TEMPLATE

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

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

«2018 Bond Program as described in Article 1.1 of the AIA Document B101-2017»
« »

THE OWNER:
(Name, legal status and address)

«Grosse Pointe Public School System »« »
«389 St. Clair »
«Grosse Pointe, MI 48230 »

THE ARCHITECT:
(Name, legal status and address)

« »« »
« »
« »

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

« »« »
« »
« »

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (i) between the Contractor and the Architect or the Architect's consultants, (ii) between the Owner and a Subcontractor or a Sub-subcontractor, (iii) between the Owner and the Architect or the Architect's consultants or (iv) 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" consists of all goods and services, such as labor, transportation, materials, tools, and equipment (i) to be incorporated into the Project (or the Contractor's portion of the Project if the Contractor is not responsible for the entire Project), (ii) required of the Contractor under the Contract Documents, or (iii) necessary or appropriate to fully construct, fixture, operate and maintain the Project (or the Contractor's portion of the Project if the Contractor is not responsible for the entire Project). The Work shall be performed in accordance with the Contract Documents. The Work may constitute the whole or a part of the Project. The term "Work" shall also include labor, materials, equipment and services provided or to be provided by subcontractors, sub-subcontractors, material suppliers or any other entity for whom the Contractor is responsible under or pursuant to the Contract Documents.

§ 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 AND PROJECT MANUAL

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. The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.1.8 INITIAL DECISION MAKER

Unless otherwise provided in writing, the Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 APPLICABLE LAWS. Applicable Laws means all applicable codes, statutes, ordinances, laws (including the

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Americans with Disabilities Act ("ADA"), rules and regulations, and lawful orders of all public authorities having jurisdiction over the Owner, any member of the Construction Team, the Project, the Work site, the Work or the prosecution of the Work.

§ 1.1.10 CONSTRUCTION SCHEDULE. The Construction Schedule is the Critical Path Method ("CPM") schedule for construction of the Work submitted as part of the Contractor's Contract Sum or Guaranteed Maximum Price Proposal, prepared by the Contractor and approved by the Owner in accordance with Section 3.10. The Construction Schedule can be modified only by Change Order. Following any such modification, the term "Construction Schedule" shall mean the most recent Owner-approved version.

§ 1.1.11 MILESTONE DATES. The Milestone Dates are those dates included in the Master Design and Construction Schedule and Construction Schedule that are critical to ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

§ 1.1.12 CONSTRUCTION TEAM. The Construction Team includes the Contractor, Subcontractors, sub-subcontractor at any tier and 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.

§ 1.1.13 CONSTRUCTION TIME. The Construction Time is the number of calendar days described in the Construction Schedule in which (or, alternatively, the date set forth in the Construction Schedule by which) Substantial Completion shall be achieved, subject to any extensions granted in executed Change Orders or otherwise specifically permitted by the Contract Documents. Any references to Contract time shall be interpreted to mean Construction Time.

§ 1.1.14 ADDITIONAL MEASURES. Additional Measures are corrective measures necessary to expedite the progress of construction, including (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, (iii) expediting the delivery of materials, and (iv) other similar measures. Subject to the Contractor's rights under Section 7.5, the Owner shall have the right to order Contractor to take Additional Measures when it determines that the performance of the Work, as of a Milestone Date, has not progressed to or reached the level of completion required by the Contract Documents.

§ 1.1.15 MASTER DESIGN AND CONSTRUCTION SCHEDULE. The Master Design and Construction Schedule is the preliminary schedule for the Work to be developed by the Owner or Contractor during the bidding and negotiation process and which shall, at a minimum, provide for major elements such as preparation of the Design, phasing of construction, the time of commencement and completion required for each anticipated Bid Package.

§ 1.1.16 OWNER DELAY. An Owner Delay means an actual delay to Contractor's completion of the Work to the extent caused by one or more of the following: (i) Modifications (excluding minor changes in the Work and Architect interpretations), (ii) the Owner's failure (or that of any other person for whom the Owner is responsible to the Contractor including, the Architect or a separate contractor hired by the Owner) to provide any data or information requested by the Contractor in writing that is reasonably necessary for Contractor to carry out its duties and is the Owner's obligation to provide (so long as the Owner and any other responsible person are given adequate time to respond); or (iii) unreasonable interference by the Owner or persons for whom it is responsible to the Contractor, including, the Architect or a separate contractor hired by the Owner, with the Contractor's performance of the Work, which is not cured within five (5) business days of written notice to the Owner.

§ 1.1.17 OWNER REPRESENTATION CONSULTANT (PROGRAM MANAGER). Owner Representation Consultant or Program Manager means a consultant engaged by the Owner to assist the Owner with the management and/or coordination of the Project as set forth in this Agreement. Unless otherwise provided in the Agreement, Contract Document or specifically authorized by the Owner, the Owner Representation Consultant is not authorized to commit the Owner in matters regarding changes in the Work, Construction Schedule, or grant approvals on behalf of the Owner.

§ 1.1.18 PUNCHLIST. Punchlist means a list of uncompleted or unacceptable items of Work which do not interfere with the use or occupancy of any part of the Work for its intended purpose and which, unless delayed by a need to order materials that could not reasonably have been anticipated by the Contractor, collectively are capable of being

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completed within sixty (60) days.

§ 1.1.19 VALUE ENGINEERING. Value Engineering means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Owner's program at the lowest cost consistent with required and necessary performance, reliability, quality and safety.

