

DRAFT AIA® Document A201® - 2017

General Conditions of the Contract for Construction

These General Conditions of the Contract for Construction are dated as of the ____ of _____, Two Thousand Twenty Four and supersede any prior versions of the General Conditions of the Contract for Construction for the Project below.

for the following PROJECT:

(Name and location or address)

«City of Westland
Fire Station No. 2
7300 N. Merriman Road
Westland, Michigan 48185»

THE OWNER:

(Name, legal status and address)

«City of Westland
36300 Warren Road
Westland, Michigan 48185 »

THE ARCHITECT:

(Name, legal status and address)

Sidock Group, Inc.
45650 Grand River
Novi, Michigan 48374
(248) 349-4500

THE CONTRACTOR:

(Name, legal status and address)

«TBD »« »
« »
« »
« »

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents 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.

§ 1.1.1.1 Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. An assemblage of documents compiled as a project manual is not the Contract Documents, and the inclusion of a document in any such assemblage does not incorporate it into the Contract Documents unless it is specifically enumerated in the Agreement.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Owner's consultants, or (5) 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 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. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.1.9 Construction Team

The Construction Team consists of the Contractor, Subcontractors, sub-subcontractor at any tier, suppliers and (i) all other persons in privity of contract with any of them in connection with the Work (except the Owner), (ii) anyone else providing labor, materials, supplies, equipment, or services as part of or in connection with the Work (except those, if any, hired directly or indirectly by the Owner), and (iii) all of their officers, employees, agents, and independent contractors.

§ 1.1.10 Project Team

The Project Team includes those listed in Section 1.1.9 and the Owner, the Owner's Representative Consultant, and the Architect in their official and individual capacities, their consultants, administrators, employees, agents, contractors, successors, assignees, and all other persons in privity of contract with any of them in connection with the Project.

§ 1.1.11 Applicable Law

Applicable Law refers to any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities bearing on the Work, Project, and the Construction Team's activities in relation to the Work and Project.

§1.1.12 OWNER'S REPRESENTATIVE CONSULTANT

The Owner's Representative Consultant means a consultant engaged by the Owner as outlined in the Agreement to advise them regarding certain aspects of the Project. The Owner's Representative Consultant is not authorized to commit or otherwise obligate the Owner including in matters regarding changes in the Work, construction schedule, or other approvals on behalf of the Owner.

§1.1.13 Knowledge

The term "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractors, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Document. Analogously, the expression "reasonably inferable; and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor, but Contract Documents are by nature generally diagrammatic. The Contractor shall therefore provide labor and materials that are consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results for the Contract Sum and Contract Time, even if an item is not specifically drawn or specified. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and Applicable Law, the Contractor shall: (i) provide the better quality or greater quantity of Work, or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Section 1.2.1, however, shall not relieve the Contractor of any obligations set forth in Section 3.2 and 3.7.

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

§ 1.2.3 The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Work not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified. On certain Contract Documents, only a portion of the detail may be fully shown, and the remainder indicated in outline, in which case the general detail shall be understood as applying also to other like portions of the Work. For example, if case carving, ornament, facing, veneer or similar treatment is indicated by starting of the detail, such detail must be continued throughout the course of parts in which it occurs, and to all similar parts in the Work wherever such general detail shall apply unless otherwise specifically provided in the Contract Documents. Organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings into categories does not relieve the Contractor of its obligation to coordinate the Work, does not control

the Contractor in dividing the Work among Subcontractors, and does not establish the extent of Work to be performed by any trade. Similarly, the organization of the Contractor's duties into different phases or categories in the Contract Documents is for convenience only and shall not limit the Contractor's obligation to provide all of the Work. The Contractor shall reconcile any such conflict presented by such organization without delay or cost to the Owner.

§ 1.2.4 References in the Contract Documents to standards, such as those published by trade associations and governmental agencies, whether for materials, processes, assemblies, workmanship, performance or any other purpose, shall mean the version of the standard published most recently prior to the date of the particular part of the Contract Documents bearing the reference. Unless expressly modified, all standards referred to by the Contract Documents have the same contractual effect as though restated therein. These standards will not be furnished to the Contractor, as the Contractor and all members of the Construction Team are required to be familiar with their requirements.

§ 1.2.5 Work called for on the Drawings and not mentioned in the Specifications, or vice versa, shall be performed as though fully set forth in both. Nothing in this Section 1.2, however, shall relieve the Contractor of any of its obligations under the Contract Documents. The Contractor shall be responsible for timely and thoroughly reviewing the Contract Documents to fully understand the nature and the scope of the Work, and shall promptly notify the Architect upon the discovery of any potential conflicts, discrepancies, gaps or other deficiencies. It is acknowledged by the Contractor that the Contractor has had, or will be afforded, the opportunity to review and seek clarification of the Contract Documents prior to entering into any Subcontract for the Work or entering into an agreement or amendment establishing the Contract Sum, Guaranteed Maximum price, or the Contract Time. The resolution of potential conflicts, discrepancies, gap, or other deficiencies of the Contract Documents shall be resolved under the following priorities:

- .1 Modifications;
- .2 The Agreement;
- .3 These General Conditions of the Contract for Construction;
- .4 Addenda, with those of later date having precedence over those of earlier date;
- .5 The Supplementary Conditions;
- .6 Division 00 and 01 of the Specifications (or similar information if the Specifications are in a format other than the Divisions outlined by the Construction Specification Institute's Master Format);
- .7 Drawings and Divisions 2-49 of the Specifications (or equivalent information if the Specifications are in a format other than the Divisions outlined by the Construction Specification Institute's Master Format) as interpreted and prioritized by the Architect in accordance with Section 4.2.11, 4.2.12 and 4.2.13;
- .8 Other documents specifically enumerated in the Agreement as part of the Contract Documents.

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

§ 1.2.7 The singular shall include the plural and vice versa. Pronouns are interchangeable. The word "person" includes human beings and recognized legal entities. Unless the context clearly requires otherwise, reference to a section shall include all subsections beneath it bearing identical introductory numbers

§ 1.2.8 Delegated Design

§1.2.8.1 In the event the Contract Documents delegate the design of a portion of the Work to the Contractor or the Construction Team, or otherwise require the performance of professional services, the Contractor will provide all such services with the standard of care that would be followed on a comparable project by a reasonably skilled design professional in the same field working in the locality of the Project. The Contractor shall provide the services through a properly licensed design profession whose signature and seal shall appear on all drawings, specifications, submittals, and other deliverables. All Work designed by the Contractor or Construction Team shall be in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.2.8.2 The Contractor will cooperate with the Architect and the Owner's consultants in the performance of any design that has been delegated to it in order to ensure its design can be coordinated with the Architect's design for the other portions of the Project.

§ 1.2.8.3 The Contractor will promptly inform the Owner of information needed to meet the Contractor's obligations under this Section 1.2.8.

§ 1.2.8.4 The Contractor grants, or will cause to be granted, to the Owner a perpetual, nonexclusive license to use all designs prepared by or for the Construction Team for constructing, using, maintaining, altering, and adding to the Project in the future.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 The agreement between the Owner and Architect shall establish the ownership of the Instruments of Service, including the Drawings and Specifications and who will and retain all common law, statutory, and other reserved rights in the Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of any reserved rights.

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

§ 1.5.3 In the event the Contract Documents require the Contractor to produce any intellectual property, the Contractor grants to the Owner a perpetual nonexclusive license to use and reproduce it for purposes of constructing, using, maintaining, altering, and adding to the Project, now and in the future. The Contractor shall obtain similar perpetual nonexclusive licenses from its Subcontractors and consultants. The license granted under this section permits the Owner to authorize its consultants, the Architect and its consultants, and the Owner's Separate Contractors to use and reproduce applicable portions of the intellectual property for purposes.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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

§ 1.7 Digital Data Use and Transmission

The Architect and Contractor shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form by the Construction Team. The Architect and Contractor may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. No such protocols

agreed upon by the Architect and Contractor shall in anyway relieve the Architect or any member of the Construction Team of any obligations or duty to the Owner, impact the Owner's rights in any Instruments of Service or document, impose any obligation upon the Owner, nor give rise to any Additional Services of the Architect, charges to the Architect or Contractor, nor any change to the Contract Sum or Contract Time.

§ 1.8 Building Information Models Use and Reliance

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

§ 1.9 Confidentiality

§ 1.9.1 The Contractor shall not communicate or disclose at any time to any person any information concerning the Work or the Project, except: (i) with prior written consent of the Owner, (ii) information which has become part of the public domain prior to the date of the Agreement, (iii) information which becomes part of the public domain by means other than an unauthorized act or omission of the Contractor, (iv) as may be required to perform the Work or by any Applicable Law, or (v) to its professional advisors or lender (all of whom shall be required to maintain such information in confidence). The obligations of this Section 1.9 are in addition to any separate confidentiality agreement with the Owner and shall not supersede or otherwise modify any such agreement.

