DESIGN CONSULTING SERVICES

TRANSPORTATION BUILDING DESIGN

FOR

MOBIL DIESEL, WELDING AND AUTOMOTIVE TECHNOLOGIES PROGRAMS

WHITE MOUNTAINS COMMUNITY COLLEGE

Project WMC 13-10

January 22, 2013
REQUEST FOR QUALIFICATIONS

Design Consulting Services for
Transportation Building Design
for
Mobil Diesel, Welding and Automotive Technologies Programs
At
White Mountains Community College, Berlin, NH

Purpose: White Mountains Community College is seeking qualifications from qualified, interested parties to provide “Design and Construction Consulting Services” involving the design of a Building in Berlin, N.H. to accommodate Welding, Automotive and Mobil Diesel Instruction.

The project will include at least two phases:

1. Schematic Design and Estimate for approximately 30,000 square foot building to accommodate Welding, Automotive and Mobil Diesel Instruction, immediately. See attached plans for reference. The existing structure is likely to be removed and the ground restored by a separate contract.
2. If funded: complete Construction Drawings, Permitting and Construction Administration (Construction Management separate contract), for approximately 30,000 square foot building to accommodate Welding, Automotive and Mobil Diesel Instruction.

Total Projected budget: $4,000,000 including design and construction. Project design completion and construction to start, if and when funding becomes available July 1, 2013.

The consultant will assist WMCC in developing plans, performance criteria, specifications, construction bid documents and construction administration according to WMCC and CCSNH requirements (see AIA drafts and exhibits attached), administration needs and all applicable code requirements. Applicant team must include an Architect registered in the State of New Hampshire and registered to do business with the State of New Hampshire.

Proposal Instructions: BIDS WILL BE ACCEPTED FROM QUALIFIED FIRMS ONLY.
STEP 1:
Interested organizations must submit their RFQ electronically via email: memoore@ccsnh.edu and Two (2) copies must be received by White Mountains Community College, ATTN: Lynn Moore, 2020 Riverside Drive, Berlin, NH 03570 of the following information by 3:00 pm Monday, January 28, 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 firms approach to planning, designing and implementing the project

RFQ Due Date: The information above no later than 3:00 pm, Monday, January 28, 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 3:00 pm on Wednesday, January 30, 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. The purpose of the schematic design is to showcase the ability and experience of the firms to provide a design for the relocated Technical Programs of Automotive Technology, Welding and Mobile Diesel. It is not meant to represent a recommended design or cost for the work. CCSNH reserves the right to retain and use any material supplied.

AWARD PROCESS: All responses will be reviewed by the Selection Committee. The Selection Committee shall evaluate the proposals and shall be composed of White Mountains Community College Representatives and a CCSNH Representative. Interviews with the short listed firms will be held Thursday afternoon, February 14, 2013 and/or Friday, February 15, 2013. This decision shall be based on the criteria of the scoring sheet (see Exhibit F).

The successful applicant will then be asked to provide a proposal for the work. WMCC will enter into negotiations regarding the terms of the contract with the highest ranked firm. Should WMCC be unable to reach agreement on contract and price, they will proceed to negotiations with the next ranked firm.

The RFQ/RFP process is a procedure allowing White Mountains Community College to award this contract for Phase 1 - Schematic Design and Phase 2 if funded -Design and Construction Administration Services to the applicant whose submittal best meets the interests of White Mountains Community College.

The Design Firm shall not begin work until a fully executed contract has been received and the Design Firm 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/.

SITE VISITS:
The project area is available to visit at any time.

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.**
- **Power and cable requirements are to be included in the design.**

*This Agreement is comprised of the following documents listed below:*

2. Exhibit A Modified AIA Document A201-2007 General Conditions of the Contract for Construction
3. Exhibit B - Architect’s Scope and Fee Description and Architects design schedule
4. Exhibit C – Architects Rate Schedule
5. Exhibit D - is the insurance requirements
6. Exhibit E - Design Qualification Form
7. Exhibit F - Design Firm Scoring Criteria for the qualified firms

**CONTRACT INFORMATION**

**FORM OF CONTRACT**
The Design Firm who is awarded the contract will need to complete an AIA B101 -2007 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 Design Firm awarded the contract will need to furnish an insurance certificate which includes the following:

See Exhibit D for full individual insurance requirements.
**DESIGNER CERTIFICATIONS:**
The Designer, 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, 2013**, unless extended to include phase 2.

White Mountains Community College shall have the right to terminate the contract at any time by giving the Designer 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 White Mountains 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 Designer/Vendor 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 Design Firm.
- If applicable, vendor is responsible for calling Dig Safe System, Inc., a private locating service. Any fines, damages, etc. assessed to the College due to failure to obtain a Dig Safe permit and to have utilities located by a private company will be the responsibility of the successful Designer.
- Shirts are required to be worn at all times on the work site, smoking is allowed only in vehicles.
- After the award, the Designer shall submit a list of all key personnel and subconsultants.
- The College reserves the right to request a criminal background check on any employee of Design Firm. 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 DESIGNER WITH LAWS AND REGULATIONS - EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of the Services, the Designer shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Designer, including, but not limited to, civil rights and equal opportunity laws. In addition, the Design Firm shall comply with all applicable copyright laws. During the term of any contract, the Designer 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 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 Designer further agrees to permit the State or United States access to any of the Designer’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.
EXHIBIT D

REQUEST FOR QUALIFICATIONS

Design Consulting Services for Transportation Building Design

for

Mobil Diesel, Welding and Automotive Technologies Programs

At

White Mountains Community College, Berlin, NH

INSURANCE REQUIREMENTS

TYPES OF INSURANCE REQUIRED

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

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 for bodily injury/property damage
- $1,000,000 per occurrence for personal and advertising injury
- $2,000,000 aggregate for products/completed operations
- $2,000,000 aggregate for policy aggregate
- $5,000 per person for medical expense

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
- $500,000 each employee
- $500,000 policy limit

or the minimum limits required by Contractor’s Umbrella insurer.

Workers’ compensation requirements as required by NH law must be followed, and includes, in part, providing proof by the Contractor of workers’ compensation insurance coverage for all of its employees on this site. The Contractor awarded the work is also to submit information as required under RSA 21-I: 81 B. This law requires, among other things, the Contractor to provide timely information on employee and subcontractor identity, including all CFOs and principals on a log for this purpose, and for the College to post this information on a publicly accessible website. (Note: Any exemptions demonstrated by the Contractor can be noted in the contract in Exhibit C.)

**Umbrella Liability Insurance:** Contractor agrees to maintain in full force and affect 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:** “Builder’s Risk” coverage does not provide coverage for the Contractor’s business personal property – tools, equipment, etc. As such, coverage must be provided by Contractor for this exposure.

The certificates are required to name Great Bay Community College as additional insured.
EXHIBIT E

REQUEST FOR QUALIFICATIONS

Design Consulting Services for Transportation Building Design

for

Mobil Diesel, Welding and Automotive Technologies Programs

At

White Mountains Community College, Berlin, NH

DESIGN QUALIFICATION FORM

THIS FORM IS TO SUBMITTED WITH THE PROPOSAL

Qualifications to perform the work: Design Firms must have a minimum of three (3) years experience within the last five (5) years with design and construction of projects of similar scope and complexity within 200 miles.