§ 1.1.20 HAZARDOUS MATERIALS. Hazardous Materials shall mean and include any toxic or hazardous materials or substances as defined or regulated by in any U.S. environmental law or any Applicable Laws.

§ 1.1.21 PERMITTED MATERIALS. Permitted Materials shall mean materials that are general supplies and equipment that have a hazardous or potentially hazardous nature and are or will be used for their intended purpose and which do not pose any significant threat of contamination to the Project Site or neighboring properties.

§ 1.1.22 The words "consent," "approved," "satisfactory," "proper," "as directed," any derivatives of them, or similar terms, mean written approval by the Owner, and may include approval of the Architect if the Owner so directs. Except where a different standard is specifically established, the Owner has the right to grant or withhold such approval in its sole discretion.

§ 1.1.23 The word "provide" and any derivatives thereof, and similar terms, mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Contract Documents.

§ 1.1.24 The terms "known," "knowledge," "recognize," "believe," and "discover," and any derivatives thereof and similar terms, when used in reference to the Contractor, shall mean that which the Contractor knows or should reasonably know, recognizes or should reasonably recognize, and discovers or should reasonably discover in exercising the care, skill, and diligence required of the Contractor by the Agreement. The expression "reasonably inferable" and similar terms mean reasonably inferable by a Contractor familiar with the Work and exercising the care, skill and diligence required of the Contractor by the Agreement.

§ 1.1.25 The word "including" shall not be a word of limitation, but instead shall be construed as introducing one or more nonexclusive examples.

§ 1.1.26 Words or abbreviations that are not defined but have well-known technical, trade or construction industry meanings, shall have those meanings ascribed to them. 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 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. 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. Other conflicts between or among the Contract Documents shall be resolved under the following rules of construction:

- **.1** The specific shall govern over the general.
- **.2** Specified dimensions shown on the Drawings shall govern, even though they may differ from dimensions scaled on the Drawings, if any;
- **.3** Drawings of larger scale shall govern over those of smaller scale; any special Drawing details shall govern over standard detail;
- **.4** Specifications shall govern over Drawings in matters of material or equipment specified; Drawings shall govern over Specifications in matters of construction or installation detail;
- **.5** Documents of later date shall always govern; except that
- **.6** The Agreement shall govern over all other documents, regardless of their dates.

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§ 1.2.2 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.

§ 1.2.3 The organization of the Specifications into divisions, sections, and/or articles, and the arrangement of the Drawings, shall not dictate to the Contractor in any way how the Work is to be divided among Subcontractors, or 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 Agreement is for convenience only and shall not limit the generality of the Contractor's obligation to provide all of the Services whenever necessary.

§ 1.2.4 All references in the Contract Documents to standards (such as commercial standards, federal specifications, trade association standards or similar standards), whether for materials, processes, assemblies, workmanship, performance or any other purpose, shall mean, unless otherwise noted, the most recent available published version of such standard as of the date of that part of the Contract Documents bearing the reference. All standards referred to, except as modified in the Contract Documents, shall have the same force and effect as though printed 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 Whenever a provision of the Contract Documents conflicts with agreements or regulations in force among members of trade associations, unions or councils, which regulate or distinguish the portions of the Work which shall or shall not be performed by a particular trade, the Contractor shall make necessary arrangements to reconcile the conflict without delay, damage, cost or recourse to the Owner. Delays in the Work resulting from the failure of the Contractor to use its best efforts to reconcile any such conflicts shall not result in an extension of the Construction Time and shall not result in the increase of the Contract Sum or Guaranteed Maximum Price.

§ 1.2.6 The Contractor acknowledges that there may be items of the Work, which the Contractor is responsible to provide under the Agreement that are not drawn or specified in the Design but are necessary for the proper execution and completion of the Work and are consistent with and reasonably inferable from the Drawings and Specifications. All such items shall be provided as part of the Work without delay in its progress and without any increase in the Contract Sum or Guaranteed Maximum Price.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (i) specifically defined, (ii) the titles of numbered articles or (iii) 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 Drawings, Specifications, and other documents and all data used in compiling, and the results of, any tests, surveys or inspections at the Project Site, as well as all photographs, drawings, specifications, schedules, data processing output, building information modeling (BIM), integrated project delivery (IPD) and/or computer-aided design/drafting (CAD) systems disks/tapes, computations, studies, audits, reports, models and other items of like kind, and all intellectual property, prepared or created for or in connection with the Project, regardless of whether they were prepared by the Owner, the Contractor, Architect or a third party, shall constitute the project documents, and shall belong to the Owner.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service, or any other documents prepared for or in connection with the Project, or any concepts or ideas developed in

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connection with the Project, for any purpose other than the Project without the specific written consent of the Owner. The Owner shall at all times have access to and control over the disposition of any Drawings, Specifications, and other documents pertaining to the Project.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.7 CONFIDENTIALITY

§ 1.7.1 The Contractor shall not knowingly or negligently 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).

§ 1.7.2 The Contractor 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 to the Contractor.

§ 1.7.3 The Contractor shall maintain, and shall cause all members of the Construction Team, and its and their directors, officers, employees, and agents, to maintain, during and after the term of the Agreement, the confidentiality of all trade secrets, know-how, confidential data or other proprietary information of the Owner when designated as such and shall not use such information for any purpose whatsoever except for uses permitted by Section 1.7.1.

§ 1.7.4 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.