§ 1.9.2 The Contractor may disclose information concerning the Work or the Project when disclosure is required by law, including a subpoena or other form of compulsory legal process. In the event of a disclosure required by law, the Contractor shall notify the Owner as far in advance as possible prior to any such disclosure and will reasonably cooperate with the Owner, at the Owner's expense, in any attempt it may make to obtain a protective order or other appropriate assurance that confidential treatment will be afforded the information. The Contractor may also disclose information concerning the Work or the Project to its employees, consultants, sureties, and members of the Construction Team who need to know the content of such information solely and exclusively for the Project and who agree to maintain the its confidentiality.

§ 1.9.3 Members of the Construction Team shall promptly upon the request of the Owner return and surrender to the Owner the original or legible copies of any materials, records, notices, memoranda, recordings, Drawings, Specifications and mock-ups and any other documents furnished by the Owner and certify the destruction of any electronic copies of such documents.

§ 1.9.4 The Contractor shall not identify, either expressly or by implication, the Owner, or its corporate affiliates, or use any of their trademarks, trade names, service marks, other proprietary marks, or reference the services performed under the Agreement, in any advertising, press releases, publicity matters, or other promotional materials without the Owner's prior written approval.

§ 1.9.4 The Contractor shall cause all members of the Construction Team to specifically acknowledge that the provisions of this Section 1.9 are binding upon them.

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. The Architect and Owner's Representative Consultant do not have authority to modify the Contract Sum or the Contract Time, and they may only act on the Owner's behalf with respect to other matters to the extent set forth in the Contract Documents. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may designate more than one authorized representative to act on its behalf, but shall describe the authority of the authorized representative(s) in writing to the Contractor and Architect.

§ 2.1.2 Contractor shall timely request and obtain from the owner, and if required under Applicable Law, conspicuously post on the Project site information necessary and relevant for the Construction Team to evaluate, give notice of, or enforce construction or mechanic's lien rights if they apply to the Project. Such information shall

include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.1.3 The Owner may provide information necessary for members of the Construction Team to perfect assert claims on the Contractor's payment bond, if one has been provided.

§ 2.2 Evidence of the Owner's Financial Arrangements

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

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum.

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

§ 2.2.4 All information on the Owner's financing arrangements provided to the Contractor is confidential and is subject to the provisions of Section 1.9, except that the Contractor will not disclose such information to the Construction Team without the Owner's prior written authorization.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. All permits and approvals not specifically identified in the Agreement or Contract Documents as the responsibility of the Owner are the responsibility of the Contractor.

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

§ 2.3.3 If the employment of the Architect terminates, the Owner may employ a successor whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing known physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. To the extent reasonable and conditioned upon the Contractor's careful review of such information, 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 and its impact on existing facilities and utilities. The Contractor shall advise the Owner and Architect of additional information that may be needed to limit the Work's impact on them or is otherwise advisable. The Contractor shall promptly notify the Owner and the Architect of any errors, problems, or inaccuracies in any of the information provided by the Owner.

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

§ 2.3.6 If requested by the Contractor, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents, fails to carry out Work in accordance with the Contract Documents, or fails to meet any other obligation imposed by the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. This right shall be in addition to the Owner's other rights under the Contract Documents and common law. The exercise of the Owner's right to stop the Work shall not relieve the Contractor of any of the Contractor's responsibilities and obligations under the Contract Documents.

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If the Contractor defaults on any obligation imposed by the Contract Documents or neglects to carry out the Work within the construction schedule or in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, take any action necessary to mitigate or correct such default or neglect, including removal of non-conforming Work and disposal of excess materials, and may charge the Contractor for the cost of doing so. The Owner does not become the Contractor's bailee by exercising rights granted by this Section 2.5. The Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent necessary to reimburse the Owner for the cost of mitigating or correcting such deficiencies, including Owner's expenses and compensation for professional fees and the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5.2 Upon notification to the Contractor, the Owner shall have the right to place and install equipment and machinery during the progress of the Work before the completion of the various parts of the Work. Such placing and installing of equipment and machinery shall not in any way evidence the completion of the Work or any portion thereof by the Contractor, nor signify the Owner's acceptance of the Work or any portion thereof. If the Owner places or installs such equipment and machinery with its own forces, the Owner shall be responsible for any damage to Work of the Contractor caused by the Owner's workers. If the Owner engages another contractor for such placement or installation, the Owner shall require said contractor to be responsible for such damages caused by its work, its workers, or its subcontractor. Upon discovery of any such damage, the Contractor shall have the right to request and file a Contractor's Request Change Order under Section 7.5.

§ 2.6 Limitation on the Owner's Responsibility

§ 2.6.1 The Owner, Architect, and Owner's Representative Consultant do not have control over or charge of and are not responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Owner, Architect, and Owner's Representative Consultant are not responsible for the Contractor's failure to perform Work in accordance with the Contract Documents. The Owner, Architect, and Owner's Representative Consultant do not have control over or charge of and are not responsible for acts or omissions of any member of the Construction Team.

§ 2.6.2 The Contractor shall only be entitled to rely upon instructions and directions provided in writing by the Owner's authorized representative(s).

§ 2.6.3 From time to time the Owner may review or take action on the Contractor's Shop Drawings, Product Data, Samples, and other submittals and may review, observe, or take other appropriate action concerning the Work and the selection of the Construction Team. However, such activities by the Owner do not alter or relieve the Contractor or the Architect of their obligations under the Contract Documents unless memorialized in a Modification.

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 strict accordance with the Contract Documents and current Applicable Law.

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

§ 3.1.4 Unless the Contract Documents provide otherwise for a specific circumstance, the Contractor bears the risk of loss to the Work until it, or the relevant portion of it, has been accepted as substantially complete. Thereafter, a Certificate of Substantial Completion accepted by the Owner under Section 9.8 or 9.9 shall assign the risk of loss. This Section 3.1.4 does not prevent the Contractor from recovering sums paid by the applicable property insurer for loss to the Work, after the Contractor has satisfied the deductible associated with such payment.

§ 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, is familiar with the conditions under which the Work is to be performed, and has correlated personal observations with requirements of the Contract Documents. Prior to establishing the Contract Sum, Guaranteed Maximum Price, or Contract Time, the Contractor and the Construction Team have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, history, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools and equipment, and (v) other similar issues. The Owner has no responsibility or liability under this Agreement for the physical condition or safety of the Project site or any improvement on the Project site. Except as provided under Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. Except as permitted by Sections 3.2.4 and 3.7.4, the Contract Sum and Contract Time shall not be adjusted because of existing conditions affecting the Work.

§ 3.2.1.1 The Contractor shall perform all reasonable and customary non-destructive field investigation activities to the extent necessary to develop an informed understanding of the Project's existing conditions necessary to deliver the project within the Owner's anticipated design and construction milestone dates and budget for the Cost of the Work. The Contractor's field investigation activities shall include, but not be limited to, meeting with the Owner's facility and maintenance staff to review the applicable systems and known conditions. The Contractor shall provide Owner prompt written notice should it become aware of any reason why additional investigation of the existing conditions is warranted to develop the necessary informed understanding of the Project's existing conditions.

§ 3.2.1.2 The exactness of grades, elevations, dimensions, or locations of existing conditions given on any Drawings issued by the Architect, or work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions or locations shall be promptly rectified by the Contractor without any additional cost to the Owner or change in Contract Time.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before submitting pricing or estimates and/or starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents. The Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. However, it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless the Contract Documents delegate design for that portion of the Work to the Contractor. Contractor's failure to report to and requesting information clarifying such errors,

ambiguities, inconsistencies or omissions from the Architect shall result in interpretation of and resolving such errors, ambiguities, inconsistencies or omissions in favor of the Owner.

§ 3.2.3 With the exception of Contractor-designed Work, the Contractor is not required to ascertain that the Contract Documents are in accordance with Applicable Law, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall request a Change Order under Section 7.5 or submit Claims as provided in Article 15, as applicable. If the Contractor fails to perform the obligations of Sections 3.2, the Contractor releases its right to any claim of increase in the Contract Sum and Contract Time and shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 If the Contractor encounters concealed or unknown conditions that differ from those anticipated or expected in the Contract Documents, whether or not it is entitled to assert a Claim under Section 3.7.4, the Contractor shall promptly notify the Owner and Architect, as required in Section 3.7.4, in writing of such conditions so that the Architect and Owner can determine if such conditions revision to the Contract Documents or some other remedial action. The Contractor's failure to provide the required notification under this Section shall constitute a waiver of any Claim for additional time or compensation for any materially different conditions as set forth in Section 3.7.4.

§ 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 safety, means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor may perform the Work using its alternative means, methods, techniques, sequences, or procedures but shall remain responsible for the completed Work's conformance to the requirements of the Contract Documents.

§ 3.3.2 The Contractor is responsible to the Owner for all acts and omissions of the Construction Team.

§ 3.3.3 The Contractor shall inspect the Work as it is being performed until final completion and acceptance of the Project by the Owner to assure that the Work performed and the materials furnished are in accordance with the Contract Documents and that Work on the Project is progressing on schedule. In the event that the quality control testing should indicate that the Work, as installed, does not meet the requirements of the Project, the Architect shall determine the extent of the Work that does not meet the requirements and the Contractor shall take appropriate corrective action, and advise the Owner of the corrective action.