NAME OF FIRM SUBMITTING PROPOSAL:

Proposal Instructions: Each response must include the following information:

1) Name, address, of the Design Build Firm.

   ____________________________________________________________
   ____________________________________________________________

2) Brief history and description of firm. (Include area of expertise and list past pertinent projects)

3) List of key personnel to be assigned to this project. (Include recent, with time employed with firm)

   a) Project Manager
b) Principal in Charge

4) List and qualifications of sub consultants to be used on the Project. *(Include resume with past projects, and those done with the firm)*

   a) Architect
   b) Mechanical designer
   c) Structural designer
   d) Electrical designer
   e) Specialty Designer

5) Provide detail of experience with the State Energy Code, including the newly enacted requirement to meet RSA compliance with USGBC Section 189.1

6) Related projects / areas of expertise / experience. Include descriptions of other projects of similar scope designed and built by this firm. Include reference contact information.

7) A brief description of the firm’s approach to project designing and implementation.

NAME OF REFERENCE PROJECT __________________________________________

  Location of Project ___________________________________________________

  Date work performed __________________________________________________

  Description of Project _________________________________________________

  Approx Contract value _________________________________________________

  Name of Owner ________________________________________________________

  Address ______________________________________________________________

  Contact Information ____________________________________________________

**END OF EXHIBIT E**
EXHIBIT F

REQUEST FOR QUALIFICATIONS

Design Consulting Services for
Transportation Building Design
for
Mobil Diesel, Welding and Automotive Technologies Programs
At
White Mountains Community College, Berlin, NH

DESIGN SCORING CRITERIA FOR CANDIDATES

Score Sheet

This interview criteria list will be used by the Interviewers. To score the submission

<table>
<thead>
<tr>
<th>Category</th>
<th>Yes or No</th>
<th>Possible Points</th>
<th>Points Awarded</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PREQUALIFICATION REQUIREMENTS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Experience in the local area with project of this dollar value</td>
<td>Y/N</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>Experience with local subconsultants that will be used on this project</td>
<td>Y/N</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Familiarity with local designers</td>
<td>Y/N</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Quality of the management team

Quality will be the level of experience of the management personnel of the designer. This will include the Project Manager.

### References included

<table>
<thead>
<tr>
<th>Y/N</th>
<th>10</th>
</tr>
</thead>
</table>

### Proven ability to meet schedule on similarly complex projects.

### AWARD REQUIREMENTS

#### Key Personnel and Roles

Key factors are experience, time with firm, and education.

#### Design Firm

- **Project Manager, with 3 years experience with the firm**: 10
- **Architect - with 3 years experience with the firm**: 10

#### Consultants

- **Mechanical Designer**: 10
- **Electrical Designer**: 10
- **Structural Designer**: 10
- **Specialty Consultant, if any**: n/a

#### GRAND TOTAL

100

### Notes:

---

**END OF EXHIBIT F**
EXHIBIT G

REQUEST FOR QUALIFICATIONS

Design Consulting Services for
Transportation Building Design

for
Mobil Diesel, Welding and Automotive Technologies Programs

At
White Mountains Community College, Berlin, NH

State Building Code Section 155-A:13
With
High Performance Design Standards
TITLE XII
PUBLIC SAFETY AND WELFARE

CHAPTER 155-A
NEW HAMPSHIRE BUILDING CODE

Section 155-A:13

[RSA 155-A:13 effective July 1, 2011.]

155-A:13 Building Requirements for State Funded Buildings. —

I. Any new construction, reconstruction, alteration, or maintenance in any state owned building, plant, fixture, or facility, meeting the definition of "project" in RSA 21-I:78, considered a major project under RSA 21-I:80, and constructed using any state funding, shall meet a high performance, energy efficient, sustainable design standard determined by the commissioners of the department of environmental services and the department of administrative services, in consultation with the division of historic resources and the community college system, that shows the building or structure can recoup the incremental costs of implementing the requirements of this section as measured by reduced energy costs over a 10-year period of time.

II. The following construction or renovation projects shall be exempt from the requirements of paragraphs I:

(a) A building or structure that is less than 25,000 square feet.
(b) A building or structure that does not consume energy for heating, ventilating, or air conditioning.
(c) A renovation or modification that is estimated to cost less than $1,000,000.
(d) Temporary structures.
(e) Public school facilities that are subject to RSA 198:15-c.
(f) The university system of New Hampshire.
(g) Projects employing new, innovative, or experimental energy efficient technology that may not recoup their incremental costs within 10 years, as may be determined by the commissioner of the department of administrative services to be in the best interest of the state.

Source. 2010, 347:1, eff. July 1, 2011.
STATE OF NEW HAMPSHIRE
DEPARTMENT OF ADMINISTRATIVE SERVICES
BUREAU OF PUBLIC WORKS DESIGN & CONSTRUCTION
POB 483, 7 Hazen Drive – Room 250
Concord, New Hampshire 03302-0483
Phone (603) 271-3516, Fax (603) 271-3515

LINDA M. HODGDON
Commissioner

HIGH PERFORMANCE DESIGN STANDARD

The following requirements are to be implemented in the design and construction of State funded projects for State owned properties, per SB 0409, 2010 and the State Building Code section 155-A:13.

I. Any new construction, reconstruction, alteration, or maintenance in any State owned building, plant, fixture, or facility, as defined by Chapter 155-A:13 of the State Building Code and its noted exceptions, shall conform to standards not less than those established by Standard 189.1-2009, Standard for the Design of High-Performance Green Buildings, as published by ANSI/ASHRAE/USGBC/IES, the code and amendments to the code.

(a) The following sections of Standard 189.1-2009 shall be deleted:
   (1) Section 4, Administration and Enforcement.
   (2) Section 9, The Building’s Impact on the Atmosphere, Materials and Resources.
   (3) Section 10, Construction and Plans for Operation.

(b) To the extent that there is any conflict between the current State Energy Code requirements of the current State Building Code and Standard 189.1-2009, where the current State Building Code is less stringent, Standard 189.1-2009 shall take precedence.

(c) The Reviewing Official shall be the Commissioner of the Department of Administrative Services or his or her designee. The role of the Reviewing Official shall be to review for compliance with this Design Standard.

(d) Appeals by persons aggrieved by decisions of the Reviewing Official shall be made in accordance with RSA 21:1-86.

II. Provisions of the above noted Standard shall be implemented to the maximum extent possible, while remaining at or below the allowable 10-year payback period, per RSA 155-A:13. It will be the responsibility of the project team, including Reviewing Official, Owner, Architect and Engineers of record, to make recommendations for the most appropriate aspects of Standard 189.1-2009 to include under the 10-year payback, based upon the nature and scope of a project. The payback period shall be calculated by estimating the following:

(a) Additional project costs in excess of costs that would be required to meet the current State Building Code at the time of design.

(b) Annual utility energy cost savings anticipated, in excess of utility costs that would be expected if the project were built to meet the current State Building Code at the time of design.