§ 1.7.5 The Contractor shall not, without the express written consent of the Owner, discuss the Work or any part thereof with persons under circumstances in which such communications can reasonably be expected to be published in newspapers, magazines or trade journals or broadcast on radio or television. This restriction shall not apply to statements consistent with a crisis management plan development and agreed to by both parties with respect to the Work. This restriction also shall not apply to any fair response by the Contractor to publicity released by the Owner that is detrimental to the reputation of the Contractor. Any such contact shall be referred to the Owner for response. Further, without the Owner's consent, the Contractor shall not participate in professional or trade seminars or publish or submit articles for publication, the subject of which is, in whole or in part, the Work. Any such proposed article or publication shall be submitted to the Owner for review and approval, which shall not be unreasonably withheld.

§ 1.7.6 The Contractor shall cause all members of the Construction Team to specifically acknowledge that the provisions of this Section 1.7 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. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen (15) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

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§ 2.1.3 The Owner may at any time and from time to time designate a third-party, such as an architect or engineer or other professional consultant, to perform any of its duties under the Agreement. In the event of any such designation, the Owner shall provide written notice to the Contractor. The duties, responsibilities and limitations of authority of any third party designated by the Owner pursuant to Section 2.1.1, shall not be restricted, modified or extended without written consent of the Owner.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall 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 shall be the responsibility of the Contractor.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall promptly notify the Owner and the Architect of any errors, problems or inaccuracies, which the Contractor becomes aware of in the course of its use of such surveys.

§ 2.2.4 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.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, pursuant to Section 1.5.2, copies of Drawings and Project Manuals as follows:

- **.1** one reproducible set or an electronic file copy, and a maximum of four (4) sets of Drawings and Project Manuals, including revisions thereto. If additional copies are desired by the Contractor, copies will be furnished upon Contractor's request for the actual cost of reproduction and handling.
- **.2** all instruments, Change Orders, Field Directives, and other like correspondence pertaining to the Work will be provided to the Contractor in the form of one (1) signed copy by the Owner.
- **.3** Change Proposal Documents, including Bulletins, revised drawings, etc. will be provided to the Contractor in the form of one reproducible set and four (4) printed sets.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. This right shall be in addition to and not in restriction or derogation of the Owner's rights under Article 14 thereof. The Owner's right to stop the Work shall not relieve the Contractor of any of the Contractor's responsibilities and obligations under or pursuant to the Contract Document.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may

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have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior acknowledgement of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.4.2 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.

§ 2.5 LIMITATION ON OWNER'S RESPONSIBILITY

§ 2.5.1 The Owner, Architect and Owner Representation Consultant will not, under any circumstances, have control over or charge of and will not be 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. Owner, Architect and Owner Representation Consultant will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner, Architect and Owner Representation Consultant will not have control over or charge of and will not be responsible for acts or omissions of any member of the Construction Team.

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

§ 2.5.3 The Owner may, in addition to delivering them to the Architect, from time to time 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 the Owner's objectives and goals. Review of such submittals will not be conducted for the purpose of determining their accuracy and completeness of 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. The Owner's review and approval of or taking other appropriate action on the Contractor's submittals shall not relieve the Contractor or the Architect of any of their obligations. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Owner's receipt of any informational submittals, of any submittals relating to equipment or systems designed by the Contractor, or of any submittals relating to alternatives proposed by any member of the Construction Team shall not constitute approval of or action by the Owner on such submittals. All such submittals will be received by the Owner for record purposes only.

§ 2.5.4 The Owner may from time to time review or observe or take other appropriate action concerning the Work and any documents, and the selection of Subcontractors and Suppliers. The Owner's doing so shall be solely for the limited purpose of providing the Contractor with information as to how such items relate to the Owner's objectives and goals with respect to the Work and not for the purpose of determining their accuracy and completeness and shall in no way create any responsibility on the part of the Owner for or complicity by the Owner in errors, inconsistencies, or omissions, nor shall any such review, approval, other action or payment of the Contractor alter or in any way reduce the Contractor's obligations under the Agreement.

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 is the primary (main) contractor who oversees and is responsible for all the Work performed on the Project, and to whom any and all subcontractors on the Project are responsible. 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

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respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and discovering errors, omissions, or inconsistencies in the Contract Documents. Errors, ambiguities, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require. 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. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with Applicable Laws, 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 make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor permits any construction activity to be performed that involves an error, inconsistency or omission in the Contract Documents or a physical condition at the Project Site it recognized or should, employing the degree of diligence required of that Contractor under the Contract Documents, have recognized without providing notice to the Owner and receiving authorization to proceed, the Contractor shall assume responsibility for such performance and bear all costs attributable to correction, without recovery, whether under the Contract Sum, Guaranteed Maximum Price or otherwise. If the Contractor performs the obligations of Section 3.2.2 and 3.2.3, 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, unless the Contractor recognized such errors, inconsistency, omission or difference and knowingly failed to report such to the Architect.