§ 3.4 Labor, Materials, Utilities, and Facilities

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

§ 3.4.1.1 The Contractor shall provide and maintain all temporary facilities in clean and sanitary condition acceptable to the Owner. The Construction Team may not use facilities in the building under construction or in other buildings on or near the Project site without the Owner's written permission.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. The Contractor will provide any information requested by the Architect related to its evaluation of a proposed substitution.

§ 3.4.2.1 By making requests for substitutions based on Subparagraph 3.4.2 above, the Contractor:

- .1 represents it has personally investigated the proposed substitute product and determined that the substitution is equal or superior in all respects to that which is specified;
- .2 represents it will provide the same warranty for the substitution that the Contractor would have provided for that which is specified;
- .3 certifies it presented any all costs or savings to the Owner associated with the requested substitutions and that the cost data presented, is complete, and includes all related costs, including but not limited to, the Architect's redesign costs and waives all Claims for additional costs related to the substitution that 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 completed in all respects.

§ 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.

§ 3.4.3.1 The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts, and any other contractors and individuals associated with the Project. The Contractor shall proactively minimize the likelihood of any strike, work stoppage, or other labor disturbance. Wherever applicable, the Contractor shall make all necessary arrangements to reconcile, without delay, damage or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind which regulate, control or distinguish what activities shall or shall not be included in the work of any particular trade.

§ 3.4.4 The Contractor shall coordinate the Work with the owners of known and ascertainable public and private utilities and shall relocate service lines and construct by-passes as needed to perform the Work. The Contractor shall protect all known or ascertainable utilities from its activities and shall promptly remedy all damage it cause them, without an increase in the Contract Sum and Contract Time. In the event the Contract Documents require the Owner to coordinate a specific utility it does not own or control, the Owner shall only be obligated to make reasonable efforts to do so.

§ 3.4.4.1 To the extent available and practical, the Contractor may tie into the Owner's existing water, power, natural gas, and steam utilities without charge as to any usage in connection with the Work. Connections may require permitting. The Contractor must adhere to all applicable county and city rules and requirements for utility connection and usage. In the event the Work occurs in an occupied building or facility, the Contractor shall give the Owner timely notice of its need for such services and the Owner shall make arrangements for the connection or activation.

§ 3.4.5 The Contractor shall permit the Owner, Architect, and representatives of governmental authorities to inspect and test the Work and shall account for such inspection and testing in its schedules.

§ 3.4.6 To the extent practicable, materials and equipment will be delivered to the Project site in original containers or wrappings. The Architect and the Owner have no obligation to inspect materials and equipment, but they may do so and may reject those that do not conform to the Contract Documents. The Architect or Owner's acceptance of non-conforming materials and equipment is only effective if done in a writing that expressly waives the non-conformity.

§ 3.4.7 There shall be no offsite storage of materials or equipment without the Owner's prior written consent in each instance. If the Owner consents to offsite storage, the Contractor shall meet the following criteria when storing materials and equipment stored offsite:

- .1 Title to materials and equipment shall be vest with the Owner upon payment under Section 9.3.2, and shall be documented as reasonably requested by the Owner;
- .2 All materials and equipment shall be insured for no less than the total replacement value;
- .3 Components must be assembled into completed units unless the Owner has given written permission otherwise;
- .4 The Architect and Owner may inspect the storage area, materials, and equipment at any reasonable time; and
- .5 The materials and equipment shall be (i) protected from diversion, destruction, theft, and damage, (ii) specifically marked for use in the Work, and (iii) segregated from other materials at the storage facility.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless 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 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 All written warranties shall be in the form and shall contain the terms required by the Contract Documents.

§ 3.5.4 Contractor and Subcontractors' Warranty Acknowledgment.

The Contractor's submission of a Certificate of Substantial Completion constitutes the acknowledgment and delivery of the following Warranty Acknowledgement. Upon request by the Owner, the Contractor shall provide the Owner a separate signed copy of the following Warranty Acknowledgement. Additionally, the Contractor shall cause members of the Construction Team giving warranties that are contractually bound to the Contractor to execute and deliver to the Owner, the following Warranty Acknowledgment prior to or with the submission of a Final Application for Payment:

Warranty Acknowledgment:

(Contractor Name or Name of Subcontractor) ("Contractor") warrants that all of its Work complies with the requirements of the Contract Documents. If, within two (2) years after the date of Substantial Completion of the Work or designated portion of the Work, any of Contractor's Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct the Work at its sole expense promptly after receipt of written notice from the Owner. This two (2) year period shall be extended (i) with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of Contractor's Work, and (ii) with respect to warranty work for an additional two (2) year period following each correction. This obligation shall survive acceptance of the Work and termination of the Contract.

This Warranty shall be in addition to, and not in lieu of, the terms of any other warranty or longer period of obligation specified in the Contract Documents, any applicable special warranty required by the Contract Documents, or the terms of any other warranty provided to the Owner. Neither this warranty, nor any other warranty, shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time which any proceeding may be commenced.

§ 3.5.5 Post-Occupancy Assessment.

As part of the Contractor's Work, the Contractor shall conduct a post-occupancy assessment eleven (11) months and twenty two (22) months following the Date of Substantial Completion to assist the Owner in identifying and correcting non-conforming or faulty Work.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, commercial activities, local business, 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, trade permits, fees, licenses, connection fees, municipal performance bonds 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. All such fees are included in the Contract Sum.

§ 3.7.2 The Contractor shall ascertain the applicability of, comply with, and give notices required by Applicable Laws, and lawful orders and all other requirements of public authorities pertaining to performance of the Work.

§ 3.7.2.1 The Contractor will ensure all members of the Construction Team are treated during the Project without regard to their race, color, religion, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status. Breach of this covenant may be regarded as a material breach of their respective agreement with the Owner. Such action shall include, but not be limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause. This Section 3.7.2.1 supplements, but does not replace, obligations the Contractor may have under Applicable Law to prevent discrimination.

§ 3.7.2.2 The Contractor is responsible for the Construction Team's compliance with all Applicable Law including, but not limited to, those related to the employment or utilization of the Construction Team's workforce to carry out the Work. Accordingly, the Contractor is responsible that policies and procedures in place to ensure the Construction Team's compliance with Applicable Laws with regard to the Work.

§ 3.7.2.3 The Contractor will provide any verified information, certification, or assurance of compliance with Applicable Law that may be requested by Owner or any public authority. The Contractor will obtain this information from members of the Construction Team upon request by the Owner.

§ 3.7.3 If the Contractor performs Work contrary to Applicable Law, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, Owner's Representative Consultant, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, liabilities, and expenses, including but not limited to professional and attorneys' fees, arising out of or resulting from its and the Construction Team's activities or performance of the Work in violation of Applicable Law. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are unknown and: (1) subsurface or otherwise concealed physical conditions that differ materially from those described in the Contract Documents; (2) 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; and (3) not the Contractor's responsibility to ascertain under 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 forty-eight (48) hours after first observance of the conditions. Only if the condition encountered meet the above requirements, if the Contractor has provided

notice as required in this Section 3.7.4, and if the Contractor has fulfilled its obligations under Section 3.2, may the Contractor be entitled to an adjustment in the Contract Time or Contract Sum resulting from concealed or unknown 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 that an equitable adjustment be made 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, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15; except the Contractor will have released its right to an increase in the Contract Sum and Contract Time if it fails to follow the notice requirements of this Section 3.7.4.

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

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection. Any allowances, including any Subcontractor allowances, shall be approved by the Owner in writing and allowance funds may only be used for the established specific purpose, whether it be to address a specific unquantifiable issue or specific type potential unknown conduction.

§ 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;
- .3 whenever costs are more than or less than allowances, the Contract Sum may be adjusted accordingly by Change Order in the difference between actual costs and the allowance; and
- .4 Once the scope of the Work for which an allowance was established is complete, the Contractor shall sign a Change Order returning any and all remaining allowance funds to the Owner.

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

§ 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.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract or with its Guaranteed Maximum Price proposal, as applicable, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall reflect the Contractor's intended approach to the execution of and completion of the Work. The schedule shall provide for the orderly progression of the Work to completion, and shall not exceed milestone and Substantial Completion time current limits current under the Contract Documents.

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

§ 3.10.3 The construction schedule shall be in a detailed critical path method (CPM) format satisfactory to the Owner and Architect and shall: (i) graphically depict the coordination and sequence of all activities and events planned to occur during performance of the Work; (ii) identify each phase of construction and occupancy and (iii) include milestone and Substantial Completion dates. The construction schedule shall be broken into work areas to provide for a clear identification of the planned progress of the Work. Unless it is impractical, the duration of each activity shall not be greater than 30 calendar days. The construction schedule shall make reasonable allowance for delays caused by such things as labor scarcity, weather, local jurisdictional work restrictions, and building official inspections and shall depict the following:

- .1 Work durations in calendar days;
- .2 restrictions and constraints stated in the Contract Documents;
- .3 milestone and other intermediate completion dates set by the Contract Documents;
- .4 actual start and finish dates and remaining durations for each activity;
- .5 reasonable time for needed approvals by the Owner, Architect, or other agency or authority;
- .6 reasonable time for Owner, Architect, or other agency or authority inspections and/or tests where required by the Contract Documents;
- .7 the work of separate contractors or the Owner;
- .8 a legend for each report or chart which clearly identifies how to interpret each;
- .9 any phasing of activities or sequences that are needed to complete the Work; and
- .10 fabrication and/or ordering activities for critical or long lead materials for the Project.

