within the Contract Time with an adequate work force, irrespective of any labor dispute (other than those of general applicability not directed at the Project, the Contractor or anyone for whom the Contractor is responsible), including picketing at or near the Project site, whether or not the Contractor is the primary employer involved in the labor dispute or a neutral employer, and whether or not the Contractor has a collective bargaining relationship with the union(s) involved in the labor dispute. Notwithstanding anything to the contrary in any of the Contract Documents, the Contractor acknowledges and agrees that no extension of time shall be granted on account of a labor dispute (other than those of general applicability not directed at the Project, the Contractor, or anyone for whom the contractor is responsible).

§ 8.3.8 If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

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The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contractor shall provide to the Owner, throughout the course of the Work, reports projecting the cash flow needs of the Contractor. This report shall be prepared and delivered monthly, projecting the anticipated needs for the balance of the Project.

... Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner and Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require and shall be revised if later found by the Architect to be inaccurate. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Each item in the schedule of values shall be exclusive of the Contractor's Fee. The proper share of the Contractor's Fee for each item shall be listed in a separate line or column.

...
with the schedule of values, if required under Section 9.2, for completed portions of the Work. The format and number of copies of such Applications for Payment shall be as directed by the Owner. Such application shall be notarized, if required, and supported by such data substantiating the Contractor’s right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Contractor’s lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, together with similar sworn statements from all such Subcontractors and material suppliers: (ii) duly executed waivers of mechanics’ and material suppliers’ liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; (iii) proof of compliance with insurance and surety provisions as outlined in this Agreement; (iv) an updated Schedule that accurately reflects the current status of the Project; and (v) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect.

§ 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 when such Construction Change Directives have set forth an adjustment to the Contract Sum.

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§ 9.3.4 Contractor shall maintain record drawings as required by the Contract Documents, including for the mechanical and electrical trades, and shall review and inspect such drawings on a monthly basis. Contractor shall, on a monthly basis provide to Owner written confirmation that the record drawings are current.

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.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by Contractor, including subcontractor and/or supplier lien claims which have not been dissolved by bond by operation of law by the Contractor;

.7 repeated failure to carry out the Work in accordance with the Contract Documents.

.8 failure to maintain current record drawings

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law, or other, or vendor.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3, 9.6.6, and 9.6.4.

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

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§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and only minor items which can be corrected or completed without any material interference with the Owner’s use of the Work which remains to be corrected or completed. Further, the following items are required from the Contractor prior to the Owner’s issuing of the Certificate of Substantial Completion: (i) the Owner and Architect agree that the Project is ready for the use intended without any concurrent Work that will disrupt the Owner’s activities; (ii) the Owner and the Architect agree that the Work has been completed in accordance with the Contract Documents, specifications, plans, drawings and all Change Orders; (iii) all HVAC systems included in the Work are functioning in accordance with the Contract Documents and a satisfactory test and balance report for HVAC systems has been received by the Architect; (iv) all life safety systems included in the Work are functioning in accordance with the Contract Documents; (v) the punch list is complete; and (vi) receipt by the Owner of all required final certifications and/or approvals from the governmental authorities having jurisdiction over the Work.

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

... 

§ 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 Architect as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project stage. Such partial occupancy or use may commence when whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them respective responsibilities of Owner and Contractor 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, been established in writing. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5) payment, (5) waivers of liens, in the form provided by the Owner, from the Contractor and all Subcontractors and suppliers who performed portions of the Work or
supplied materials or equipment in connection with the Work, (6) the expiration of time within which any Contractor, Subcontractor or supplier could file a lien under law, (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (8) to the extent that final certificate(s) of occupancy for the Project and the certificates of inspection and operating permits described in Section 13.5.4 are required by governmental authorities to use and occupy the Project as intended, and to the extent that such items were not delivered to the Owner as a condition to Substantial completion of the Work, the final certificate(s) of occupancy for the Project and the certificates of inspection and operating permits described in Section 13.5.4, (9) the As-Built Documents and reproducible transparencies thereof, in accordance with Section 3.11, (10) all special warranties required by the Contract Documents, endorsed by the Contractor and in a form reasonably acceptable to the Architect and the Owner, and (11) all manufacturers' catalogs, instructions, and other similar data, including the necessary graphic cuts, diagrams, value charts, and the like, covering all mechanical and manually operated devices furnished and/or installed in any permanent structure. All of the foregoing items shall be submitted to the Owner in a single binder (the "Project Binder"), and the Contractor shall submit to the Owner four (4) copies of the Project Binder. As an additional condition to be satisfied prior to final payment, the Contractor's personnel or Subcontractors' or suppliers' personnel, as appropriate, shall provide the property management and operations personnel at the Property with training in the operation and maintenance of building systems and controls installed as part of the Work. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

4. any Claim which has not been waived in accordance with this Agreement shall be deemed to have accrued upon discovery by the Owner of the condition or breach upon which such Claim is based, for the purpose of any applicable statute of limitation.