§ 3.2.5 Except and only to the extent otherwise provided in Section 2.2.3 or Section 3.7.3, by signing the Agreement, the Contractor agrees: (i) to bear the risk of concealed or unknown conditions other than those defined in Section 3.7.4 as Materially Different Conditions, if any, which may be encountered in performing the Work; and (ii) that the established Contract Sum or Guaranteed Maximum Price accepted this responsibility with full knowledge of this risk. In agreeing to bear the risk of concealed or unknown conditions to the extent herein provided, the Contractor understands that, except and only to the extent provided otherwise in Section 2.2.3 or Section 3.7.4, concealed and/or unknown conditions shall not excuse the Contractor from its obligation to achieve full completion of the Work within the Construction Time, and shall not entitle the Contractor to an adjustment of the Contract Sum or Guaranteed Maximum Price. Except as provided in Section 2.2.3: (i) the Owner has not determined the accuracy or completeness of any information it may provide concerning physical conditions at the Project Site, and all such information is made

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available to the Contractor, and shall by the Contractor be made available to bidders without any representation or warranty by the Owner whatsoever as to its accuracy, completeness, or relevancy; (ii) the Contractor and the bidders shall independently evaluate such information for their use and shall be solely responsible for use or interpretation of such information; (iii) any such use or interpretation shall not be the basis of any claim whatsoever against the Owner.

§ 3.2.6 If the Contractor encounters concealed or unknown conditions that differ materially from those anticipated or expected, whether or not it is entitled to assert a Claim under Section 3.7.4, the Contractor shall promptly notify the Owner, as required in Section 3.7.4**,** in writing of such conditions so that the Owner can determine if such conditions require design details, which differ from those design details shown in the Design or some other remedial action. The Contractor shall be liable to the Owner for any extra costs incurred as the result of the Contractor's failure to give such required notice.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed in writing to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and Sub-subcontractors at any tier and their respective agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors or Sub-subcontractors at any tier. Reference in the Contract Documents to the Work, obligations, acts or omissions of the Contractor shall be interpreted to apply to those of its Subcontractors, Sub-subcontractors at any tier, material suppliers and their respective agents and employees irrespective of whether such other entities are specifically identified in such reference.

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

§ 3.4 LABOR AND MATERIALS AND UTILITIES

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

.1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified.

.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified.

.3 certifies that the cost data presented is complete and includes all related costs, including but not limited to the Architect's redesign costs; and waives all claims for additional costs related to the substitution which subsequently become apparent; and

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects.

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§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 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 also minimize the likelihood of any strike, work stoppage or other labor disturbance.

§ 3.4.3.2 If the Work is to be performed by trade unions, 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.

§ 3.4.3.3 In addition, so as to ensure compliance with the federal Immigration Reform and Control Act of 1986 and regulations promulgated thereunder, Contractor shall establish and diligently implement, and require each of its Subcontractors and sub-Subcontractors at any tier and all other persons and entities providing labor or services related to the Work or the Project on behalf of Contractor to establish and diligently implement, a policy of hiring only individuals who are lawfully authorized to work in the United States; neither the policy nor its implementation shall discriminate because of citizenship status against U.S. citizens, U.S. nationals or permanent residents or temporary residents having proper work authorization. Contractor shall defend hold harmless and indemnify Owner and the other Indemnitees against any Loss, arising from or related to the failure of Contractor or any Subcontractor or sub-Subcontractor at any tier or any other person or entity providing labor or services related to the Work or the Project on behalf of Contractor to comply with the foregoing requirements. As used herein, the terms "Indemnitees" and "Loss" shall have the same meanings as set forth in Section 3.18 below.

§ 3.4.4 In all cases involving utilities, unless the Contract Documents specifically provide otherwise, it shall be the Contractor's responsibility to coordinate the Work with the owners of such utilities, for the protection of such utilities and for the safety associated with working with or in the vicinity of such utilities. The Contractor shall coordinate any work required by private and/or public utility companies to provide utilities to the Work and/or shall coordinate relocation of utilities as required by the Work. Any reference to the Owner being responsible for the coordination of, the paying for, or the relocation of any utility or associated equipment, which it does not own or control, requires only reasonable efforts by the Owner to coordinate such activity.

.1 Utilities or other services which are shown on surveys, or not shown but encountered or otherwise found, shall be protected by the Contractor from any damage from any Work and operations under the Contract Documents, unless or until they are abandoned. Except for utilities or other services that are not shown on surveys and were not previously encountered or otherwise found by Contractor or anyone working for or on behalf of the Contractor: (i) unless or until they are abandoned, or to be abandoned, the Contractor shall immediately repair, or cause the responsible party to repair, any damage from the Work or operations and restore the utilities and services to an equal or better condition than that which existed prior to the damage or disruption; (ii) the cost of repair of such utilities and services shall be borne solely by the Contractor or the responsible party without an extension of the Construction Time and without any increase in the Contract Sum or the Guaranteed maximum Price.

.2 To the extent practical, the Contractor shall be entitled to tie into the Owner's existing water, power, natural gas and steam facilities without charge as to any usage in connection with the Work.

.3 No one except the Owner is permitted to connect to or activate any utility services in any building or facility owned or occupied by the Owner. When such connection or activation services are required, the Owner shall be contacted, and unless otherwise specifically provided in the Contract Documents all such work shall be performed by Owner's personnel. In all cases, the Contractor shall give notice of the need for such services, to the Owner, in a timely manner (at least seventy-two (72) hours in advance) in order to avoid delays to the Project's progress.

§ 3.4.5 The Contractor shall cause pre-purchased equipment and material to be delivered to the Project Site or temporarily stored to assure coordination with other trades. The Contractor shall be responsible to verify that such equipment is in accordance with the Specifications.