§ 3.10.4 In management of the construction schedule, the Contractor shall:

- .1 meet at least bi-weekly with the persons providing labor or materials under each trade package to review their progress and take appropriate action to maintain the construction schedule;
- .2 update the construction schedule with the current status of the Work and the Contractor's plan for completing it (i) monthly to compare actual progress with projected progress; (ii) within seven days of an event that impacts the critical path, (iii) monthly updates shall be submitted with the pay application and (iv) at any other reasonable time if requested by the Owner;
- .3 develop recovery schedules when critical path, milestone, or Substantial Completion dates are or may be at risk of being missed;
- .4 not place Owner activities on the critical path without its approval;
- .5 with its submission of the baseline schedule and with each update, provide the Owner and Architect with a narrative describing the Project's progress, Project challenges, any impacts to critical and near-critical path activities, if any, and the Contractor's forecast of upcoming Work;
- .6 provide the Owner with copies of the schedule and all updates in their native electronic format; and
- .7 submit copy of the final, as-built construction schedule to the Owner upon final completion of the Work.

§ 3.10.5 Durations of activities for the Owner's forces and the Owner's Separate Contractors on the Contractor's construction schedule are not binding on the Owner unless they have been accepted in writing.

§ 3.10.6 Because schedule float is a resource to be shared for the benefit of the Project, the Owner or the Contractor may use float as it may be available.

§ 3.10.7 The Owner's or the Architect's review of the Contractor's schedules shall not constitute or imply the acceptance of them or relieve the Contractor of responsibility for the means, methods, sequences, techniques or procedures used in the performance of the Work.

§ 3.11 Documents and Samples at the Site

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

§ 3.12 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 how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 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 The Contractor is responsible for the content of all submittals. 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, (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents, and (4) confirmed constructability of the Work described in them. The Contractor's submittals shall clearly identify both the person who undertook the review required by this Section 3.12 and the date of the submittal's transmittal to the Architect.

§ 3.12.6.1 The Contractor shall develop and keep current a submittal log that is coordinated with the submittal and construction schedules.

§ 3.12.6.2 Submittals describing manufactured equipment must be clearly marked to fully define the intended model number, configuration, and other applicable product information.

§ 3.12.6.3 The Contractor shall notify the Owner and the Architect in writing if any submittals describe Work that diverges from the requirements of the Contract Documents. The notice shall identify each and every divergence.

§ 3.12.6.4 The Contractor shall furnish to the Architect for review when requested, or when required by the Contract Documents, Samples of all materials and finishes to be used in the execution of the Work. Such Samples shall be of sufficient size to be representative and the required number of them shall be submitted before the Work utilizing the

materials they exemplify is commenced and in ample time to permit examination thereof.

§ 3.12.6.5 The Architect and Contractor will establish and adhere to the procedures and requirements for the timing, transmission, and review of Submittals, Samples, and Shop Drawings. No such protocols agreed upon by the Architect and Contractor shall in anyway relieve the Architect or any member of the Construction Team of any obligations or duty to the Owner, impose any obligation upon the Owner, nor give rise to any Additional Services of the Architect or any change to the Contract Sum or Contract Time. The Contractor and Architect shall be responsible for the costs of their failure to adhere to the established protocols. Failure by the Contractor to submit a Submittal, Sample, or Shop Drawing in conformance with the established protocols, or to document the agreed up on timeframe for response and the timing of the submission and response, shall constitute a waiver of any claim for change in the Contract Time or Contract Sum resulting from the Architect's delayed review or response to a Submittal, Sample, Shop Drawing.

§ 3.12.6.6 The Contractor shall review the Architect's comments on submittals that have been returned, may seek clarification through a request for information if necessary, or, if the Contractor concurs, shall make such corrections and re-submit the submittal. When noted on the submittals or requested by the Architect, the Contractor shall resubmit corrected submittals to the Architect for final check and review. The Contractor shall direct specific attention, in an attached writing or on the resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's review of a resubmission shall not apply to such revisions.

§ 3.12.6.7 Except for minor changes of Work expressly authorized by the Architect in writing, the Architect's approval, corrections, or comments on submittals do not constitute a Modification. In the event the Contractor believes the Architect's corrections or comments on submittals effect a change in the Work, the Contractor shall submit notice pursuant to Section 7.5 before implementing the corrections or comments.

§ 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 Architect has completed its review of the respective submittal.

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written

approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to times of day and areas permitted by Applicable Law, lawful orders of public authorities, and the Contract Documents. To the extent reasonably possible, the Contractor shall minimize the impact of the Work on neighboring properties and shall keep public areas adjacent the site free of debris, building materials, and equipment.

3.13.1.1 On-site logistics for construction staging / parking will be discussed with the Owner prior to the onset of construction activities.

3.13.1.2 The Contractor shall not obstruct walks or public ways without the written permission of governing authorities and the Owner.

§3.13.2 The Contractor shall maintain a clean and orderly site and shall not encumber it with unnecessary materials or equipment. After temporary facilities and equipment are no longer required for the Work they shall be promptly removed. The Contractor shall protect construction materials and equipment stored at the Project site from weather, theft, damage and all other casualty and bears the risk of loss to them. This Section 3.13 does not prevent the Contractor from recovering sums paid by the Owner's property insurer for their loss.

§ 3.13.3 No member of the Construction Team shall erect any sign on the Project site without the Owner's prior consent.

§ 3.13.4 The Contractor shall not, without the Owner's prior written approval, permit the Construction Team to use any existing facilities at the Project site, including, without limitation, lavatories, entrances, eating, and parking areas. The Contractor shall adhere to the Owner's site use policies and shall suggest reasonable alternatives in the event the Contractor believes those policies impact the progress of the Work. The Contractor shall restore any existing property, facility, or conditions, whether or not owned or controlled by the Owner, it uses to support its performance of the Work to the facility's pre-use condition. To the extent reasonably possible, the Contractor shall minimize the impact of its operations on such things as traffic control devices, landscaping, and other features existing on the Project site and shall restore that which is damaged by its activities.

§ 3.13.5 In the event the Work occurs in an occupied building or facility, the Contractor shall not disrupt the operation, access or use of any portion of the building or facility, any building system, or utility service without obtaining the Owner's prior written consent after having given the Owner seven days' written notice of the planned disruption. The notice shall detail the exact nature and duration of such interruption and the area affected. The Contractor's failure to comply with the notice provisions of this Section 3.13.5 is a waiver of any right to an increase in the Contract Sum and Contract Time to which the Contractor might otherwise be entitled as a result of the Owner's failure to give consent.

§ 3.13.6 The Contractor shall provide all security necessary to safeguard the site, building, tools, materials, and Work. In the event the Work occurs in an occupied building or facility, the Contractor shall ensure all members of the Construction Team shall cooperate with the Owner's security personnel and comply with the Owner's security requirements, which may include badging and enumeration of personnel working on site. The Owner may bar access to any individual for reasonable security reasons and may restrict the location of entries to the Work that may be used by members of the Construction Team.

§ 3.13.7 The Contractor shall control dust, smoke, noise, and fumes to avoid creation of a nuisance and to comply

with Applicable Law.

§ 3.13.8 The Contractor shall take all necessary precautions to guard against and eliminate damage and disruption to the Work, the Project, and neighboring property. The Contractor's health and safety plan required by Section 10.1.2 shall include a detailed fire prevention, protection, and suppression plan that is acceptable to the Owner and complies with Applicable Law and lawful orders of public authorities. The Contractor shall coordinate with the applicable public authorities and maintain free access to the Project site for emergency equipment at all times.

§ 3.14 Cutting and Patching

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

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

§ 3.14.3 Only tradespersons skilled and experienced in cutting, fitting and patching shall perform such Work. An appropriate member of the Construction Team shall do all cutting, fitting or patching on the Work that may be required to make its several parts come together properly and fit the Work to receive or be received by work of other contractors shown by, or reasonably implied by, the Contract Documents for the completed Project. An appropriate member of the Construction Team shall repair or otherwise make good all such cutting, fitting, or patching after the required Work has been completed as the Architect may direct.

§ 3.14.4 The Contractor shall not cut or otherwise alter any portion of any structure of which the Work is a part of or to which the Work is attached without in each instance having first submitted a Shop Drawings accurately locating each such cut or alteration. The Architect's approval of such Shop Drawings must be obtained prior to making any such cut or alteration.

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

The Contractor shall provide the Owner, the Owner's consultants and separate contractors, and the Architect with 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 defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, Owner's consultants, Owner's Representative Consultant, Architect, Architect's consultants, and agents and

employees of any of them from and against claims, damages, losses, liabilities, and expenses, including but not limited to professional and attorneys' fees, arising out of or resulting from its and the Construction Team's activities related to the performance of the Work, but only to the extent caused by the negligent acts or omissions of the Contractor and the Construction Team, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

§ 3.18.3 The Contractor shall pay all professional and attorney fees incurred by the indemnitees to enforce the provisions of this Section 3.18.