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§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the Work or by the local fire chief or fire marshal. The area within the site limits, including all storage areas, shall be kept orderly and clean, and all combustible rubbish shall be promptly removed from the site.

§ 10.2.9 The Contractor is responsible for maintaining the area within the site limits free of all debris and food-related trash that may harbor and/or attract rodents. The Contractor shall provide secure refuse containers for all food-related trash. The containers shall be heavy-duty refuse containers with tight-fitting domed lids, with a spring loaded flap, and no openings that allow access by rodents. The Contractor shall notify the Owner immediately whenever rodents or signs of rodents (e.g., burrows, droppings) are observed.

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

§ 10.2.11 The Contractor shall take reasonable precautions to prevent loss or damage caused by vandalism, theft, burglary, pilferage or unexplained disappearance of property of the Owner, whether or not forming part of the Work, located within those areas of the Project to which the Contractor has control.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Subcontractors' 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.

Intentionally omitted.

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

§ 10.3.4.1 Hazardous waste that is generated by the Contractor as part of the Work shall be stored and disposed of in accordance with all applicable Federal, State and local regulations. Hazardous waste storage requirements include, but are not limited to, secondary containment, proper labeling, segregation of incompatible materials and routine inspection of storage areas. In addition, all hazardous waste containers shall be constructed of a material that is compatible with the waste, shall be in sound condition, and shall be kept securely closed at all times.

§ 10.3.4.2 The Contractor is responsible for the proper removal and disposition of all surplus chemicals (e.g., paints, lubricants, cleaning products) that they bring on-site as part of the Work. The Contractor shall not use any drain, pipe or plumbing fixture for the disposal of any waste materials. No chemicals that the Contractor brings on-site shall remain on the Project site at the completion of the Work.

§ 10.3.4.3 To ensure that construction activities and the use of heavy equipment does not increase the risk of release of oil or hazardous materials to the environment, the Contractor shall have and implement a Spill Plan that reflects all regulatory standards. The Contractor shall immediately report all spills/releases to the Owner. The Contractor shall coordinate with the Owner regarding reporting and follow-up documentation to outside regulatory agencies.

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§ 10.3.5 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 outside the scope of the Work solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.3.6 Notwithstanding anything to the contrary, the Contractor acknowledges and agrees that the Work will likely require the removal and/or remediation of soil, debris and other items containing hazardous materials or contaminants to the extent disclosed in reports or materials previously delivered to the Contractor. All such Work shall be performed, and all such materials shall be removed and disposed of, by qualified and licensed (where required) parties engaged by the Contractor in compliance with all applicable legal requirements.

...
be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

2. Claims for damages because of bodily injury, occupational sickness or disease, death of the Contractor's employees;

3. Claims for damages because of bodily injury, sickness or disease, death of any person other than the Contractor's employees;

4. Claims for damages under usual personal injury liability coverage;

5. Claims for damages other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

7. Claims for bodily injury or property damage arising out of completed operations; and

8. Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.2. Such insurance shall include, at a minimum, the following:

§ 11.1.1.1

The Contractor shall maintain the insurance coverages set out in this Section, insuring the Contractor and its employees, agents, and designees, which insurance shall be by policies that are subject to the Owner's approval:

a. Workers' Compensation Insurance to cover full liability under the Workers' Compensation laws of the state or jurisdiction in which the Project is located at the statutory limits required in said jurisdiction, including coverage for the benefits provided under United States Longshoremens' & Harbor Workers' Act, if applicable.

b. Employers' Liability Insurance (with limits of not less than $500,000 per accident for Bodily Injury by accident, $500,000 each employee - by disease and $500,000 policy limit - by disease), covering operations of the Contractor.

c. Commercial General Liability ("CGL") Insurance for operations of the Contractor with coverage written at least as broad as that of the standard Commercial General Liability Insurance policy (Occurrence Form) including hazards of operations (including explosions, collapse, and underground operations), with contractual liability coverage and personal injury liability coverage for claims arising out of this Agreement. The insurance required by this subsection (c) shall be written for not less than limits of liability as follows: $1,000,000 each occurrence for bodily injury and property damage; $2,000,000 general aggregate; and $2,000,000 aggregate products/completed operations. CGL coverage shall be written on ISO Occurrence Form CG 00 01 (10 01) or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products, completed operations, and personal and advertising injury.