§ 3.4.6 To the extent practicable, materials and equipment will be delivered to the Project site in original containers or

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wrappings. Used materials or equipment will not be permitted to be incorporated into the Work without the written approval of the Architect and the Owner or unless specifically permitted or required by the Contract Documents. The Architect and the Owner shall have the right to have any such improperly used materials or equipment removed from the Project site or completed Work whenever detected. The Architect's or Owner's failure to detect such used materials or equipment shall not relieve the Contractor of its obligations under this paragraph. Neither the Architect nor the Owner shall have any obligation to inspect for or improperly detect used materials or equipment.

§ 3.4.7 All members of the Construction Team shall cooperate with each other and with any separate contractors or persons employed by the Owner. Each of these parties shall correlate their Work and activities with the Work of others, and in the case of disagreements as to the proper procedure, sequence of Work, use of space, responsibility for damage, or other matters related to the Work, the parties involved shall abide by the Contractor's decision as to the procedure to be followed.

§ 3.4.8 Except in cases of unreasonable interference that constitutes an Owner Delay, the Contractor shall not be relieved of its obligation to cause the Work to be performed on time in accordance with the Contract Documents by the activities or duties of anyone involved in the administration of the contract, or by tests, inspections or approvals required or performed and coordinated by someone other than the Contractor.

§ 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. The warranty shall be in the form and substance as required by Section 5.3.2.11.

§ 3.5.2 The Contractor shall assign to the Owner at the time of Substantial Completion any and all manufacturer's warranties relating to materials and labor used in the Work. Contractor shall perform the Work in a manner that will preserve any and all manufacturer's warranties.

§ 3.5.3 If the Contractor uses any portion of the Work or the Owner's other property, such items will be restored to the condition they were in immediately prior to such use at or before the time of Substantial Completion, or as otherwise specified in the Contract Documents. The Contractor's warranty and agreement to correct Defective Work includes the Contractor's obligations under this section.

§ 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, fees, licenses, and inspections by government agencies necessary for proper execution, completion, and occupancy of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded; including, without limitation, all connection charges, assessments and inspection fees imposed by any municipal agency or utility company. All such permit fees and charges are included in the Contractor’s Contract Sum or Guaranteed Maximum Price.

§ 3.7.2 The Contractor shall comply with and give notices required by Applicable Laws applicable to the performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to Applicable Laws the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

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§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from both (1) those indicated in the Contract Documents, and (2) those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents ("Materially Different Conditions"), the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed, irrespective of Section 15.1.2 or other provisions to the contrary contained in the Contract Documents, and in no event later than forty-eight (48) hours after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that Materially Different Conditions exist that cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Architect will recommend to the Owner an equitable adjustment in the Contract Sum or Construction Time, or both. If the Architect determines that the reported conditions at the site are not Materially Different Conditions or that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

§ 3.7.6 The Contractor shall notify the municipality, public utilities, agencies, Miss Dig and the Owner in a timely manner so as to allow reasonable response time before digging any tunnels or similar underground work, and shall protect all existing utilities, sidewalks, streets, and similar improvements while performing the Work.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

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

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§ 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 SCHEDULES

§ 3.10.1 The Contractor, as part of its Contract Sum or Guaranteed Maximum Price, promptly after being awarded the Contract, shall prepare and submit to the Owner and the Architect a proposed Construction Schedule, to serve as a schedule for the performance of the Work. Except with the Owner's prior written approval, the Construction Schedule shall maintain the critical path and all milestones and deadlines established in the Master Design and Construction Schedule. The schedule shall not exceed time limits current under the Contract Documents, shall be reviewed and, if appropriate, revised monthly or at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (i) be coordinated with the Contractor's construction schedule, and (ii) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Construction Time based on the time required for review of submittals. The submittal schedule shall substantively follow the requirements depicted in figure 3.12.4.3.

§ 3.10.3 Construction Schedule shall be in a detailed critical path method format satisfactory to the Owner which shall also: (i) provide a graphic representation coordinating and sequencing all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; (iii) set forth Milestone Dates and manpower loading. The Construction Schedule shall allow for and depict the following:

- **.1** local weather conditions;
- **.2** local jurisdictional or other work restrictions;
- **.3** specific restrictions, constraints and Contract completion dates stipulated in the Contract Documents;
- **.4** intermediate completion dates stipulated in the Contract Documents;
- **.5** time for needed approvals by the Owner, Architect, or other agency or authority;
- **.6** 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** necessary resources to accomplish the Work within the Construction Time;
- **.9** other information that may be provided by the Architect or the Owner; and
- **.10** a legend for each report or chart which clearly identifies how to interpret each.

§ 3.10.4 Upon review and acceptance by the Owner, the Construction Schedule shall be deemed part of the Contract Documents and shall not be subject to change except in accordance with Section 8.3 and Article 7. If it is not accepted, the Construction Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and Architect and resubmitted for acceptance.

- **.1** The Construction Schedule, subject to any Modification granted in accordance with the Agreement, shall constitute the Contractor's scheduling commitment to the Owner. It shall also serve as the basis for the Contractor's Contract Sum or Guaranteed Maximum Price.
- **.2** The Contractor shall 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.
- **.3** The accepted Construction Schedule shall be updated (i) monthly to compare actual progress with projected progress and (ii) at any other time if requested by the Owner. The updated Construction Schedule shall reflect the status of the Project's progress at the date of update and the Contractor's planned progress of remaining portions of the Work.
- **.4** The Contractor shall develop recovery schedules when critical path or Milestone Dates are or may be at risk.
- **.5** The Contractor is responsible for the completeness of the Construction Schedule. The Contractor shall confirm in writing, with each submission of the Construction Schedule, that the Contractor has reviewed the Construction Schedule with Subcontractors and Suppliers and has coordinated and allowed for the lead times associated with the delivery of materials or equipment required for the proper progress of the

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Work.