(c) Utility costs over the ten-year period shall be calculated using the current utility cost rates at the time of design.
(d) The following construction or renovation projects shall be exempt from the requirements of this Design Standard:
   (1) A building or structure that is less than 25,000 square feet.
   (2) A building or structure that does not consume energy for heating, ventilating, or air conditioning.
   (3) A renovation or modification that is estimated to cost less than $1,000,000.
   (4) Temporary structures.
   (5) Public school facilities that are subject to RSA 198:15-c.
   (6) The university system of New Hampshire.
   (7) Projects employing new, innovative, or experimental energy efficient technology that may not recoup their incremental costs within 10 years, as may be determined by the commissioner of the department of administrative services to be in the best interest of the state.
   (8) Any building or structure that is listed in the State or National Register of Historic Places; designated as a historic property under local or state designation law or survey; certified as a contributing resource with a National Register listed or locally designated historic district; or with an opinion or certification that the property is eligible to be listed on the National or State Registers of Historic Places either individually or as a contributing building to a historic district by the State Historic Preservation Officer or the Keeper of the National Register of Historic Places.

III. These policy requirements shall be reviewed annually, with applicable revisions to be implemented each year on the 1st of July. The review and revision process shall be implemented by the Commissioners of the Department of Environmental Services and the Department of Administrative Services, in consultation with the Division of Historic Resources and the Community College System.

Effective Date: July 1, 2011
AGREEMENT made as of the _____ day of _______ in the year ________
(In words, indicate day, month and year.)

BETWEEN the Architect’s client identified as the Owner:
(Name, legal status, address and other information)

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

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

WM 13-10 Transportation Building Design Contract
White Mountains Community College

The Owner and Architect agree as follows.
TABLE OF ARTICLES

1 INITIAL INFORMATION
2 ARCHITECT’S RESPONSIBILITIES
3 SCOPE OF ARCHITECT’S BASIC SERVICES
4 ADDITIONAL SERVICES
5 OWNER’S RESPONSIBILITIES
6 COST OF THE WORK
7 COPYRIGHTS AND LICENSES
8 CLAIMS AND DISPUTES
9 TERMINATION OR SUSPENSION
10 MISCELLANEOUS PROVISIONS
11 COMPENSATION
12 SPECIAL TERMS AND CONDITIONS
13 SCOPE OF THE AGREEMENT

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION
§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in Exhibit A.

§ 1.2 The Owner’s anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:
   .1 Commencement of Construction Management construction date:
   .2 Substantial Completion date:

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect’s services and the Architect’s compensation.

ARTICLE 2 ARCHITECT’S RESPONSIBILITIES
§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality-under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.
§ 2.4 Except with the Owner’s knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect’s professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the insurance identified in attached Exhibit “D” for the duration of this Agreement and the Architect shall be responsible for the cost thereof as part of Architect’s Fee.

§ 2.5.1 Until the Project is completed and accepted by the Owner, and for one year after substantial completion, the Architect shall provide, pay for, and maintain in full force and effect, the insurance required by this Agreement for coverages at not less than the prescribed minimum limits of liability, covering the Architect’s activities.

§ 2.5.2 Certificates of Insurance: Before commencing to perform the Architect’s Services, the Architect shall provide to the Owner a certificate of insurance certifying that at least the minimum insurance coverages required are in effect and specifying that the liability coverages (except for professional liability) are written on an occurrence form and that the coverages will not be canceled, non-renewed or materially changed by endorsement or through issuance of other policy(s) of insurance without thirty (30) days’ advance written notice to the Owner. The Owner and its trustees, directors, officers, employees, agents, representatives, successors, assigns and affiliated entities shall be named as “Additional Insureds” (except professional liability and workers’ compensation).

§ 2.5.3 Insurer Qualification: All insurance required shall be issued by companies with a A.M. Best rating of A-8 or better. Coverage for the Additional Insureds shall apply on a primary and non-contributory basis irrespective of any other insurance, whether collectible or not. All policies (except professional liability) shall be endorsed to provide a Waiver of Subrogation in favor of the Additional Insureds.

§ 2.5.4 Consultants’ Insurance: The Architect shall cause each major consultant retained by the Architect to purchase and maintain insurance of the type and amount specified below. When requested by the Owner, the Architect shall furnish copies of certificates of insurance evidencing coverage for each consultant.

ARTICLE 3 SCOPE OF ARCHITECT’S BASIC SERVICES

§ 3.1 The Architect’s Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services. The Architect’s scope of services shall be attached as Exhibit “B”.

§ 3.1.1 The Architect shall manage the Architect’s services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner’s consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner’s consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner’s approval a schedule for the performance of the Architect’s services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner’s review, for the performance of the Owner’s consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner’s approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner’s directive or substitution made without the Architect’s approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.
§ 3.1.6 The Architect shall assist the Owner in connection with the Owner’s responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.7 The Architect shall use reasonable professional efforts to identify the building codes, rules, and regulations which apply to the Project, to interpret the same in a reasonable manner, and produce reports, plans, and other documents which are consistent therewith. The Architect shall not be responsible for non-compliances resulting from changes to such codes, rules and regulations which may be adopted following the preparation of the Architect’s code review unless such changes should reasonably have been foreseen.

§ 3.1.8 The architect may generally field verify the building information represented on documents provided by the Owner. Such verification shall be limited to the noting of readily observable conditions and spot dimensioning.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES
§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect’s services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner’s program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project’s requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner’s approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner’s approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner’s approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner’s program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4. The design must meet the State of New Hampshire’s desired level of building energy efficiency requirements applicable to this Project, including but not limited to ASHRAE 189.1-2009 as defined by NH statutes and any amendments. To the extent the Owner requires the design to meet any other energy, sustainability requirements, those requirements shall be attached as Exhibit “G” Chapter 155-A New Hampshire Building Code Section 155-A:13.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner’s program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an Estimate supplied by the Construction Manager, of the Cost of the Work prepared in accordance with Section 6.3 based on the completed Schematic Design Documents. The Estimate shall be in a format approved in advance by the Owner, and shall include separate line item costs, projected to the scheduled construction dates, for all major systems and components of the Work. The Estimate shall be accompanied by an updated project schedule if any changes from the last distributed version thereof have occurred or are anticipated. The Architect shall design to the Owner’s budget.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner’s approval.
§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES
§ 3.3.1 Based on the Owner’s approval of the Schematic Design Documents, and on the Owner’s authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner’s approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work of which the Architect should reasonably be aware, and request the Owner’s approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES
§ 3.4.1 Based on the Owner’s approval of the Design Development Documents, and on the Owner’s authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner’s approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner’s approval.

§ 3.4.6 The Architect and CCSNH to review and coordinate necessary bidding and specification documents. All proposed Alternates must be approved by the Owner in writing prior to inclusion in the Contract Documents. Preparation of Alternates proposed by the Architect shall be included in the Architect’s basic services and shall not be compensated as a Change in Service. Basic Service Alternates shall be limited to similar systems and materials incorporated within the Schematic Design. Alternates that include significant changes to the architectural design, engineering of systems, and product installations shall be compensated as a Change in Service.