d. Automobile Liability Insurance covering all owned non-owned and hired automobiles, trucks, and trailers of the Contractor. Such insurance coverage shall be written at least as broad as that of the Standard Commercial Automobile Liability policy and shall be written for not less than a $1,000,000 limit of liability per occurrence for bodily injury and property damage.

e. Should aircraft or watercraft of any kind be used by Contractor, any tier of Subcontractor or by anyone else on their behalf, Contractor or Subcontractor shall maintain or cause the operator of the aircraft/watercraft to maintain Aircraft/Watercraft Public Liability Insurance including bodily injury, property damage, and passenger liability, with respect to any aircraft/watercraft owner, used, operated or hired in connection with the Work the Contractor, Subcontractor or anyone else written for not less than a $5,000,000 limit of liability per occurrence for bodily injury and property damage.

f. Should the performance of this Agreement require the Contractor, any tier of subcontractor or anyone else on their behalf to conduct any activities in the vicinity of a railroad, the Contractor or Subcontractor shall maintain such Railroad Protective Insurance as may be required by the affected railroad written for not less than the limits required by such railroad. The Contractor's Railroad Protective Insurance shall be written on the policy form required by the affected railroad.
g. Excess or Umbrella Liability Insurance with coverage written at least as broad as those of the primary policies required by this Subsection (b), (c), (d), and (e) above and written for not less than a $10,000,000 limit of liability per occurrence.

§ 11.1.1.2 Each insurance policy to be maintained under the prior Section, subparts 1 (b), (c), (d), (e), (f), and (g), shall be endorsed to name Additional Insureds: the Owner, Owner's Representative, Architect and the trustees, directors, officers, agents, consultants, servants and employees of each of them and all other interests as may be reasonably required by the Owner. Such parties shall be included as Additional Insureds on the CGL and Umbrella using ISO Additional Insured Endorsement CG 20 10 (11 85) or CG 20 33 (10 01) AND CG 20 37 (10 01) or an endorsement providing equivalent coverage to the additional insureds. This insurance for the Additional Insureds shall be as broad as the coverage provided for the named insured. Such insurance shall apply as primary and non-contributing insurance before any other insurance or self insurance, including any deductible, maintained by, or provided to, the Additional Insured. If the Additional Insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis and apply to the Additional Insureds only. The amount of Contractor's insurance shall not be reduced by the existence of such other insurance. All Subcontractors shall provide endorsements naming the Contractor, the Owner, Owner's Representative, Architect, and any lenders of Owner and all other parties required by this Agreement as "Additional Insureds" on their CGL and Umbrella policies using the same ISO forms or combinations of forms. Contractor and all Subcontractors shall maintain CGL and Umbrella coverage for themselves and all additional insureds for the duration of the Work and maintain Completed Operations coverage for themselves and the Additional Insureds for at least six (6) years after Substantial Completion of the Work.

§ 11.1.1.3 Prior to the date on which Contractor commences the performance of the Work, the Contractor shall cause to be furnished to the Owner the Certificate of Insurance for the coverages required by this Agreement to be maintained by Contractor with insurance carriers acceptable to the Owner. As and when the Owner may direct, copies of the actual insurance policies or renewals or replacements thereof shall be submitted to the Owner. All copies of policies, if any, and Certificates of Insurance submitted to the Owner shall be in form and content acceptable to the Owner. In the event Contractor maintains insurance with limits exceeding the limits required hereunder, the Certificate of Insurance shall state the full extent of the coverage available to the above Additional Insureds. Such excess liability coverage will inure to the benefit of the Additional Insureds in the event of loss in excess of the minimum insurance required herein. Contractor will obtain and maintain copies of Certificates of Insurance from all Subcontractors.

§ 11.1.1.4 Contractor shall require all policies of insurance that are secured and maintained by Contractor to include clauses providing that each carrier shall waive all of its rights of recovery, under subrogation or otherwise, against the Owner, Owner's Representative, Architect and their affiliates. In addition, Contractor waives all rights of recovery against the Owner, Owner's Representative and/or Architect it may have or acquire because of deductible clauses in or inadequacy of limits of any policies of insurance that are in any way related to the Work or activities of Contractor. Nothing contained herein shall relieve contractor from its obligations to exercise due care in the performance of its duties in under this Contract. If the Contractor fails to furnish and maintain the required insurance, the Owner may, at its option, purchase such insurance on behalf of the Contractor, and Contractor shall pay the cost thereof to the Owner upon demand and shall furnish to the Owner any information needed to obtain such insurance.