.6 The sequence of activities in the Construction Schedule will reflect the Contractor's intended approach to the execution of and completion of the Work. 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 will not be greater than twenty (20) working days. All durations shown will be in working days.

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

.8 The Construction Schedule shall represent the Contractor's plan for organizing, directing, managing, controlling, staffing and executing the Work required by the Contract Documents. The Owner shall have the right to rely on such Construction Schedule to coordinate and otherwise plan the work of the Owner, Architect, or other separate contractors, and to evaluate progress for payment purposes or other purposes as described in the Contract Documents.

.9 All float time in the Construction Schedule shall be shared by the Owner and Contractor or otherwise used for the benefit of the Project.

.10 The updated Construction Schedule will identify the actual start and finish dates of all activities completed and the actual start date and remaining duration of all activities in progress.

.11 At the completion of the Work and as a condition precedent to final payment to the Contractor, the Contractor shall submit two (2) copies of the final updated Construction Schedule to the Owner.

§ 3.10.5 The Contractor shall proceed strictly (not substantially) in accordance with the critical path set forth in the Construction Schedule. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delays or potential delays. If any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment of the Construction Time or any Milestone Date or the Contract Sum or Guaranteed Maximum Price unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as 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 the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

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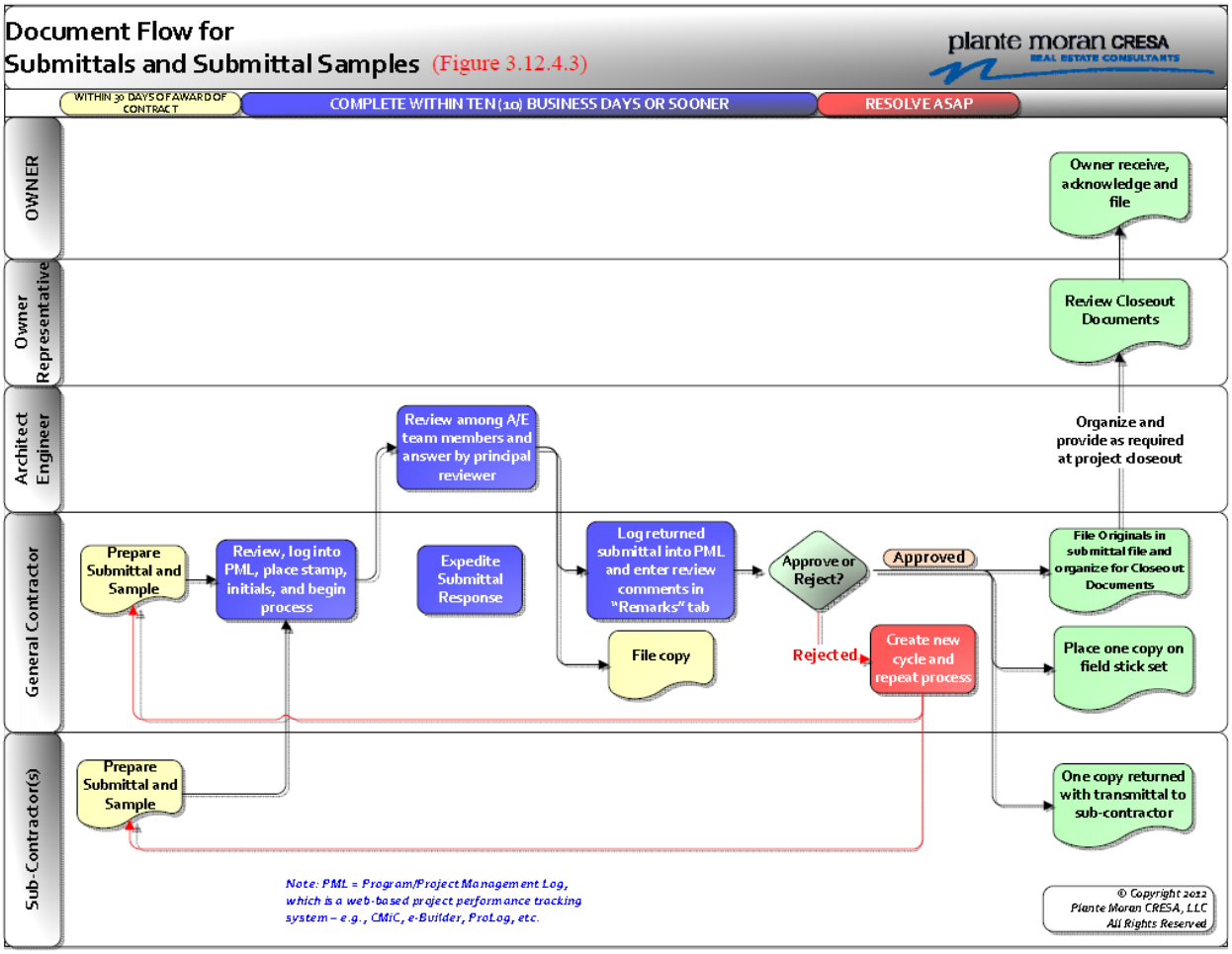
§ 3.12.4.1 As part of the document control system, the Contractor shall develop and keep current a Submittal log, which is coordinated with the Construction Schedule.