§ 3.4.7 The Architect shall conduct a detailed review of the Construction Documents, for the purposes of providing coordination among the applicable building trades and minimizing errors and omissions.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES
§ 3.5.1 GENERAL
The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner’s approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive

AIA Document B101™ - 2007 (formerly B151™ - 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA™ Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA™ Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.
bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING
§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 Unless otherwise agreed to, the Architect shall assist the Owner in bidding the Project by
   .1 providing PDF file format electronic copies of the Construction Documents for distribution to prospective bidders;
   .2 distributing the Bidding Documents to prospective bidders.
   .3 organizing and conducting a pre-bid conference for prospective bidders;
   .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
   .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS (IF APPLICABLE).
§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by
   .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
   .2 organizing and participating in selection interviews with prospective contractors; and
   .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES
§ 3.6.1 GENERAL
§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the Modified AIA Document A201™–2007, General Conditions of the Contract for Construction, which is incorporated into this Agreement as Exhibit “A”. If the Owner and Contractor make subsequent modifications to the Modified AIA Document A201–2007 after the execution of this agreement, the Owner shall notify the Architect of such changes in writing those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment, except for confirmation of closeout of warranty issues at the end of the warranty period. One site inspection and one final report is to be issued by the Architect in accordance with article 3.6.6.6 detailing the status of the warranty items. The contract finish date is as noted in paragraph 4.3.3 Adjustments to this date will be made by a mutually agreed upon contract amendment.
§ 3.6.2 EVALUATIONS OF THE WORK
§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, but at a minimum, bi-weekly, or as otherwise required in Section 4.3.3, 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 shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall 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. After each visit, the Architect shall promptly submit a written report of its observations and findings to the Owner, including all decisions and interpretations of the Contract documents and work progress made during or as a result of the site visit.

§ 3.6.2.2 The Architect has the authority to recommend rejection of Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to request inspection or testing of the Work in accordance with the provisions of the Contract Documents, 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.

§ 3.6.2.3 The Architect shall 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 shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in the Modified AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR
§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor will submit using the Application and Certificate for Payment, AIA Document G702, and shall issue certificates in such amounts in accordance with G702 requirements. The Architect’s certification for payment shall constitute a representation to the Owner, based on the Architect’s evaluation of the Work for conformance with the Contract Documents, and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.4 SUBMITTALS
§ 3.6.4.1 In accordance with the Architect and Owner-approved submittal schedule, the Architect shall review the Contractor’s submittals and shall not unreasonably delay or withhold approval. The Architect’s action in reviewing submittals shall be taken in accordance with the approved submittal schedule 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.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor’s submittals such as Shop Drawings, Product Data and Samples. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information.
such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor’s responsibility. 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.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional’s seal and signature when submitted to the Architect. 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.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect’s response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK
§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner’s approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION
§ 3.6.6.1 The Architect shall conduct reviews and inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s reviews and inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 The Architect shall provide the Contractor with electronic files of the Contract Documents. Within 30 days after issuance of the final Certificate for Payment, the Architect shall review the Contractor’s complete set of all original Contract Drawings modified to incorporate all changes directed by "SK" and other supplementary instructions prepared by the Architect or its consultants and issued after execution of the construction contract, all changes in the Work, including detail and dimensional changes and the final locations of all plumbing, storm drainage, fire protection, mechanical and electrical lines, outlets, manholes, etc., both inside and outside the
building, as recorded on the Contractor’s record drawings required by Exhibit “A” to this Agreement, and any other changes of which the Architect may be aware. These modified drawings shall be dated and labeled "As-built Record Set" and shall be submitted to the Owner in an electronic format using current storage technology (e.g., CD, DVD, etc.) and the latest version of AutoCAD, an AutoCAD-compatible DWG format, or other format approved in advance by the Owner. Hard copy drawings shall be in architectural units and standard architectural scales. Electronic storage submittal shall be prepared using standardized blocks throughout and in professional layer format for all architectural, plumbing, fire protection, mechanical, electrical and other drawings, and shall be accompanied by a hard copy listing of layers and their contents. Room numbers shall be provided as attributes of a block. North arrow shall be shown on all drawings where appropriate. The Architect shall not be responsible for any drafting related to this review and shall completely rely upon the Contractor for all documented changes to the original Contract Documents. Note: Related language of this requirement of the Contractor must be included in AIA-A201-2007

§ 3.6.6.6 The Architect shall assist as reasonably requested by the Owner during the warranty period set forth in the Contract Documents in identifying defects in accordance with 3.6.6.7 in the Project and in determining and implementing appropriate corrective measures in accordance with the requirements of the Construction Contract. Approximately one month before expiration of the Contractor’s warranty period, the Architect shall conduct an inspection of the Project together with the Owner's representatives, and shall report in writing any observed discrepancies under warranties or guarantees required by the Contract Documents.

§ 3.6.6.7 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. (Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

<table>
<thead>
<tr>
<th>Additional Services</th>
<th>Responsibility (Architect, Owner or Not Provided)</th>
<th>Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 4.1.1 Programming</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.2 Multiple preliminary designs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.3 Measured drawings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.4 Existing facilities surveys</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.5 Site Evaluation and Planning (B203™–2007)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.6 Building information modeling</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.7 Civil engineering</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.8 Landscape design</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.9 Architectural Interior Design (B252™–2007)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.10 Value Analysis (B204™–2007)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.11 Detailed cost estimating</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.12 On-site project representation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.13 Conformed construction documents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.14 As-Designed Record drawings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.15 As-Constructed Record drawings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.16 Post occupancy evaluation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.17 Facility Support Services (B210™–2007)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.18 Tenant-related services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.19 Coordination of Owner’s consultants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§ 4.1.20 Telecommunications/data design</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

§ 4.1.22 Commissioning (B211™–2007)

§ 4.1.23 Extensive environmentally responsible design

§ 4.1.24 LEED® Certification (B214™–2007)

§ 4.1.25 Fast-track design services

§ 4.1.26 Historic Preservation (B205™–2007)

§ 4.1.27 Furniture, Fixtures Furnishings, and Equipment Design (B253™–2007)

§ 4.1.28 Food Service Design

§ 4.1.29 Energy Modeling beyond the State Building Code section 155*A:13

§ 4.1.30 Geotechnical

§ 4.1.31 Land Survey

§ 4.1.32 Environmental Studies and Reports

§ 4.1.32 Site Permitting Fees

§ 4.1.33 Building Identification and Wayfinding Signage

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner’s written authorization:

1. Services necessitated by a material change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner’s schedule or budget for Cost of the Work, or procurement or delivery method;

2. Energy Modeling beyond the State Building Code section 155*A:13 is an additional service;

3. Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations not reasonably anticipated;

4. Services necessitated by decisions of the Owner not rendered in a timely manner or any other material failure of performance on the part of the Owner or the Owner’s consultants or contractors;

5. Preparing digital data for transmission to the Owner’s consultants and contractors, or to other Owner authorized recipients;

6. Preparation of design and documentation for an extraordinary number of alternate bid or proposal requests proposed by the Owner in accordance with 3.4.6;

7. Preparation for, and attendance at, a public presentation, meeting or hearing;

8. Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

9. Evaluation of the qualifications of bidders or persons providing proposals;

10. Consultation concerning replacement of Work resulting from fire or other cause during construction; or

11. Assistance to the Initial Decision Maker, if other than the Architect;

§ 4.3.2 To avoid delay in the Construction Phase, if the Architect believes the work is an additional service, the Architect shall notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services.
.1 Reviewing a Contractor’s submittal materially out of sequence from the submittal schedule agreed to by the Architect;
.2 Responding to the Contractor’s requests for information that are not prepared in accordance with the Contract Documents or where such information is obviously available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor’s proposals and supporting data, or the preparation or revision of Instruments of Service, but only when not due to errors, omissions, ambiguities, or inconsistencies in the Instruments of Service;
.4 Evaluating an extraordinary number of Claims as the Initial Decision Maker, but only when not due to errors, omissions, ambiguities, or inconsistencies in the Instruments of Service;
.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom but only when not due to errors, omissions, ambiguities, or inconsistencies in the Instruments of Service; or
.6 To the extent the Architect’s Basic Services are affected, providing Construction Phase Services 90 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:
.1 Up to two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
.2 Up to an average of two (2) visits to the site by the Architect over the duration of the Project during construction
.3 Up to two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
.4 Up to two (2) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER’S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 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; (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 Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project’s scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner’s behalf with respect to the Project. The Owner shall render decisions and approve the Architect’s submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect’s services.