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

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall

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be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. These certificates shall set forth evidence of all coverage required by Section 11.1.1. The form of certificates shall be the ACCORD form. Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending limits of coverage.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. Intentionally omitted.

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§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. The Owner's property insurance will not cover hoists, tools, or other equipment belonging to the Contractor or any Subcontractor.

...

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles unless such loss is due to the fault or neglect of Contractor or a party for whom Contractor is responsible.

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The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused, to the extent covered by insurance.

...

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

§ 11.3.5 Intentionally omitted.

...

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary in good faith and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.
§ 11.3.9 If required in writing by a party in interest, the Owner or fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected as in the Agreement between the Owner and Contractor. If after such loss no such special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a change in the Work in accordance with Article 7. Intentionally omitted.

§ 11.3.10 The Owner or fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner or fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

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§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The cost of all bonds shall be included in the Construction Managers Fee. If the construction manager requires bonding of subcontractors, this cost shall be noted as a separate cost item on the subcontractors bid and contract. The owner shall have the right to reject the bond cost for subcontractors as a cost of the work and require the construction manager to carry the cost as part of the base fee.

...  

§ 11.5.1.1 In addition, should anyone claiming by, through or under Contractor assert a mechanic's lien on the Project alleging non-payment for work, labor and materials or other similar claims regarding the Project, Contractor shall be obligated to obtain a bond pursuant to applicable law, or if acceptable to Owner, other lawful and satisfactory security, to discharge said lien and to clear the title of the Project.

...

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

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. This obligation under the Section 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract.
§ 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. This obligation under this Section 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract.

§ 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.

Intentionally omitted.

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If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable, but in such event, the Owner's acceptance shall not be deemed a waiver of any other rights the Owner has hereunder. Such adjustment shall be effected whether or not final payment has been made.

... The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 45-4, located.

... § 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, provided, however, that either party may assign this Agreement or any rights acquired hereunder without the other party's consent if such assignment is to any corporation or entity which may hereafter become the party's successor-in-interest or which purchases all or substantially all of the party's assets. In the event an assignment is approved, the assignee must expressly assume all obligations and liabilities of the assignor hereunder, and such assignment will not relieve the assignor of its obligations hereunder. Any attempt at assignment without the consent of the other party as provided herein shall be deemed null and void and a material breach of this Agreement. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

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

PAGE 48

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

PAGE 49
§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed in place.  

...

A Claim is a demand or assertion by one of the parties— the Contractor— seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and the Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim— Contractor.

...

Claims by either the Owner or Contractor must be initiated by written notice to the other party containing a clear statement of the basis of the Claim and the relief sought by the Contractor, and such notice shall be provided to the Owner and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant— Contractor first recognizes the condition giving rise to the Claim, whichever is later— later— provided that, in the event of a Claim based upon delay to the Contractor, as a condition precedent to any Claim, the Contractor shall first provide initial notice of a delay within 3 days of the event giving rise to the delay, and then provide a Claim within such 21 day period thereafter; and further provided, however, that the Contractor shall use its best efforts to furnish the Architect and the Owner, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized, and shall cooperate with the Architect and the Owner in an effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. THE CONTRACTOR EXPRESSLY AGREES THAT FAILURE OF THE CONTRACTOR TO INITIATE A CLAIM WITHIN THE TIME LIMITS SPECIFIED IN THIS SECTION 15.1.2 SHALL RESULT IN SUCH CLAIM BEING WAIVED

...

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments that are not in dispute in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

...

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein in Section 15.1.2 shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

PAGE 50

§ 15.1.5.1 Contractor shall advise the Owner and Architect in writing of any known delay within three (3) days of its knowledge of the same (including delays in the receipt of drawings or designs from designer or Architect), and shall include an identification of the delay, its anticipated duration and its anticipated effect on the prosecution and completion of the Work. If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein in Section 15.1.2 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. The Contractor shall have the burden of demonstrating the effect of the claimed delay on the Contract Time, and shall furnish the Owner and Architect with such documentation relating thereto as they may reasonably require. The Contractor shall take all prudent steps necessary to minimize the delay, and shall diligently proceed to complete the Work as required by the Contract Documents. Notwithstanding the foregoing, time for performance of a party's obligations hereunder shall not be tolled unless and until the party claiming such excuse has provided the other party with written notice of the event.
§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Claims arising from adverse weather conditions shall be subject to the provisions of Section 8.3.5.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES
Intentionally omitted.