§ 3.12.4.2 The Contractor shall monitor the time required for submission of Submittals to the Architect, as well as the time required for their review and approval by the Architect. The Contractor shall take corrective action as appropriate to insure the timely submission and review of Submittals.

§ 3.12.4.3 Unless required otherwise in the Construction Documents, the Architect and Contractor shall follow and shall cause their respective Consultants, Subcontractors and/or Suppliers to follow the submittal document control process and schedule described in the figure 3.12.4.3 below, *Document Flow for Submittals and Submittal Samples*.



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

§ 3.12.5.1 The Contractor shall check thoroughly all such Submittals, including those it prepares itself, as to measurements, sizes of members, materials and all other details, to assure that they conform to the intent of the Contract Documents.

§ 3.12.5.2 The Contractor shall promptly return to the Subcontractors and/or Suppliers, for correction, any of the Submittals that are found inaccurate or otherwise erroneous.

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§ 3.12.5.3 After the Contractor has checked and approved such Submittals, the Contractor shall place thereon the date of its approval and the legible signature of the individual who reviewed them and shall then submit them to the Architect for review. The quantity required and the manner of submission will be as required by the outlined procedure shown on the attached flow chart. The Architect may refuse to check or review any Submittals, which are not submitted in compliance with these requirements.

§ 3.12.5.4 Submittals describing manufactured equipment must be "project specific". Every submission copy must be clearly marked to fully define the intended model number, configuration and other applicable product information.

§ 3.12.5.5 Among other things, the Contractor shall be responsible for the constructability, content, completeness and consistency of all Submittals.

§ 3.12.5.6 The Contractor shall notify the Owner when Submittals are received. It shall deliver copies to the Owner upon request.

§ 3.12.5.7 The Contractor shall notify the Owner and the Architect in writing if any Submittals appear to modify the requirements of the Contract Documents. This notice shall identify each and every change.

§ 3.12.5.8 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. In all cases, Samples shall be submitted at least three (3) weeks prior to when approval is needed to maintain the progress required by the Construction Schedule. All materials furnished and finishes applied to the Work shall be fully equal to the submitted Samples.

.1 Samples shall be forwarded to the Architect with all shipping charges prepaid. Unless otherwise directed, Samples shall be submitted in triplicate, boxed or wrapped properly, each labeled with the name, type or brand of the materials, its place of origin, the names of its producer, Contractor, and the Project.

.2 The approval of Samples is generally directed towards establishing quality, color and finish criteria, and does not modify the requirements of the Contract Documents as to dimensions or design.

§ 3.12.5.9 Each Shop Drawing which details by original line drawings the Work to be fabricated for the job shall be submitted in either electronic or in a printed form suitable for reproductions plus three (3) copies made therefrom. A clear space, 8 inch x 8 inch, shall be allowed on the Shop Drawings in the lower right hand corner for the placement of review and date stamps. After review, the Architect will obtain a copy from the documents as required for use and will return the reviewed and noted, or corrected, documents to the Contractor and a copy to the Owner. Drawings returned for resubmission or disapproved require the original Shop Drawing to be corrected and a new set of documents with the required edits made therefrom submitted. Such procedure shall be followed until review is final. The Contractor shall obtain and provide such number of approved documents from the final drawing, which carry the Architect's stamp of approval, as may be required for distribution. This shall include the forwarding of one set of approved documents each to the Architect and the Owner for record, and necessary quantity of documents for the Owner's use.

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

§ 3.12.6.1 The Architect will check and review the Submittals with reasonable promptness and within any time limits agreed upon in writing and will return them as hereinafter described, indicating by notation, or by written instructions, or other directions, any corrections, which in the judgment of the Architect, may be necessary to meet the requirements of the Contract Documents. The Contractor shall then review such notations, instructions, or directions, and if the Contractor concurs therein, shall make or have made such corrections, and shall, when so noted on the submittals or requested by the Architect, resubmit corrected Submittals to the Architect as soon as possible, for final check and review. Such final check and review by the Architect of Submittals so corrected and resubmitted will be limited to the corrections only, and the Contractor, by such resubmission shall be held to have represented that such submittals contain no other alterations, additions, or deletions, unless the Contractor, in writing, directs the Architect's specific

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attention to same. Should the Contractor question or disagree with such notations, instructions, or directions, the Contractor shall direct the Architect's attention to same for further clarification before resubmitting them. Corrections or changes indicated on submittals shall not be construed as an order for a change in the Work or to perform extra work.

§ 3.12.6.2 The Architect's review of 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. The Architect does not assume responsibility for errors, omissions or deviations from the Contract Documents contained in such Submittals. Any such errors, omissions or deviations from the Contract Documents must be corrected by the Contractor, irrespective of the receipt and review of the Submittals by the Architect, and even though the work is done in accordance with such Submittals, unless such error, omission or deviation from the Contract Documents is specifically called to the Architect's attention by the Contractor in a separate written letter of communication, at the time of submittal, and the Architect has given written approval of such error, omission or deviation.

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

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

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written 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. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by Applicable Laws, lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project Site. After equipment is no longer required for the Work, if feasible, it shall be promptly removed from the

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Project Site. Protection of construction materials and equipment stored at the Project Site from weather, theft, damage and all other casualty is solely the responsibility of the Contractor, who shall bear the risk of loss thereof except to the extent such loss is covered by insurance the Owner is required to maintain under the Agreement.