§ 3.19 Record Documents

§ 3.19.1 The Contractor shall maintain at the Project site keep updated the Record Documents, which include the Contract Documents, Change Orders, proposed or requested Change Orders, Construction Change Directives, the Record Drawings, construction schedules, reports, requests for information and responses to them, submittals and responses to them, logs, meeting minutes, notices, maintenance and operating manuals, and other documents generated by the Construction Team in the performance of the Work. As part of the Record Documents, the Contractor shall maintain records of principal building layout lines, elevations of the bottoms of footings, utility inverts, Project floor levels and key site elevations certified by a qualified surveyor. Internal memoranda or reports, privileged communications, documents with incidental references to the Work, and documents which discuss multiple projects are not Record Documents.

§ 3.19.2 The Contractor shall make the Record Documents available to the Owner and the Architect for inspection and copying at all times during performance of the Work.

§ 3.19.3 The Record Drawings depict the Work as it is actually built. The Contractor shall prepare and update them continuously during the prosecution of the Work. The Contractor shall maintain the Record Drawings showing: (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 any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (v) such other information as the Owner and Architect may reasonably request. The Contractor shall also be responsible for providing record sitework drawings that are required by the authority having jurisdiction in order to closeout the project.

§ 3.19.3.1 At Substantial Completion of the Work, the Contractor shall deliver the Record Drawings, approved shop drawings and submittals, requests for information and responses, operation and maintenance manuals, and other Record Documents requested by the Owner to the Owner neatly organized and indexed in both bound hard copy and electronic format. The Contractor shall be permitted to retain a copy of the Record Documents for its own use after the Work is completed and, in any event, the Owner shall continue to provide the Contractor with access to them for to inspection and copying.

§ 3.20 Warranties and Manuals

§ 3.20 Unless the Contract Documents require otherwise, the Contractor shall bind and turn over to the Owner in electronic and hard copy form a set of manufacturers' warranties and operating and/or maintenance manuals, instructions or schedules for all equipment and special materials requiring such. Such information will clearly categorize and index each piece of equipment and material included, and shall be clearly marked noting "project specific" equipment, model numbers, and other applicable information. Such manuals will be collected and organized by the Contractor and submitted to the Owner at one time, as a condition of Substantial Completion.

§ 3.21 Project Information System

The Contractor shall establish and maintain a Project Information System for organizing, preserving, and tracking

Project documents, requests, and other administrative matters including, but not limited to, submittals, requests for information, project accounting, and change order requests. The Contractor shall provide the Owner, Architect, and the Owner's Representative Consultant access to the Project Information System. Upon completion of the Project, the Contractor shall provide the Owner an archival copy of the information contained on the Project Information System. The Contractor shall maintain the information in the Project Information System for the applicable statute of limitation or statute of repose.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect to administer the Contract as set forth in the Contract Documents shall not be restricted, modified, or extended without written notice to the Contractor.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Owner makes final payment, and, with the Owner's concurrence, during the period for correction of the Work under Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. The Architect does not have authority to modify the Contract Sum or Contract Time or to direct changes in the Work that may prompt the Contractor to seek a change in Contract Sum or Contract Time.

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

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

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents or that the Architect believes will not conform when completed. 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 13.4.2 and 13.4.3, whether or not the 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, suppliers, their agents or employees, or

other persons or entities performing portions of the Work. The Architect's failure to reject non-conforming Work does not constitute acceptance of it.

§ 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 or approval 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 or approval of a submittal shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Except for minor changes to the Work expressly authorized by the Architect in writing, the Architect's approval does not constitute a Modification.

§ 4.2.8 The Architect will prepare, or if prepared by the Contractor or Owner the Architect will review, Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. The Architect's signature on any Change Order certifies that the Architect has reviewed all changes to the Work set forth therein and that Contract Documents, as modified by the Change Order, are consistent with the Architect's obligations under the agreement between the Owner and Architect.

§ 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, compile, review, confirm the completeness of, 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 Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Subject to Section 7.5, the Contractor shall implement directions given with the Architect's response.

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

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate and subject to Article 7, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.15 The Architect and Contractor recognize that the timely responses to requests for information from Architect is important to the success of the Work. Accordingly, Contractor shall promptly meet after the execution of the Contract to establish with the Architect in writing protocols and mutually acceptable time limits for the Architect's responses regarding requests for information from the Architect. Such agreed upon time limits shall not give rise to

a change in the Contract Time. The Architect shall be responsible for the cost of delays, if any, attributable to its failure to provide responses in the time established by the Architect and Contractor. Failure by the Contractor to document the agreed up on timeframe for response, or the timing of the request and response, shall constitute a waiver of any claim for change in the Contract Time or Contract Sum resulting from the Architect's delayed response to the request for information.

§ 4.2.16 The Contractor will compensate the Owner for fees demanded by the Architect for excessive review of submittals and for reviewing requests for information by the Contractor that the Architect legitimately believes to lack merit.

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 the 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, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. The Contractor shall provide the Owner or Architect information regarding such entities as reasonably requested. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

§ 5.2.5 The Owner may enter into agreements with trade contractors for portions of the Project and assign one or more of the agreements to the Contractor, which the Contractor shall accept unless reasonable and particularized objection is promptly made in writing. With any such assignment, the agreement shall become a Subcontract, the trade contractor shall become a Subcontractor, and the work being performed shall become Work for which the Contractor is responsible.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume

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

§ 5.3.1 In addition to the requirements of Section 5.3, each form of subcontract agreement shall:

- .1 require timely submittal of invoices and applications for payment and supporting documentation;
- .2 unless precluded by the Owner's property insurance, waive of rights of subrogation for damages caused by fire or other perils covered by the property insurance;
- .3 name the Owner as an intended third-party beneficiary; and,
- .4 recognize the contingent assignment of the subcontract under Section 5.4

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

§ 5.4.2 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 5.5 **Subcontractor Insurance.** Unless excused on a case by case basis, all Subcontractors and Sub-subcontractors shall procure the insurance coverage required of the Contractor by the Contract Documents. The Contractor shall obtain required documentation, shall review it for compliance with the requirements of the Contract Documents, and shall report it to the Owner. No Subcontractor or Sub-subcontractor shall perform any portion of the Work or have a presence at the Project site without providing satisfactory proof of insurance coverage to the Owner. The Contractor shall monitor the Subcontractors' and Sub-subcontractors' insurance certificates to ensure coverage remains current.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right, but shall have no obligation, to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors .

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

§ 6.1.3 The Contractor shall coordinate the Work being performed by the Construction Team with the Owner's forces and each Separate Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall account for the work of the Owner's forces and Separate Contractors on its construction schedule and shall make any revisions

deemed necessary after a joint review. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised. Whenever the Contractor's Work is dependent upon the work of the Owner or the Owner's Separate Contractors, the Contractor shall notify the Owner of such condition with sufficient time to prevent any delays to the progress of the Work. The Contractor shall promptly notify the Owner in writing, and in accordance with the Contract's requirements, upon becoming aware that Separate Contractor actions will in any way compromise the Contractor's ability to meet its responsibility under the Contract Documents.

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

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent provided it has thoroughly examined the visible portions of any work that the Contractor's Work may be dependent on or interconnected with.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs for its own forces or 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 provided the Contractor has taken every reasonable step to mitigate any Contractor costs and delays and gives the Owner notice in accordance with the applicable provision of the Contract Documents.

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive may be issued by the Owner or 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 Owner or Architect. The Contractor may request a Change Order in accordance with Section 7.5.

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

§ 7.1.4 The Contractor shall maintain a log of all changes in the Work, Contract Sum, or Contract Time that have been proposed or requested by the parties, all Change Orders, and all other Modifications. The log shall include the date the change was first proposed, a brief description of the change, an estimate of the cost or savings realized by the contemplated change, an estimate of the change's impact on the critical path, and any adjustment in the Contract Sum and Contract Time resulting from a Change Order or Modification that implements the change. A Construction Change Directive shall be recorded as such on the log. This log must be updated and presented to the Owner least bi-weekly and/or via a collaborative Project Information System. This log must also include projected changes in the Work through Final Completion of the Project, enabling the Contractor and Owner to manage the contingency funds for the Project.

§ 7.1.4.1 In order to facilitate the timely submission and processing of proposed changes described in Article 7.1.4, the Contractor and Architect shall establish an efficient process for their review and shall reserve for the Owner an appropriate amount of time for the review and approval of proposed Modifications. The Contractor shall utilize a collaborative Project Information System to manage the Modification process.

§ 7.1.5 The Contractor shall maintain accounting records detailing the cost of all changes in the Work and will permit the Owner to inspect and copy them upon request.

§ 7.1.6 In no event shall the Contractor be entitled to receive, and the Contractor hereby waives the right to receive any payment or any extension of time for additional or changed Work, whether partially or fully completed or simply proposed, unless such additional work is authorized by a written Change Order or Construction Change Directive signed by the Owner, nor shall the Contractor be obligated to proceed with any such work. Change Orders and Construction Change Directives may only be accomplished using a form substantially similar to an AIA G701 or G714 respectively or, if applicable, a form attached to the Contract. No course of conduct or dealing between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim for an adjustment to the Contract Sum or Contract time. For an abundance of clarity, no Architect's bulletin nor Contractor Change Order Request or Change Log, even if signed or otherwise agreed to by the Owner, shall be binding or be given effect unless incorporated into a signed Change Order or Construction Change Directive in accordance with this Section.