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

1. damages incurred by the Owner for rental expense, for losses of use, income, profit, financing, business and reputation, and for los of management or employee productivity or of the services of such persons; and

2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

§ 15.1.7 No extension of time shall be granted to the Contractor for delays occurring to parts of the Work that have no measurable impact on the completion of the Milestone Dates; nor shall any extension of time be granted for delays to parts of the Work that are not located on the critical path. The Contractor acknowledges and agrees that an excusable delay in a portion of the Work or schedule activity does not necessarily result in a delay of equal duration in the completion of the entire Project.

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 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.8 Direct Negotiation. Any dispute arising at any time during or after the construction of the Project shall be resolved, if possible, by negotiations between duly authorized representatives of the Contractor and the Owner. If such duly authorized representatives are unable to resolve any dispute within ten (10) days after written notice of such dispute together with all relevant supporting documentation is given by either party to the other, the matter may be submitted by either party to the dispute resolution process set forth below.

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

§ 15.4 LITIGATION AND ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. Any dispute that is not resolved by negotiation or mediation or arbitration shall be resolved by litigation in state or federal court. Contractor assents to jurisdiction in the state or federal courts of New Hampshire and agrees that the sole venue of any litigation between Contractor and Owner shall be Hillsborough County, New Hampshire. To the extent the parties have agreed in the Owner-Contractor Agreement that claims below a certain dollar threshold shall be decided by binding arbitration, such arbitration shall be conducted and the arbitrator(s) selected in accordance with the Construction Industry Rules of the American Arbitration Association then pertaining unless the parties mutually agree otherwise.

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User Notes: 1049702217
§ 16.4.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

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

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

§ 16.4.4 CONSOLIDATION OR JOINDER

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

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

§ 16.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.
Attachment 12.2.3

for
CONSTRUCTION MANAGEMENT SERVICES
FY 2014 and 2015
for
NASHUA COMMUNITY COLLEGE

Add at contract time
Attachment 12.2.4

SCOPE OF WORK
for
CONSTRUCTION MANAGEMENT SERVICES
FY 2014 and 2015
for
NASHUA COMMUNITY COLLEGE

Add at contract time
PROJECT  NCC 13-08

Attachment 12.2.5

COST OF THE WORK AND METHOD OF PAYMENT
for
CONSTRUCTION MANAGEMENT SERVICES
FY 2014 and 2015
for
NASHUA COMMUNITY COLLEGE

Add at contract time
PROJECT NCC 13-08

Attachment 12.2.6

RATE SHEET FOR TIME AND MATERIAL WORK
for
CONSTRUCTION MANAGEMENT SERVICES
FY 2014 and 2015
for
NASHUA COMMUNITY COLLEGE

Add at contract time
PROJECT NCC 13-08

Attachment 12.2.7

FORMS FOR PARTIAL AND FINAL LIEN WAIVER AND RELEASE
for
CONSTRUCTION MANAGEMENT SERVICES
FY 2014 and 2015
for
NASHUA COMMUNITY COLLEGE

Forms for partial and final lien waiver and release
EXHIBIT C-1
WAIVER AND RELEASE
UPON PARTIAL PAYMENT

STATE OF: ___________________________
COUNTY OF: ___________________________
The undersigned ___________________________ has furnished materials and/or labor

for ___________________________ for the:

Project: ___________________________
Located at: ___________________________
Owned by: ___________________________

The undersigned hereby acknowledges receipt to date of: ___________________________
Which includes current payment of: ___________________________

from ___________________________ and waives and releases any and all liens or claim of right of lien under
the statutes of New Hampshire relating to mechanic's and materialmen's liens on the above described
premises and improvements thereon on account of labor and/or services, materials, fixtures, apparatus
and machinery furnished in relation to the Project.

This payment received relates to work for the period ending ___________________________.

The undersigned also hereby certifies and affirms that it has paid or will pay in full all persons or entities
who have, on its behalf, performed labor or supplied materials to the Project and that the undersigned will
indemnify and hold ___________________________ and ___________________________ harmless from any and
all claims made by such subcontractors and suppliers of labor and materials.

I hereby certify that I am duly authorized to execute this instrument.