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

§ 5.5 When the Owner deems it necessary it 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.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect’s request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner’s consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 Except as to such legal, insurance, and accounting services to be provided by Architect for Architect’s own benefit, as between the Architect and the Owner, 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.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect’s Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect’s consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect’s services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect’s duties and responsibilities set forth in the Contract for Construction with the Architect’s services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.13 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 herein or 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.

§ 5.14 The Owner shall furnish complete copies of all surveys, drawings, specifications and reports related to the existing building and or site which are in owner’s possession for the Architect’s information and use. If available such documents shall be in electronic format.

§ 5.15 The Owner understands and agrees that all structures are subject to wear and tear resulting from environmental and man-made exposures. As a result, all structures require regular monitoring and maintenance to prevent damage and deterioration. The Architect shall not be responsible for damage or other consequences, which may result solely from the Owner’s failure to provide proper monitoring and maintenance.
ARTICLE 6  COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors’ general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner’s budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner’s budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect’s judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor’s methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner’s budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner’s budget for the Cost of the Work. The Architect’s estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner’s budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect’s estimate of the Cost of the Work exceeds the Owner’s budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project’s size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner’s budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

.1 give written approval of an increase in the budget for the Cost of the Work;
.2 authorize rebidding or renegotiating of the Project within a reasonable time;
.3 terminate in accordance with Section 9.5;
.4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
.5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, and the increase in the Cost of the Work is not the result of Owner Authorized Changes, unpredictable changes in market conditions, or sub-standard estimating by others the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner’s budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect’s modification of the Construction Documents shall be the limit of the Architect’s responsibility under this Article 6.

ARTICLE 7  COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect 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.

§ 7.2 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 shall retain all common law, statutory and
other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect’s consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect’s Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, and/or the property on or in which the Project is located provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect’s consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner’s consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect’s consultant(s) from all claims and causes of action arising from such uses. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants, from all judgments resulting from claims and causes of action asserted by any third person or entity to the extent such judgment arises from the Owner’s use of the Instruments of Service under this section 7.3.1.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner’s sole risk and without liability to the Architect and the Architect’s consultants.

ARTICLE 8 CLAIMS AND DISPUTES
§ 8.1 GENERAL
§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 8 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the Modified AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.2 MEDIATION
§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation. If such matter relates to or is the subject of a lien arising out of the Architect’s services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation. The Owner and Architect further agree to use their best efforts to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to request that all independent contractors and consultants to also include a similar remediation provision in all agreements with subcontractors, sub-consultants, suppliers, or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements which requested the Architect agrees to be joined and participate in any such mediation.
§ 8.2.3 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.

§ 8.2.4 The method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect 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, the dispute will be resolved in a court of competent jurisdiction.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction in the State of New Hampshire
- Other (Specify)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect’s option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days’ written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect’s services. The Architect’s fees for the remaining services and the time schedules may be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect may be compensated for expenses incurred in the interruption and resumption of the Architect’s services. The Architect’s fees for the remaining services and the time schedules may be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days’ written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days’ written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days’ written notice to the Architect for the Owner’s convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

§ 9.7 Intentionally Omitted

§ 9.8 The Owner’s rights to use the Architect’s Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the State of New Hampshire.

§ 10.2 Terms in this Agreement shall have the same meaning as those in the Modified AIA Document A201–2007, General Conditions of the Contract for Construction incorporated into this agreement as Exhibit “A”.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect 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.
§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect’s promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect’s materials shall not include the Owner’s confidential or proprietary information written permission. The Owner shall provide professional credit for the Architect in the Owner’s promotional materials for the Project when appropriate.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

§ 10.9 In recognition of the relative risks, rewards and benefits of the Project to both the Owner and the Architect, the risks have been allocated such that the Owner understands and agrees that, to the fullest extent permitted by law, the total liability, in the aggregate, of the Architect, his officers, directors, employees, and consultants to the Owner and anyone claiming by, through or under the Owner, for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this Agreement from any cause or causes, the Architect’s total liability shall be limited to the Architect’s available insurance coverage and fee for services rendered on the Project.

§ 10.9 The Owner understands and agrees that this Project involves the renovation of an existing facility. As such, it will not be possible for the Architect to observe all existing conditions and/or anticipate all unforeseen and/or latent conditions and contingencies. The Owner recognizes that it will be necessary for the Architect to make certain assumptions regarding such existing conditions, which cannot be verified without expending substantial sums of money and destroying portions of the building.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect’s Basic Services described under Article 3, the Owner shall compensate the Architect as identified in Exhibit “B”

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows: The Architect shall provide a Stipulated Lump Sum or Hourly compensation fee, plus reimbursable expenses, mutually agreed upon by the Owner and Architect based on the specific circumstances for each item requiring Additional Services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows: The Architect shall provide a Stipulated Lump Sum or Hourly compensation fee, plus reimbursable expenses, mutually agreed upon by the Owner and Architect based on the specific circumstances for each item requiring Additional Services.

§ 11.4 Compensation for Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10%), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:
§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants, if any, are set forth as identified in Exhibit “C”. The rates shall be adjusted as agreed to with the Owner.

§ 11.8 COMPENSATION FOR REimbursABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect’s consultants directly related to the Project, as follows:

.1 Transportation and authorized out-of-town travel and subsistence approved in writing in advance by Owner (local travel within 100 miles of the Project shall not be considered a Reimbursable Expense);

.2 Fees paid for securing approval of authorities having jurisdiction over the Project;

.3 Printing, reproductions, plots, standard form documents;

.4 Postage, handling and delivery;

.5 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner, other than model and mock-ups identified as part of Basic Services and included in Architect’s Fee;

§ 11.8.2 For Reimbursable Expenses the compensation shall be incorporated into the overall base fee as identified in Exhibit “B”

§ 11.9 Intentionally omitted.

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 No initial payment shall be made upon execution of this Agreement.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect’s invoice. Amounts unpaid 45 days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from the time to time at the principal place of business of the Architect. Costs incurred due to late payment of Invoices may be requested through the Change Order process (Insert rate of monthly or annual interest agreed upon)

One and one half percent (1.5%)

§ 11.10.3 The Owner shall not without good cause, withhold amounts from the Architect’s compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors from the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times. The Architect shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be satisfactory to the Owner. The Owner and Owner’s accountants shall be afforded access to, and shall be permitted to audit and copy, the Architect’s records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other
data relating to this Agreement, and the Architect shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 12.1 Indemnity To the fullest extent permitted by law, the Architect shall indemnify and hold harmless the Owner, its affiliates, and the Architect from and against any claims, actions, proceedings, liabilities, losses, damages, costs and expenses, including reasonable legal fees, which the Architect may sustain by reason of any negligent act, error, or omission of the Architect, its officers, agents, employees, or subconsultants arising out of the Architect’s Services hereunder.