§ 7.2 Change Orders

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

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

§ 7.2.2 Written agreement by the Owner, Architect, and Contractor on any Change Order shall constitute a final settlement of and a waiver of and permanent bar to all claims by Architect or Contractor relating to the change in the Work which is the subject to the Change Order, including all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the Contract Time. No blanket reservation for the Contractor of any right to bring further claims for the subject of the Change Order, whether or not included in the Change order, shall be given effect. A signed Change Order constitutes the whole fully integrated agreement between the parties with respect to the subject matter contained therein.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order signed by the Owner and Architect, directing a change in the Work or the Contractor's pace of performing 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, or order changes in the Contractor's pace of performing the Work, the Contract Sum being adjusted in accordance with the actual cost of implementing the direction and the Contract Time being adjusted in accordance with the actual extension or reduction in the construction schedule's critical path.

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect, in consultation with the Owner and Contractor, shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the Construction Change Directive, including, in case of a change in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount for overhead and profit not to exceed ten percent on Work self-performed by the Contractor and five percent for Work performed by Subcontractors. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following which shall not exceed the then current market rate for the Project location:

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

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

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

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect and Owner. 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 or reduction, if any, with respect to that change. The reduction in the Contract Time for a deletion of Work shall be proportionate to the reduction in parts of the Work that are critical path activities on the current construction schedule.

§ 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, in consultation with the Owner and Contractor, 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. The Owner may audit the Contractor's books and records to verify the cost of Work performed under a Construction Change Directive.

§ 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, in consultation with the Owner, may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and Architect in accordance with Sections 7.5, 15.1.5, and 15.1.6 and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Owner's or Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.5 Contractor Change Order Requests

If the Contractor believes a change in the Contract Sum or Contract Time is warranted and not otherwise covered in an prior Change Order, the Contractor shall issue a written request for a Change Order to the Owner and Architect. The request shall include all reasonably ascertainable information needed to evaluate the request, including the estimated cost and the effect on the construction schedule, as well as the contractual basis for the Change in Contract Sum or Contract Time. Unless involving an emergency requiring immediate action to protect life or property and where the Contractor has provided written notice to the Owner and Architect within 12 hours, the Contractor shall issue the request and wait for the Owner's response before starting the affected Work. In no case shall the Contractor issue a request or be entitled to Modification later than twenty-one (21) days after the date the Contractor discovers, or should have discovered with the exercise of appropriate diligence, the pertinent act, error, omission, or circumstances giving rise to the requested change. In the event the Contractor disagrees with the Owner's response, the Contractor may pursue a Claim under Article 15 and subject to the requirements of Section 15.1.3. The Contractor's failure to strictly follow the procedure regarding the timing of requests for Change Orders shall operate as a waiver and release of any right to an increase in the Contract Sum and Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

§ 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve all milestone dates and Substantial Completion within the Contract Time. The Contractor shall not, without the Owner's prior approval, reschedule or re-sequence the Work so that an action, approval, or activity of the Owner moves onto the critical path or otherwise becomes critical to the Contract Time so long as such action, approval, or activity would not in fact have been critical but for the rescheduling or re-sequencing.

§ 8.2.4 Should the Contractor fail, refuse or neglect to supply sufficient workers or to cause the delivery of equipment and materials promptly to prevent delay, or fail in any material respect to commence and execute the Work diligently in accordance with the Contract Documents, or if the Work falls behind schedule, the Owner may require the Contractor to take additional measures and to have the members of the Construction Team do likewise, all at no additional cost to the Owner. Such Additional 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 additional measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule and subject to the following:

- .1 The Contractor shall not be entitled to an adjustment in its compensation in connection with Additional Measures required by the Owner under or pursuant to this Article 8 except as specifically provided in Section 8.3.2 or in a Change Order or Construction Change Directive.
- .2 The Owner may exercise the rights furnished it under or pursuant to this Article 8 as frequently as necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.
- .3 Subject to reasonable prior notice and opportunity to cure, and except to the extent caused by Owner Delay, the Owner shall also have the right to offset against any amounts then or thereafter due to the Contractor, or to be reimbursed by the Contractor for, any costs incurred as a result of an increase in the Owner's own labor force or for overtime, Saturday, Sunday, and/or holiday work as a result of implementing Additional Measures for which the Contractor is responsible to pay.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) a wrongful act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes that are both beyond the Contractor's control and are reasonably unforeseeable; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect and Owner determines in their discretion, justify delay, then the Contract Time shall be extended for such time as the Contractor demonstrates to the Owner's reasonable satisfaction an unavoidable impact to the construction schedule's critical path.

§ 8.3.2 Except as provided by Article 7, the Contract Sum shall only be increased on account of delay when the Contractor demonstrates to the Owner's reasonable satisfaction an unavoidable impact of more than seven consecutive days to the construction schedule's critical path and that the delay is caused by a wrongful act or negligence of the Owner or Architect, of an employee of either, or of a Separate Contractor. The increase in the Contract Sum shall not exceed the Contractor's direct, actual cost of delay calculated in accordance with the Contract Documents but without overhead, or mark-up. In no event shall the Contractor, or any member of the Construction Team, be entitled to compensation or recovery for any damages in connection with delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Contractor hereby expressly waives and covenants and agrees not to assert any claims against the Owner for any damages, costs, losses or expenses of any nature whatsoever which any member of the Construction Team may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequences, congestion, disruptions, or the like arising from, out of or in connection with any act or omission of the Owner, its representatives or agents, it being understood and agreed that their sole and exclusive remedy in such event shall be an extension of the Contract Time and/or an adjustment to the Contract Sum to the extent provided in this Section 8.3.2.

§ 8.3.3 Neither the Contract Sum nor the Contract Time shall be increased:

- .1 to the extent float in the schedule may accommodate the delay, regardless of the party responsible for the delay;

- .2 when the delaying event affects the schedule's critical path concurrently with an event the Contractor is responsible for;
- .3 when the Owner or Architect exercise a right granted them by the Contract Documents to manage deficiencies in the Contractor's performance;
- .4 when the Contractor has failed to identify and avoid a reasonably foreseeable delay;
- .5 to the extent the Contractor has failed to mitigate the effect of the delay; or
- .6 when the Contractor has failed to give the Owner and Architect written notice of a critical path delay within twenty four (24) hours of its occurrence and failed to give the Owner and Architect an opportunity to resolve the delay.

§ 8.3.4 After providing reasonable notice to the Contractor, the Owner may implement any remedy granted it by the Contract Documents to address Contractor-caused delay(s), including remedies permitted by Section 2.5, Section 6.1, Section 7.3, and Section 9.5.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work in relation to each portion's actual cost and in sufficient detail to accurately quantify completion of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect and shall be approved by the Owner. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner's Representative Consultant and Architect a pencil draw of the proposed application for payment for Costs incurred during that month. Any invoices for Costs that are not included in such pencil draw will be held over until the next monthly pay period. The amount agreed to at the pencil draw review meeting shall be processed and submitted as a payment application per the Contract Documents. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. 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, as required by Section 3.4.7, 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 The Owner shall not be required to pay for unassembled materials, such as mill steel, extrusions for windows, and incomplete assemblies.

§ 9.3.5 The Contractor's first Application of Payment is considered incomplete unless, in addition to the requirements described below, all of the following items are also included with the Application of Payment: (i) Performance and Payment Bonds, if required; (ii) Certificate of Insurance, as required; (iii) Affidavits that the surety and insurance company or companies meet the requirements in Article 11.7; (iv) CPM Schedule for the Project; (v) Completed Schedule of Values for the Project.

Each Application for Payment shall be in the form of an AIA G702 and G703 unless otherwise approved by the Owner and shall be accompanied by the following, all in form and substance satisfactory to the Owner:

- .1 a properly executed and notarized affidavit or sworn statement in statutory form (or if there is no applicable statutory form, in a form acceptable to the Owner) from the Contractor and all Subcontractors attesting to the amounts previously paid, amounts currently due, and amounts expected to become due to those providing labor or materials for the Work to them under a contract;
- .2 properly executed unconditional releases of lien and claim establishing payment or satisfaction of all obligations to those providing labor or materials for the Work for which the Owner has previously made payment; except the application for Final Payment is governed by Section 9.10.2;
- .3 properly executed conditional releases of lien and claim for the Work for which payment is being requested, except the application for Final Payment is governed by Section 9.10.2;
- .4 An updated schedule of values, which unless objected to by the Architect shall be used as a basis for reviewing the Contractor's Application for Payment.
- .5 A narrative describing in detail any changes to the schedule of values.
- .6 An updated schedule with written narrative summarizing the progress of the Project, including behind schedule Work that may adversely affect the critical path of the Work. If such behind schedule Work would or could potentially affect the timely completion of the Work, the Contractor must also include a recovery plan describing in sufficient detail of overtime, multiple shifts and any other measures necessary to complete the Work within the Contract Time.
- .7 Initial or updated insurance documentation and/or bond documentation evidencing compliance with the requirements of the Contract Documents.