Executed this ______ day of ____________, 20___

Name: ___________________________

By: ___________________________
(Signature)

Witness: ___________________________ Title: ___________________________

#50439432
STATE OF:  
                  
COUNTY OF:  
                  
The undersigned  
                  
has furnished materials and/or labor  

                  
for  

for the:  

Project:  

Located at:  

Owned by:  

The undersigned hereby acknowledges receipt of final payment of:  

The undersigned also acknowledges total payments 
(including final payment) to date of:  

from  

and waives and releases any and all liens or claim of right of lien under 
the statutes of New Hampshire relating to mechanic’s and materialmen’s liens on the above described 
premises and improvements thereon on account of labor and/or services, materials, fixtures, apparatus 
and machinery furnished in relation to the Project. 

This payment received constitutes final payment for all Contract work under the Contract Documents 
including any and all Change Orders and/or Change Directives. 

This final payment received includes work through the period ending   

The undersigned also hereby certifies and affirms that it has paid or will pay in full all persons or entities 
who have, on its behalf, performed labor or supplied materials to the Project and that the undersigned will 
indemnify and hold  

and  

harmless from any and 
all claims made by such subcontractors and suppliers of labor and materials. 

I hereby certify that I am duly authorized to execute this instrument. 

Executed this   day of , 20   

Name:  


By:  

(Signature)  

Witness:  

Title:  

#50439431
Attachment 12.2.8

SUBCONTRACTOR/EMPLOYEE MASTER LIS
RSA 21-I 81a
for
CONSTRUCTION MANAGEMENT SERVICES
FY 2014 and 2015
for
NASHUA COMMUNITY COLLEGE
**SUBCONTRACTOR/EMPLOYEE MASTER LIST**  
**RSA 21-I 81a**

Date: DATE  
Project Name: NAME NAME  
Project Number: ###  
General Contractor: NAME

<table>
<thead>
<tr>
<th>NAME OF GENERAL CONTRACTOR, SUBCONTRACTOR, OR INDEPENDENT</th>
<th>EMPLOYEES EXPECTED TO WORK ON THE JOBSITE</th>
<th>ENTITY WITH WHOM SUBCONTRACTOR OR INDEPENDENT IS CONTRACTED/Employed</th>
<th>ENTITY PROVIDING WORKERS COMPENSATION COVERAGE</th>
<th>OSHA-10 CERTIFICATE ON FILE (Y/N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME ADDRESS</td>
<td>--</td>
<td>CONTRACTOR</td>
<td>SUBCONTRACTOR NAME</td>
<td>Carrier: ???</td>
</tr>
</tbody>
</table>
Attachment 12.2.9

INSURANCE REQUIREMENTS
for
CONSTRUCTION MANAGEMENT SERVICES
FY 2014 and 2015
for
NASHUA COMMUNITY COLLEGE
COMMUNITY COLLEGE SYSTEM OF NEW HAMPSHIRE
INSURANCE REQUIRED OF CONTRACTORS

TYPES OF INSURANCE REQUIRED

For the purposes of this document the term Contractor shall include each and every contractor, subcontractor, and sub-subcontractor utilized by the General Contractor to complete the construction project.

**General Liability Insurance**

Commercial General Liability insurance covers claims for Bodily Injury and Property damage. CCSNH requires GL insurance when:

- A contractor will be working at a CCSNH location.
- The contractor has third parties on CCSNH's premises who could be injured or cause injury to others.
- Their “completed work” (building; renovations; HVAC; etc.) may fail, causing bodily injury or property damage
- The contractor is likely to subcontract part of their work

**Automobile Liability Insurance**

A Business Auto Liability insurance is required when a Contractor and/or their employees and subcontractors will operate, maintain, load or unload vehicles as part of their contracted work on any campus. As such, any Contractor who drives onto CCSNH’s owned or leased property should be required to provide evidence of a Commercial Automobile Liability insurance.

**Umbrella/Excess Liability Insurance**

An Umbrella/Excess policy is required when CCSNH is requesting total per occurrence and aggregate limits of liability that are higher than those carried by the Contractor in their “primary” General Liability, Auto Liability or Employer’s Liability (WC) policies – which is always the case. Note: General Liability policies typically provide limits of $1,000,000 per occurrence and $2,000,000 aggregate. Automobile liability policies generally provide a $1,000,000 “combined single” (CSL) limit.