§ 12.2 Key Personnel The Owner is designated in this Agreement, or within the Contract Documents, to engage the providers of those testing services, for the purpose of the Owner's engagement of such a provider. However, to the extent that testing or surveying services are necessary as a result of errors, omissions or inconsistencies in the design or construction of the Project by any governmental authority of which the Owner has provided copies to the Architect at the appropriate stage of design work (collectively, the "Applicable Requirements"). The Architect shall, when and as requested, certify (and coordinate certification from all applicable Architect’s Consultants) that, to the best of the Architect’s knowledge, such compliance with Applicable Requirements will occur, or has occurred, as the case may be. The Architect's obligation as aforesaid with respect to compliance with Applicable Requirements consists of the duty to use reasonable efforts and due professional care as required under this Agreement, to (a) acquaint itself with Applicable Requirements, (b) prepare the Project Documents so that the Construction Documents for the Project are in accordance with such Applicable Requirements.

The Owner understands and agrees that the Architect’s responsibility related to compliance with applicable building codes, ordinances, rules and regulations shall be limited to items of new construction within his Scope of Services as
specifically identified herein. The Architect shall not be responsible for verifying the compliance of existing construction to remain, nor shall the architect be responsible for building improvements outside of areas of the existing building specifically designated to be renovated unless such services are requested in writing by Owner as additional services.

§ 12.6 Variance List The Architect shall (i) participate in the continuation of project review with governmental authorities; (ii) assist the Owner in the resolution of code and variance issues set forth on the "Variance List" (defined below) and (iii) prepare for and attend meetings with and hearings before any governmental authorities with respect to the Project in accordance with the scope of services set forth in the attached exhibits. The Architect shall prepare a list of variances that the Drawings and Specifications are likely to require from the Applicable Requirements (the "Variance List"). If any items on the Variance List are not obtained (or are not obtained in a timely manner so as to enable the Architect to achieve any of the milestones identified in the schedule attached as Exhibit “E”, the Owner and the Architect shall consult, and the Architect shall then, as an Additional Service, (a) suggest and analyze methods or alternative designs which would not require such variance, and (b) if requested by the Owner, make such modifications to the Project and to the Construction Documents as are necessary to eliminate the need for such variance.

§ 12.7 Duty to Correct Instruments of Service The Architect shall timely re-issue at no cost to the Owner portions of or all of the Contract Documents or other Instruments of Service if (i) necessary to correct design errors or omissions found prior to or during the course of construction, (ii) necessary due to failure to follow written instructions of the Owner during any phase of design services or the construction of the Project, or (iii) necessary due to Architect’s failure to comply with the terms of this Agreement.

§ 12.8 A201 General Conditions This Agreement incorporates by express reference a Modified AIA Document A201, General Conditions of the Contract for Construction, 2007 edition, attached hereto as Exhibit “A”. In the event of any discrepancy or conflict between the terms, provisions, and conditions of this Agreement and those of the General Conditions, the terms, provisions and conditions of this Agreement shall, in each instance, govern over and supersede those of the General Conditions.

ARTICLE 13 SCOPE OF THE AGREEMENT
§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect 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 Architect. This Agreement shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and the Contractor, (3) between the Owner or Architect and a Subcontractor or Sub-subcontractor, or (4) between any persons or entities other than the Owner and the Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

2. AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following: Deleted Intentionally
3. Other documents:
   - Exhibit A – Modified AIA Document A201-2007 General Conditions of the Contract for Construction
   - Exhibit B – Architect’s Scope and Fee Description and Architects Design Schedule
   - Exhibit C – Architect’s Rate Schedule
   - Exhibit D – Community College System of New Hampshire Insurance Requirements
   - Exhibit E - Design Qualification Form
   - Exhibit F - Design Firm Scoring Criteria for the qualified firms
   - Exhibit G - State Building Code section 155-A:13
This Agreement entered into as of the day and year first written above.

OWNER

(Signature)

(Printed name and title)

ARCHITECT

(Signature)

(Printed name and title)

President
White Mountains Community College

State of New Hampshire
County of:

Personally appeared before me___________________

Date:
Notary Public

State of New Hampshire
County of:

Personally appeared before me___________________

Date:
Notary Public
AIA® Document A201™ - 2007

General Conditions of the Contract for Construction

the following PROJECT:

White Mountains Community College
Transportation Building
Capital Project # WM 13-10

THE OWNER:

White Mountains Community College,
a component of the Community College System of New Hampshire
2020 Riverside Drive
Berlin, New Hampshire

THE ARCHITECT:

_______________________________________________________
_______________________________________________________
_______________________________________________________

TABLE OF ARTICLES

1 GENERAL PROVISIONS
2 OWNER
3 CONTRACTOR
4 ARCHITECT
5 SUBCONTRACTORS
6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7 CHANGES IN THE WORK
8 TIME
9 PAYMENTS AND COMPLETION
10 PROTECTION OF PERSONS AND PROPERTY
11 INSURANCE AND BONDS
12 UNCOVERING AND CORRECTION OF WORK
13 MISCELLANEOUS PROVISIONS
14 TERMINATION OR SUSPENSION OF THE CONTRACT
15 CLAIMS AND DISPUTES
INDEX
(Numbers and Topics in Bold are Section Headings)

Acceptance of Nonconforming Work
9.6.6, 9.9.3, 12.3
Acceptance of Work
9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3
Access to Work
3.16, 6.2.1, 12.1
Accident Prevention
10
Acts and Omissions
3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, 13.7.1, 14.1, 15.2
Addenda
1.1.1, 3.11.1
Additional Costs, Claims for
3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4
Additional Inspections and Testing
9.4.2, 9.8.3, 12.2.1, 13.5
Additional Insured
11.1.4
Additional Time, Claims for
3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, 15.1.5
Administration of the Contract
3.1.3, 4.2, 9.4, 9.5
Advertisement or Invitation to Bid
1.1.1
Aesthetic Effect
4.2.13
Allowances
3.8, 7.3.8
All-risk Insurance
11.3.1, 11.3.1.1
Applications for Payment
4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.10, 11.1.3
Approvals
2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10, 4.2.7, 9.3.2, 13.5.1
Arbitration
8.3.1, 11.3.10, 13.1.1, 15.3.2, 15.4
ARCHITECT
4
Architect, Definition of
4.1.1
Architect, Extent of Authority
2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3.1, 7.1.2, 7.3.7, 7.4, 9.2.1, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1
Architect, Limitations of Authority and Responsibility
2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4.1, 9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2
Architect’s Additional Services and Expenses
2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4
Architect’s Administration of the Contract
3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5
Architect’s Approvals
2.4.1, 3.1.3, 3.5.1, 3.10.2, 4.2.7
Architect’s Authority to Reject Work
3.5.1, 4.2.6, 12.1.2, 12.2.1
Architect’s Copyright
1.1.7, 1.5
Architect’s Decisions
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3.1, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.5.2, 15.2, 15.3
Architect’s Inspections
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5
Architect’s Instructions
3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2
Architect’s Interpretations
4.2.11, 4.2.12
Architect’s Project Representative
4.2.10
Architect’s Relationship with Contractor
1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7.8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2
Architect’s Relationship with Subcontractors
1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7
Architect’s Representations
9.4.2, 9.5.1, 9.10.1
Architect’s Site Visits
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5
Asbestos
10.3.1
Attorneys’ Fees
3.18.1, 9.10.2, 10.3.3
Award of Separate Contracts
6.1.1, 6.1.2
Award of Subcontracts and Other Contracts for Portions of the Work
5.2
Basic Definitions
1.1
Bidding Requirements
1.1.1, 5.2.1, 11.4.1
Binding Dispute Resolution
9.7.1, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1
Boiler and Machinery Insurance
11.3.2
Bonds, Lien
7.3.7.4, 9.10.2, 9.10.3
Bonds, Performance, and Payment
7.3.7.4, 9.6.7, 9.10.3, 11.3.9, 11.4
Building Permit
3.7.1
Capitalization
1.3
Certificate of Substantial Completion
9.8.3, 9.8.4, 9.8.5