§ 9.4 Certificates for Payment

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

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 Certification of any Application for Payment failing to strictly conform with the requirements of this Article 9 shall be withheld as incomplete. The Architect shall inform the Contractor and Owner of the deficiencies in the Application for Payment.

§ 9.5.2 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 any loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2 or because of

- .1 defective or non-conforming Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, including claims for non-payment by members of the Construction Team, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed by milestone dates or within the Contract Time, and that the unpaid balance of the Contract Sum would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to perform any obligation of the Contract Documents.

§ 9.5.3 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15. If the Contractor disputes any good faith determination by the Owner with regard to any Certificate of Payment, or amount paid by the Owner in respect thereof, the Contractor shall nevertheless expeditiously continue to prosecute the Work while such dispute is being resolved in accordance with the provisions of Article 15. Where the Architect is made aware that it has Certified an Application for Payment in error based on an incomplete or incorrect Application for Payment, the Architect shall rescind and withhold its Certification pending correction of the Application for Payment.

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

§ 9.5.5 The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment, or that the Owner believes there is a reasonable risk the Contractor may fail 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 Contractor shall reflect such payment on its next Application 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. Notwithstanding the Architect's Certification, the Owner may withhold payment, in whole or in part, if the Application for Payment is incomplete in any way or the Owner makes a reasonable determination that the Application for Payment is inaccurate pending the resolution of a Claim in accordance with Article 15.

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

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

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

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

§ 9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held in trust 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. Unless required otherwise by statute, nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or require payment to Subcontractors or suppliers when the terms of their agreement with the Contractor permit the Contractor to withhold it.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner and its Architect and Owner's Representative Consultant from all loss, liability, damage or expense, including joint check fees, lien discharge bond premiums, reasonable attorney's fees, and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon request by the Owner, the Contractor shall immediately discharge any such lien at its own cost. Upon receipt of notice of a lien claim or other claim for payment affecting title to the Work or Project, the Owner and Contractor shall notify the other of the lien or claim. The Contractor shall pay all attorney fees incurred by the Owner to enforce the provisions of this Section 9.6.8.

§ 9.6.9 Owner shall retain out of each progress payment a "Retainage" as provided in the Contract Documents. Retainage will be paid upon Final Completion and acceptance of the Work in accordance with Section 9.10. Upon mutual agreement of the Owner, the Architect and the Contractor, payment in full may be made to Subcontractors whose Work is fully completed during early stages of the Project.

§ 9.7 Failure of Payment

If the Owner is in default of making payment to the Contractor in accordance with the Contract Documents for more than thirty consecutive days, the Contractor may, upon seven additional days' 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 shutdown, 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; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, or any other certifications necessary for the beneficial occupancy or intended use of the Project.

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

§ 9.8.2.1 The Work shall not be considered ready for Substantial Completion review until testing and commissioning of all systems included in the Work is complete and all systems are operational in accordance with the Contract Documents and finishing the Work will not materially interfere or hamper the Owner's or Project occupant's normal operations. All occupational permits by governmental authorities with jurisdiction are also required, and temporary permits are only allowable with the Owner and Architect's written consent.

§ 9.8.3 Upon receipt of the Contractor's list and schedule, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete and the schedule for completing the Work is acceptable. 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 and the Contractor's schedule for completing the remainder of it is acceptable to the Owner and Architect, the Architect will prepare a Certificate of Substantial Completion utilizing an AIA G704 form that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, the Owner may, in its sole determination, withhold any amount of retainage it deems sufficient to secure completion or correction of Work that is incomplete or not in accordance with the requirements of the Contract Documents and to secure performance of any outstanding obligation of the Contract. Substantial Completion shall not be considered obtained until the Certificate of Substantial Completion is accepted by the Owner, which acceptance may be withheld if the Owner reasonably believes the Certificate of Substantial Completion was issued in error.

§ 9.8.6 The Owner's use of the Work, payment of retainage, final payment, or a Certificate of Substantial Completion do not constitute acceptance of Work not complying 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 when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit 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 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. 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 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, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, and (7) any outstanding Record Documents have been delivered to the Owner and Architect. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

§ 9.10.6 Contractor will provide attic stock materials as required by the Contract Documents. Materials shall be boxed, labeled, and stored as directed by the Owner.

§ 9.10.7 If the aggregate of previous payments made by the Owner exceeds the amount due the Contractor, the Contractor shall immediately reimburse the difference to the Owner.

§ 9.11 AUDITS BY THE OWNER

§ 9.11.1 The Contractor agrees that the Owner or any of its duly authorized representatives shall, until the expiration of the record retention period (as described in Section 9.11.2), have access to and the right to examine where pertinent to verifying the Cost of the Work or other items reimbursed to Contractor under the Agreement on the basis of costs, books, documents, records, contracts, correspondence, instructions, receipts, vouchers, purchase orders, memoranda, papers, and all other records of the Contractor related to the Agreement for any reason.

§ 9.11.2 The Contractor shall maintain in accordance with generally accepted accounting principles separate records and accounts of its Services and transactions on behalf of the Owner in connection with the Work and shall make such records and accounts available to the Owner for inspection and audit during normal business hours and upon reasonable prior notice. Records shall be kept in such form and detail as the Owner may reasonably request. Such records shall include time sheets, invoices from the Contractor and its Subcontractors memoranda and analyses in support of management decisions, and such other primary records as necessary to support and justify all business conducted in connection with the Work, but shall not include internal memoranda or reports, communications or discussions with incidental references to the Work or documents which discuss multiple projects. Such records will be kept by the Contractor for a period not less than seven (7) years.

§ 9.11.3 The Contractor shall include in all its Subcontracts under the Agreement a provision to the effect that the Subcontractors agree that the Owner or any of its duly authorized representatives shall, until expiration of three (3) years after Final Payment under the Subcontracts and Supply Agreements, have access to and the right to examine where directly pertinent to verifying the cost of change orders or other items reimbursed to such Subcontractor on the basis of cost, books, documents, papers, and records of such consultants, involving transactions related to the Work.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 10.1.1 The Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and the Project site.

§ 10.1.2 The Contractor shall develop and implement a written health and safety plan that addresses the requirements of this Article 10 and complies with all Applicable Law. The Contractor shall provide the Owner a copy of the health and safety plan prior to commencement of Work and shall include it with the Record Documents. The Owner has no duty to review the plan and shall assume no duty by doing so. The plan shall be included in all bidding documents issued by the Contractor, and the requirements of the plan shall be applicable to all members of the Construction Team.

§ 10.2 Safety of Persons and Property

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

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

§ 10.2.2 The Contractor shall comply with, and give all notices and requirements of Applicable Law bearing on safety of persons or property or their protection from damage, injury, or loss.

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

§ 10.2.4 When use or storage of flammable, explosive, or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall address the care of them in its health and safety plan and shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When in the course of the Work use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner reasonable advance notice.

- .1 No explosives will be permitted on the Owner's premises unless written permission is given by the Owner not less than 72 hours in advance of the time of delivery of such explosives. All risks, regardless of the Owner's approval, associated with the storage, handling and use of explosives are solely borne by the Contractor, as are any costs associated with damages, injuries or losses arising out of the use of such explosives.
- .2 The use of disposal or flammable liquids or other combustible materials shall be handled in accordance with Applicable Law.

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property or the Work caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor shall remedy such damage and loss at its expense, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, or use of any contingency or otherwise. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner 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, but do not bar the Contractor from recovering sums of money paid by the available property insurer for the loss if the Contractor has fulfilled its duties under this Article 10 and satisfied the applicable deductible.

§ 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. When required by Applicable Law or for the safety of the Work, the Contractor shall shore up, brace, underpin, and protect foundations and other portion of existing structures that are in any way affected by the Work. Before commencement of any part of the Work, the Contractor shall serve any and all notices required to be given to adjoining land and/or property owners or other parties. The Contractor shall take reasonable steps to document conditions prior to commencing Work that may impact adjoining land and/or property and take reasonable steps to monitor and document disturbances such as subsidence or vibration to adjoining land and/or property.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property, or if a party or someone it is legally or contractually responsible for causes injury or damage to person or property, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding seven days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter and will include all known Details of the incident and statements of witnesses. If death, serious personal injury, or serious property damage occurs, the accident shall be reported immediately by telephone or messenger to the other party. The obligations in this Section 10.2.8 supplement reporting obligations imposed by Applicable Law.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents and Applicable Law regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. The Contractor shall request from the Owner, carefully review, and take appropriate action based on existing documentation that may be relevant to the existence of hazardous materials including past studies, report, and due care plans. The Contractor make appropriate recommendations to the Owner if it believes further investigation is required.

§ 10.3.1.1 The Contractor shall immediately notify the Owner and Architect if any member of the Construction Team receives notice of an inquiry, test, investigation, enforcement proceeding, environmental audit, or the like by for any hazardous materials at or emanating from the Project site.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The term "rendered harmless" shall be interpreted to mean that the levels are less than any applicable exposure standards set forth in Applicable Law. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Construction Team brings to the site. The Contractor shall be responsible for the proper handling and disposal of hazardous materials brought to the site by the Construction Team.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs for remediation of hazardous materials or substances, or for any fees, fines, or penalties imposed by any governmental agency related to hazardous materials or substances, the Construction Team brings to the site, or through the Construction Team's negligent action or inaction which makes worse existing or other hazardous conditions, except to the extent that the cost and expense are due to the fault or negligence of the Owner or the Owner's Separate Contractors.