**Workers’ Compensation Insurance**

CCSNH should request evidence of Workers’ Compensation (including Employers Liability coverage) for EACH AND EVERY Contractor. Evidence of workers’ compensation insurance from subcontractors and sub-subcontractors is the responsibility of General Contractor.
**Property Insurance**
When a new building is being contracted or an existing building is being renovated, coverage for the building material and the structure itself is provided by CCSNH. However, the Contractor, all Subcontractors, and Sub-subcontractors should be aware that this “Builder’s Risk” coverage does not provide coverage for the Contractor’s business personal property – tools, equipment, etc. As such, they need to provide coverage for this exposure themselves.

**Pollution Liability Insurance**
Pollution legal liability insurance may be required if there is a chance that the Contractor may cause a first party or third party liability or property damage claim arising out of the “pollution” of any land, water or buildings by any type of “hazardous waste” material through their own actions or actions of another acting on their behalf.

**Professional/Errors & Omissions Liability Insurance**
Professional or E&O insurance is required of all Architects and Engineers who provide the design and engineering for buildings and other structures.

**LIMITS OF INSURANCE REQUIRED**
The following insurance requirements are to be used as a guide for CCSNH’s contracts with Contractors/Sub-Contractors. The insurance requirements and indemnification language that are ultimately incorporated into the contracts should be tailored to the operations and exposures with respect to the construction being performed in order to protect the interests of CCSNH and its Affiliated Entities.

**Commercial General Liability:** Contractor agrees to maintain in full force during the term of this contract and until the completion of this project Commercial General Liability insurance with the following minimum limits of liability:

- $1,000,000. per occurrence Limit for bodily injury/property damage
- $1,000,000 per occurrence Personal and advertising injury
- $2,000,000 aggregate Products/completed operations
- $2,000,000 aggregate Policy aggregate
- $5,000 per person Medical expense

These limits shall be provided per project/per job.

**Automobile Liability Insurance:** Contractor agrees to maintain in full force during the term of this contract and until the completion of this project Commercial Automobile Liability insurance for all owned, non-owned, and hired vehicles/trucks. The minimum
limit of liability shall be $1,000,000 each accident, combined single limit for Bodily Injury and Property Damage.

**Workers’ Compensation Insurance:** Contractor agrees to maintain in full force and effect Workers’ Compensation insurance which provides statutory coverage for Workers’ Compensation claims and Employers’ Liability insurance subject to minimum limits of:

- $500,000 each accident Bodily injury by accident
- $500,000 each employee Bodily injury by disease
- $500,000 policy limit Bodily injury by disease

or the minimum limits required by Contractor’s Umbrella insurer.

**Umbrella Liability Insurance:** Contractor agrees to maintain in full force and effect Umbrella Liability insurance which provides excess following form coverage over the underlying Commercial General Liability, Automobile Liability, and Employers Liability policies previously described. The Umbrella/Excess policy will provide minimum limits of liability of $5,000,000 per occurrence and aggregate - and the aggregate limit should be provided on a “per project or job” or location basis.

**Professional Liability Insurance:** Architect/Engineer agrees to maintain in full force during the term of this contract and for a period of one (1) year after the completion of this project, Architects and Engineers Professional Liability (Errors and Omissions) insurance subject to a minimum per occurrence and aggregate limit of $3,000,000. Note: The scope of coverage and limit provided by the policy shall encompass the Architect/Engineers obligations as defined in the project agreement.

**Personal Property Insurance:** Contractor is responsible for the purchase and maintenance of “property” insurance on a “replacement cost basis” to cover all of “property” (tools, equipment, materials, etc.) owned by the Contractor. Note: The contract should indicate that the property will “be the sole responsibility and risk of Contractor” and that “CCSNH shall not be liable for any loss, damage, or theft to such property.”

**Other Insurance:** CCSNH reserves the right to require the Contractor to maintain additional insurance coverage as deemed necessary by the nature of the contract and from time to time during the contract period.

**OTHER INSURANCE ISSUES AND REQUIREMENTS:**

**General Requirements**

Contractor is required to maintain, during the life of this contract with CCSNH, insurance that will adequately protect CCSNH and the Contractor against the exposures inherent to the
contract and construction project. The insurance policies provided by Contractor must be underwritten by an insurance company that is financially sound and adequately rated (“A-” or higher) by one or more of the leading financial rating services including AM Best, Moody’s and/or Standard & Poors. The insurance companies utilized by the Contractor must be licensed to do business in the State of New Hampshire. If such insurance is provided by “self-insurance” or a Captive insurance company, adequate financial data should be provided to assure CCSNH of the Contractor’s ability to fund all deductibles, retentions and claims that occur.

**Additional Insureds:** The required Commercial General Liability Automobile Liability and Excess/Umbrella Liability coverage shall name CCSNH, its affiliates, subsidiaries, trustees, officers, employees and agents as additional insureds.