Certificates for Payment
4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3
Certificates of Inspection, Testing or Approval
13.5.4
Certificates of Insurance
9.10.2, 11.1.3

Change Orders
1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.10.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3
Change Orders, Definition of
7.2.1

CHANGES IN THE WORK
2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 7.4.1, 8.3.1, 9.3.1.1, 11.3.9
Claims, Definition of
15.1.1

CLAIMS AND DISPUTES
3.2.4, 6.1.1, 6.3.1, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4
Claims and Timely Assertion of Claims
15.4.1
Claims for Additional Cost
3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4
Claims for Additional Time
3.2.4, 3.7.4, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.2, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Concealed or Unknown Conditions, Claims for
3.7.4
Claims for Damages
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Claims Subject to Arbitration
15.3.1, 15.4.1

Cleaning Up
3.15, 6.3

Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.2.1, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4

Commencement of the Work, Definition of
8.1.2

Communications Facilitating Contract Administration
3.9.1, 4.2.4

Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1, 14.2.1.2

Completion, Payments and
9
Completion, Substantial
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7
Compliance with Laws
1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions
3.7.4, 4.2.8, 8.3.1, 10.3
Conditions of the Contract
1.1.1, 6.1.1, 6.1.4
Consent, Written
3.4.2, 3.7.4, 3.12.8, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.1.4.2

Consolidation or Joinder
15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
1.1.4, 6

Construction Change Directive, Definition of
7.3.1

Construction Change Directives
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

Construction Schedules, Contractor’s
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contingent Assignment of Subcontracts
5.4, 14.2.2.2

Continuing Contract Performance
15.1.3

Contract, Definition of
1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE
5.4.1.1, 11.3.9, 14

Contract Administration
3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to
3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, The
1.1.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.2.5, 5.3

Contract Documents, Definition of
1.1.1

Contract Sum
3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

Contract Sum, Definition of
9.1

Contract Time
3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7.1, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

Contract Time, Definition of
8.1.1

CONTRACTOR
3

Contractor, Definition of
3.1, 6.1.2

Contractor’s Construction Schedules
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contractor’s Employees
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1,
Contractor’s Liability Insurance
11.1
Contractor’s Relationship with Separate Contractors
and Owner’s Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4
Contractor’s Relationship with Subcontractors
1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2,
11.3.1.2, 11.3.7, 11.3.8
Contractor’s Relationship with the Architect
1.2.2, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1,
3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2,
6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6,
10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1
Contractor’s Representations
3.2.1, 3.2.2, 3.5.1, 3.12.6, 6.2.2, 8.3.1, 9.3.3, 9.8.2
Contractor’s Responsibility for Those Performing the
Work
3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor’s Review of Contract Documents
3.2
Contractor’s Right to Stop the Work
9.7
Contractor’s Right to Terminate the Contract
14.1, 15.1.6
Contractor’s Submittals
3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2,
9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2
Contractor’s Superintendent
3.9, 10.2.6
Contractor’s Supervision and Construction
Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,
7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3
Contractual Liability Insurance
11.1.1.8, 11.2
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.2.5, 3.11
Copyrights
1.5, 3.17
Correction of Work
2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.7
Costs
2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,
7.3.3.1, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6,
11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14
Cutting and Patching
3.14, 6.2.5
Damage to Construction of Owner or Separate
Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3,
12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1,
11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Damages for Delay
6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3,
7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4, 9.5.1, 9.8.4, 9.9.1,
13.5.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, 9.5, 9.7, 14.1.3
Defective or Nonconforming Work, Acceptance,
Rejection and Correction of
2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6,
9.8.2, 9.9.3, 9.10.4, 12.2.1
Defective Work, Definition of
3.5.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1,
15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1
Delays and Extensions of Time
3.2., 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, 8.3, 9.5.1, 9.7.1,
10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5
Disputes
6.3.1, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2, 11.1.2
Emergencies
10.4, 14.1.1.2, 15.1.4
Employees, Contractor’s
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,
10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1
Environment, Labor, Materials or
1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1,
3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,
9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5.1,
3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2,
9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3
Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.4.1, 9.5.1, 9.7.1,
10.3.2, 10.4.1, 14.3, 15.1.5, 15.2.5
Failure of Payment
9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Faulty Work
(See Defective or Nonconforming Work)
Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3.1, 14.2.4, 14.4.3
Financial Arrangements, Owner’s
2.2.1, 13.2.2, 14.1.1.4
Fire and Extended Coverage Insurance
11.3.1.1

GENERAL PROVISIONS
1
Governing Law
13.1
Guarantees (See Warranty)
Hazardous Materials
10.2.4, 10.3
Identification of Subcontractors and Suppliers
5.2.1
Indemnification
3.17.1, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7
Information and Services Required of the Owner
Initial Decision
15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Injury or Damage to Person or Property
10.2.8, 10.4.1
Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5
Instructions to Bidders
1.1.1
Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2
Instruments of Service, Definition of
1.1.7
Insurance
3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11
11.3.2
Insurance, Boiler and Machinery
11.1
Insurance, Effective Date of
8.2.2, 11.1.2
Insurance, Loss of Use
11.3.3
Insurance, Owner’s Liability
11.2
Insurance, Property
10.2.5, 11.3
Insurance, Stored Materials
9.3.2, 11.4.1.4

INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
9.9.1, 11.4.1.5
Insurance Companies, Settlement with
11.4.10
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4
Interest
13.6
Interpretation
1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12, 15.1.4
Judgment on Final Award
15.4.2
Labor and Materials, Equipment
1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2, 13.6.1, 14, 15.2.8, 15.4
Liens
2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 13.7, 15.4.1.1
Limitations of Liability
2.3.1, 3.2.2, 3.5.1, 3.12.10, 3.17.1, 3.18.1, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2
Limitations of Time
2.1.2, 2.2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2.1, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7.1, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15
Loss of Use Insurance
11.3.3
Material Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5
Materials, Hazardous
10.2.4, 10.3
Materials, Labor, Equipment and
1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic’s Lien
2.1.2, 15.2.8
Mediation
8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1
Minor Changes in the Work
1.1.1, 3.12.8, 4.2.8, 7.1, 7.4
MISCELLANEOUS PROVISIONS