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

provide the Owner with documentation of the insurance coverage required by the Contract Documents, including certificates of insurances and endorsements for itself, Subcontractors, and Sub-subcontractors, and declarations sheets or certified copies of policies upon the Owner's request.

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

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three business days of the date the Contractor becomes aware of any diminution in its coverage limits or an impending or actual, cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide written notice to the Owner of such diminution in limits or impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The Owner may also procure the insurance and, in such event, the Contractor shall pay the Owner for the cost of doing so. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. In the event the Contractor's renewal or replacement policy differs in any way from the previous policy, the Contractor shall also furnish the Owner with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with written consent to submit only a certificate of insurance. All renewal and replacement policies shall in form and substance satisfactory to the Owner and be written by carriers acceptable to the Owner.

§ 11.2 Owner's Insurance

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

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

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

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, Subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

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

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

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

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

§ 11.5.3 The Contractor shall satisfy any deductible required by the Owner's property insurance as condition precedent to the Contractor's ability to claim funds for a loss that occurs to the Work before the Owner has accepted responsibility for it under Section 9.8 or Section 9.9.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

If, within the stipulated warranty period in Section 3.5.4, and after the date of (i) Substantial Completion and acceptance of the Work or any designated portion thereof or (ii) the completion of Work not finished at Substantial Completion, or within the terms of an applicable special warranty required by the Contract Documents (the "Correction Period"), any of the Work is found by the Owner to be Defective, the Contractor shall, without interfering materially with the Owner's facilities, personnel or operations, promptly cause it to be corrected, unless the Owner has previously specifically accepted such defect in writing. The Contractor shall bear all costs of correcting rejected Work, without increase in the Guaranteed Maximum Price, and without use of any contingency, including any additional testing and inspections made necessary thereby. These obligations shall apply regardless of whether such Work has been fabricated, installed, or completed and shall survive acceptance of the Work and termination of the Agreement. Unless the Owner authorizes otherwise, Substantial Completion shall not commence the Correction Period for any equipment or systems that:

- .1 Are not fully operational (equipment or systems shall not be considered fully operational if they are intended to provide service to any portion of the building which the Owner has not accepted as substantially complete); or
- .2 Are not accepted by the Owner.

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or Owner for failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's or Owner's consultant's services and expenses made necessary thereby, shall be at the Contractor's expense without adjustment to the Contract Sum or Contract Time.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it at its cost, minimizing any interference with the Owner's facilities, personnel, or operations, promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. . If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5 and charge the Contractor for the cost of doing so.

§ 12.2.2.2 The Contractor's obligation to correct non-conforming Work does not foreclose other remedies available to the Owner under the Contract Documents or Applicable Law.

§ 12.2.2.3 The Contractor's obligation to correct non-conforming Work under this Section 12.2.2 does not extend beyond the period in which the Owner may commence a legal action against the Contractor for breach of its obligations under the Contract..

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

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

§ 12.3 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 by an equitable amount which reflects the loss of value to the Owner caused by the non-conforming Work. Such adjustment shall be effected whether or not final payment has been made, and if the unpaid balance of the Contract Sum is insufficient to compensate the Owner, the Contractor shall immediately pay the Owner the difference. The Owner's acceptance of non-conforming work will only be effective if provided in writing.

§12.4 DAMAGE

§ 12.4.1 If prior to the date of Final Completion any member of the Construction Team uses or damages any portion of the Work or other property, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise.

§ 12.4.2 The Contractor shall promptly repair, replace, or restore, and shall bear all such costs, of destroyed or damaged portions of the Work or the work of separate contractors, whether completed or partially completed, or any other property, whether or not owned by the Owner, that is caused by any member of the Construction Team.

§ 12.4.3 Nothing in this Section 12.4 limits the parties' rights to obtain recovery from any available property insurance.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

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

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

§ 13.2.3 The Contractor shall not assign the whole or any part of the Agreement, or any monies due or to become due, without the express written consent of the Owner. If the Contractor, with the Owner's consent, assigns all or any part of the Agreement or any monies due or to become due, the instrument of assignment shall contain a clause satisfactory to the Owner and stating that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to the prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Agreement.

§ 13.3 Rights and Remedies

§ 13.3.1 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.

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

§ 13.4 Tests and Inspections

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

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

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense without increase in the Contract Sum and without use of any contingency.

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

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing.

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 through no act or fault of the Contractor or a member of the Construction Team for any of the following reasons:

- .1 for a period of 120 consecutive days by an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 for a period of 120 consecutive days by an act of government, such as a declaration of national emergency;
- .3 for a period of 90 consecutive days pursuant to Section 9.7;
- .4 for a period of 90 consecutive days because the Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2; or

- .5 for a period of 120 consecutive days for a suspension of the Work under Section 14.3 provided the circumstances described by Section 14.3.2.1 do not apply.

§ 14.1.2 Prior to terminating the Contract under Section 14.1.1, the Contractor shall give the Owner seven days' notice of its intention to terminate, and if the grounds for termination remain uncured, may proceed with termination of the Contract.

§ 14.1.3 Upon termination by the Contractor, the Owner will pay to the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts. This payment is the Contractor's sole and exclusive remedy to for termination under Section 14.1.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 fails to provide adequate assurances of its ability to complete the Work for the Contract Sum and within the Contract Time after substantiated concerns about its ability to do so have been delivered in writing by the Owner; or
- .5 otherwise is guilty of a breach of a provision of the Contract Documents.

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

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished and the balance due the parties under Section 14.2.5 has been determined.

§ 14.2.4 Upon termination under this Section 14.2, the Contractor shall deliver all Record Documents to the Owner. If requested by the Owner, the Contractor shall remove its equipment, machinery, and supplies from the Project site within seven days. The Owner may remove or store such equipment, machinery, and supplies at the Contractor's expense in the event the Contractor fails to do so.

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

§ 14.2.6 If the Owner's termination of the Contractor under Section 14.2 is subsequently deemed wrongful, the termination shall be deemed one for convenience under Section 14.4.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, for any reason, 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 actual and demonstrated increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been concurrently or independently suspended, delayed, or interrupted, by another cause for which a member of the Construction Team is responsible; or
- .2 that an equitable adjustment for any particular item is made or denied under another provision of the Contract.

§ 14.3.3 In the case of a termination of the Agreement by the Contractor pursuant to Section 14.1, the Contractor's Fee through the date of termination shall be calculated as if the termination were by the Owner for convenience pursuant to Section 14.4.

§ 14.3.4 Except as provided in Section 14.1, the increase in the Contract Sum and Contract Time provided by Section 14.3.2 is the Contractor's exclusive remedy for the Owner's suspension of the Work.

§ 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. Termination by the Owner under this Section shall be by a notice of termination delivered to the Contractor specifying the extent of termination and the effective date.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;
- .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; and
- .4 turn over all Record Documents.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by Applicable Law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to Final Completion of the Work, shall be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.

Unless an applicable provision in the Contract Documents sets a different deadline, Claims by either party under this Section 15.1.3.1 shall be initiated within 14 days after occurrence of the event giving rise to such Claim or within 14 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after Final Completion of the Work, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.3.3 The notice of Claim shall describe the facts and circumstances giving rise to it, the effect on the Work, a proposed solution to the Claim, the requested relief, and the basis under the Contract for the requested relief. In the event the party asserting the Claim subsequently discovers additional information relevant to the Claim it shall supplement its notice by providing it to the other party.

§ 15.1.3.4 The Contractor's failure to follow the notice provisions of this Section 15.1.3 operate as a waiver of its right to an increase in the Contract Sum and Contract Time.

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

With all Claims for an increase in the Contract Sum that are not subject to Section 7.3, the Contractor shall give notice in the manner provided in Section 15.1.3 before executing the portion of the Work that is the subject of the Claim, before incurring a cost for which the Owner may become liable, and before taking any action that hinders the Owner's investigation of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice in the manner provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

§ 15.2 Initial Decision

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

Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party participate in mediation.

§ 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 As a precondition to mediation, the Owner and Contractor agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to resolution by the Senior Officers of the Owner and Contractor prior to either of them initiating against the other a demand for mediation, unless delay in initiating mediation or arbitration would irrevocably prejudice one of the parties. The term "Senior Officer" shall mean with respect to the Owner and Contractor, the respective party's chief executive officer, president, managing partner, partner, chief financial officer, chief operating officer, or other individual with authority to resolve the matter and bind the party. If the Senior Officers fails to resolve the Disputes, the Contractor and Owner may mutually agree, in writing, to submit any dispute or claim arising out of this Agreement to mediation.

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

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

§ 15.3.4 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution.

§ 15.3.5 The Contractor shall participate in mediation with persons or entities the Owner deems necessary for resolution of the dispute.

§ 15.3.6 All participants in the mediation 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 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

[end of AIA Document A201-2017 General Conditions of the Contract for Construction]