**Certificates of Insurance (COI)**
CCSNH requires the Contractor furnish Certificates of Insurance (COI) for the required coverage and limits to CCSNH before commencing work and 30 days prior to each renewal date of the required insurance policies. Such certificates shall state that, in the event of cancellation, material change in coverage or non-renewal, the Contractor will notify CCSNH at least thirty (30) days in advance via formal, written documentation.

**Cancellation/Non-Renewal**
In the event that any of the insurance policies purchased by the Contractor to satisfy the requirements in the contract are cancelled by the insurer, non-renewed by the Contractor or are changed materially (coverage, limits, etc.), CCSNH must be notified at least 60 days in advance of such an event. If the Contractor does not provide such notice, CCSNH has the right to procure the specified insurance coverage and charge the premiums back to the Contractor.

**Occurrence/Claims Made Forms**
CCSNH prefers that all Liability policies purchased by the Contractor to satisfy the requirements in the contract are written on an "occurrence" basis. However, if any liability policy must be written on a "claims made" basis, the Contractor must maintain such insurance for a minimum of one (1) year after the termination of the contract or provide “tail coverage” if the policy is cancelled or non-renewed with a retroactive date that precedes the inception of the contract - or “prior acts” coverage without any time limitation.
Attachment 12.2.10

SUBSTANTIAL COMPLETION FORM

for

CONSTRUCTION MANAGEMENT SERVICES

FY 2014 and 2015

for

NASHUA COMMUNITY COLLEGE
Certificate of Substantial Completion

PROJECT: (Name and address)
PROJECT NUMBER:  
CONTRACT FOR: General Construction
CONTRACT DATE:  
OWNER:  
CONSTRUCTION MANAGER:  
ARCHITECT:  
CONTRACTOR:  
FIELD:  
OTHER:  

TO OWNER:  
(Name and address)  
TO CONTRACTOR:  
(Name and address)

DATE OF ISSUANCE:

PROJECT OR DESIGNATED PORTION SHALL INCLUDE:

The Work performed under this Contract has been reviewed and found, to the Construction Manager’s and Architect’s best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion thereof designated above is hereby established as ________ which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

<table>
<thead>
<tr>
<th>Warranty</th>
<th>Date of Commencement</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

CONSTRUCTION MANAGER  BY  DATE
ARCHITECT  BY  DATE

The Contractor will complete or correct the Work on the list of items attached hereto within _______ days from the above date of Substantial Completion.

CONTRACTOR  BY  DATE

The Owner accepts the Work or designated portion as substantially complete and will assume full possession thereof at ________ (time) on ________ (date).

OWNER  BY  DATE

The responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance shall be as follows:

(Note: Owner’s and Contractor’s legal and insurance counsel should determine and review insurance requirements and coverage.)
Certificate of Final Completion

This Certificate of Final Completion is dated ______ day of ______ in the year _______________ (In words, indicate day, month and year.)

The Owner:
(Name and address)

and the Contractor:
(Name and address)

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

Contract Date:

The Architect:
(Name and address)

Certificate of Final Completion:

The Work performed under this Contract has been reviewed and found, to the Architect’s best knowledge, information, and belief, to be complete in final form (Final Completion). Final Completion is the stage of the progress of the Work when the Work is entirely complete in accordance with the Contract documents. The date of Final Completion is the date of issuance established by this Certificate, which is also the date of commencement of applicable warranties required by the Contract documents, except those warranties which may have commenced upon substantial completion.

__________________  ____________________  __________
Architect       By      Date
PROJECT  NCC 13-08

Attachment 12.2.11

CERTIFICATE OF CORPORATE AUTHORITY
for
CONSTRUCTION MANAGEMENT SERVICES
FY 2014 and 2015
for
NASHUA COMMUNITY COLLEGE

Add at contract time
## SCORING CRITERIA

for

CONSTRUCTION MANAGEMENT SERVICES
FY 2014 and 2015
for

NASHUA COMMUNITY COLLEGE

<table>
<thead>
<tr>
<th>Category</th>
<th>Possible Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Quality of the Construction Manager Team</td>
<td>40</td>
</tr>
<tr>
<td>2. Quality of the related projects/areas of expertise/experience on</td>
<td>40</td>
</tr>
<tr>
<td>College Campus Projects and Construction Management Projects</td>
<td></td>
</tr>
<tr>
<td>3. Cost</td>
<td>( up to) 20</td>
</tr>
</tbody>
</table>

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Grand Total 100