13 Modifications, Definition of
1.1.1 Modifications to the Contract
1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7.1, 10.3.2, 11.3.1

Mutual Responsibility

6.2 Nonconforming Work, Acceptance of
9.6.6, 9.9.3, 12.3
Nonconforming Work, Rejection and Correction of
2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Notice
2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7.1, 9.10, 10.2.2, 11.1.3, 11.4.6, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

Notice, Written
2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7.1, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, 13.3, 14, 15.2.8, 15.4.1

Notice of Claims
3.7.4, 4.5, 10.2.8, 15.12.2, 15.4
Notice of Testing and Inspections
13.5.1, 13.5.2
Observations, Contractor's
3.2, 3.7.4
Occupancy
2.2.2, 9.6.6, 9.8, 11.3.1.5
Orders, Written
1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1

OWNER

2 Owner, Definition of
2.1.1 Owner, Information and Services Required of the

Owner’s Authority
1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3.1, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7
Owner’s Financial Capability
2.2.1, 13.2.2, 14.1.1.4
Owner’s Liability Insurance
11.2
Owner’s Loss of Use Insurance
11.3.3
Owner’s Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner’s Right to Carry Out the Work
2.4, 14.2.2
Owner’s Right to Clean Up
6.3
Owner’s Right to Perform Construction and to Award Separate Contracts
6.1
Owner’s Right to Stop the Work
2.3
Owner’s Right to SUSPEND the Work
14.3
Owner’s Right to Terminate the Contract
14.2
Ownership and Use of Drawings, Specifications and Other Instruments of Service
1.1.1, 1.1.6, 1.1.7, 1.5, 2.2.5, 3.2.2, 3.11.1, 3.17.1, 4.2.12, 5.3.1
Partial Occupancy or Use
9.6.6, 9.9, 11.3.1.5
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2.1, 9.3, 9.4, 9.5, 9.6.3, 9.7.1, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4
Payment, Final
9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
PCB
10.3.1
Payment Bond, Performance Bond and
7.3.7.4, 9.6.7, 9.10.3, 11.4.9, 11.4
Payments, Progress
9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

PAYMENTS AND COMPLETION

9 Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8, 14.2.1.2
PCB
10.3.1
Performance Bond and Payment Bond
7.3.7.4, 9.6.7, 9.10.3, 11.4.9, 11.4
Permits, Fees, Notices and Compliance with Laws
2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2
PERSONS AND PROPERTY, PROTECTION OF
10 Polychlorinated Biphenyl
10.3.1
Product Data, Definition of
3.12.2
Product Data and Samples, Shop Drawings
3.11, 3.12, 4.2.7
Progress and Completion
4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3
Progress Payments
9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
Project, Definition of the
1.1.4
Project Representatives
4.2.10

Property Insurance
10.2.5, 11.3

PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,
10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14,
15.2.8, 15.4
Rejection of Work
3.5.1, 4.2.6, 12.2.1
Releases and Waivers of Liens
9.10.2
Representations
3.2.1, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1,
9.8.2, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1,
5.1.2, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field
Conditions by Contractor
3.2, 3.12.7, 6.1.3
Review of Contractor’s Submittals by Owner and
Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and
Samples by Contractor
3.12
Rights and Remedies
1.1.2, 2.3, 2.4, 3.5.1, 3.7.4, 3.15.2, 4.2.6, 4.5, 5.3, 5.4,
6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2,
12.2.4, 13.4, 14, 15.4
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3.1, 10.1, 10.2, 10.4
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, 3.12, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 11.4.7,
12.1.2
Shop Drawings, Definition of
3.12.1

Shop Drawings, Product Data and Samples
3.11, 3.12, 4.2.7

Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5
Site Visits, Architect’s
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5
Special Inspections and Testing
4.2.6, 12.2.1, 13.5
Specifications, Definition of the
1.1.6
Specifications, The
1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14
Statute of Limitations
13.7, 15.4.1
Stopping the Work
2.3, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4, 11.4.1.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,
9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 11.4.7, 11.4.8,
14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3,
9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, 11.4.5, 11.3.7
Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3,
12.2, 13.7
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
4.1.3
Substitutions of Materials
3.4.2, 3.5.1, 7.3.8
Sub-subcontractor, Definition of
5.1.2
Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,
7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3
Surety
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7
Surety, Consent of
9.10.2, 9.10.3
Surveys
2.2.3
Suspension by the Owner for Convenience
14.3
Suspension of the Work
5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 11.4.9, 14
Taxes
3.6, 3.8.2.1, 7.3.7.4
Termination by the Contractor
14.1, 15.1.6
Termination by the Owner for Cause
5.4.1.1, 14.2, 15.1.6
Termination by the Owner for Convenience
14.4
Termination of the Architect
4.1.3
Termination of the Contractor
14.2.2
TERMINATION OR SUSPENSION OF THE CONTRACT
14
Tests and Inspections
3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, 13.5
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, 8.3, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5
Time Limits
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 4.4, 4.5, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4
Time Limits on Claims
3.7.4, 10.2.8, 13.7, 15.1.2
Title to Work
9.3.2, 9.3.3
Transmission of Data in Digital Form
1.6
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 7.3.4
Use of Documents
1.1.1, 1.5, 2.2.5, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1

Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.4.2
Waiver of Claims by the Contractor
9.10.5, 11.4.7, 13.4.2, 15.1.6
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6
Waiver of Consequential Damages
14.2.4, 15.1.6
Waiver of Liens
9.10.2, 9.10.4
Warranties of Subrogation
6.1.1, 11.4.5, 11.3.7
Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7.1
Weather Delays
15.1.5.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2
Written Interpretations
4.2.11, 4.2.12
Written Notice
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, 13.3, 14, 15.4.1
Written Orders
1.1.1, 2.3, 3.9, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2
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 specific 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 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 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.

§ 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 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).

§ 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 issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 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 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 Contract 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 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.

§ 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 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 conformation 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 that resulting from any scheduled 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 markups 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, circuiting, 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 behalf of the Architect that are normal in the course of construction administration at mutually acceptable times during construction 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. Review and Accept 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 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 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 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 day period shall constitute notice of no reasonable objection.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work 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.

§ 5.2.4 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
 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 so to report shall constitute an acknowledgment that the Owner’s or separate contractor’s completed or partially completed construction is fit and proper to receive the Contractor’s Work, except as to defects not then reasonably discoverable.
§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor’s delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor’s delays, improperly timed activities, damage to the Work or defective construction.

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

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

§ 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 Supplement 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 lien 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;
Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

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 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. 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 from 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.

§ 9.3.2 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 by 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.
8. failure to maintain current record drawings
§ 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 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 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 will promptly issue a final Certificate for Payment stating that to the best of the Architect’s knowledge, information and belief, and on the basis of the Architect’s on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect’s final Certificate for Payment will
constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor’s being entitled to final payment have been fulfilled.

§ 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 retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

1. liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
2. failure of the Work to comply with the requirements of the Contract Documents; or
3. terms of special warranties required by the Contract Documents.
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 a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

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

§ 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 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 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 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.

§ 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 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 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 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 Intentionally omitted.

§ 12.3 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 there under, except as may be specifically agreed in writing.

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

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

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

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

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

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

§ 13.6 INTEREST
Payments due and unpaid under the Contract Documents shall bear interest 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 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.

§ 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.

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

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

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

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in 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 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 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.