.1 Prior to Substantial Completion, all temporary work, of every nature, shall be dismantled and removed from the Owner's premises.

.2 If at any time it becomes necessary to move material or equipment, which has been temporarily located or stored on the site during construction, the Contractor shall, when directed, cause them to be moved to another location without charge to the Owner.

§ 3.13.3 There shall be no offsite storage of materials or equipment without the Owner's prior written approval in each instance. If the Owner consents to offsite storage, the Contractor shall also comply with the following specific requirements:

.1 Title to such materials shall be vested in the Owner, after payment therefor to the Contractor, as evidenced by documentation satisfactory in form and substance to the Owner, including bills of sale, recorded financing statements, UCC filings and UCC searches. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project Site in an amount not less than the total replacement value thereof.

.2 Only assembled components may be stored off the Project Site.

.3 Representatives of the Owner shall have the right to make inspections of the storage areas at any time.

.4 Such materials shall be (i) protected from diversion, destruction, theft and damage to the satisfaction of the Owner, (ii) specifically marked for use in the Work, and (iii) segregated from other materials at the storage facility.

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

§ 3.13.5 The Contractor shall ensure that the Work is at all times performed in a manner that affords the Owner, the Architect, and the Owner's separate contractors reasonable access, both vehicular and pedestrian, to the Project Site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project Site shall be free from all debris, building materials and equipment. Without limiting any other provision of the Contract Documents, the Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the Project Site or (ii) portions of the Project in which Work is not being carried out in the event of partial occupancy.

§ 3.13.6 The Contractor shall not, without the Owner's prior written approval, permit any workers to use any existing facilities at the Project Site, including, without limitation, lavatories, toilets, entrances, and eating and parking areas, other than those designated by the Owner. Without limiting any other provision of the Agreement, the Contractor shall enforce compliance with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project Site and the surrounding area. The Contractor shall immediately notify the Owner in writing if, during the performance of the Work, the Contractor reasonably determines compliance with any portion of such rules and regulations to be impractical, setting forth the problems of such compliance and suggesting alternative means through which the results intended by such portions of the rules and regulations can be achieved. The Owner may, in its discretion, adopt such suggestions, develop new alternatives or require compliance with the existing requirements of the rules and regulations. The Contractor shall also cause all members of the Construction Team to comply with all insurance requirements and collective bargaining agreements applicable to use and occupancy of the Project Site and the surrounding area. However, the Contractor shall not be responsible to regulate the workers' conduct outside of work hours except as may be permitted under Applicable Laws and collective bargaining agreements.

.1 Should any room or part of an existing building or facility be temporarily used by any member of the Construction Team as a shop, storeroom, locker room, an office, or for any other purpose, such room or part shall, prior to completion and when so directed, be thoroughly cleaned and returned to its original condition. All damage to any such room or part of an existing building or facility arising therefrom shall be corrected, and the whole left in a condition acceptable to the Owner by the Contractor. No room or part of an existing structure shall be so used without the written consent of the Owner.

§ 3.13.7 Anything contained in the Contract Documents to the contrary notwithstanding, no one except the Owner shall be permitted to disrupt the operation of any building system or any other services without the Owner's prior written consent. Any request to perform such work shall be in writing, received by the Owner no less than five (5) days prior

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to the commencement of the requested disruption, and shall detail (i) the exact nature and duration of such interruption, (ii) the area affected, and (iii) any impact upon the Construction Schedule caused by such proposed temporary disruption. Except in the case of Additional Measures, all Work shall be performed during the hours and on the days set forth in the Specifications. The Contractor's failure to comply with the notice provisions of this section shall constitute a waiver by the Contractor of any right it may have to an adjustment of its compensation, or the Construction Time, on account of any postponement, rescheduling, or other delays ordered by the Owner in connection with any Work affecting a Critical Service for which appropriate notice was not furnished.

§ 3.13.8 The Contractor will consult with the Owner concerning any necessary operations at the Project site, including staging area limits, office or storage trailer locations, dumpster operations, equipment and material deliveries, hoisting areas and any other construction impacts on the Owner's grounds.

.1 All areas used by member of the Construction Team must be properly fenced. Unless the Contract Documents designate another specific type of temporary fencing to be used, the minimum temporary fencing requirement will be the use of chain-link fence having a minimum exposed height of eight (8) feet above grade. Temporary barricades shall also be provided as necessary for the safety of the general public.

.2 The Contractor shall locate all underground utilities and lawn irrigation piping prior to driving fence posts.

.3 Materials, equipment, trailers, vehicles and all other operations are not to be located under or within the drip line of trees. Construction, staging or storage operations in flower and shrub plantings and beds are to be avoided.

.4 Driving of vehicles on lawn areas is strictly prohibited.

.5 Any tree trimming or tree root disturbances shall be performed only after consultation, inspection and approval by the Owner.

.6 All existing traffic control devices, such as bollards, chain and posts, building signs, or traffic signs, shall not be removed without specific approval from the Owner.

.7 Unless stated otherwise in the Contract Documents, the Contractor will be responsible to restore, to the Owner's satisfaction, all disturbed areas caused by the Work.

.8 All lawn, shrub and tree restoration work, including soil aeration, tree trimming and plant material replacements shall be performed by a qualified landscape contractor.

.9 The Contractor shall also cause all streets, drives, sidewalks, walls, lights, signs, fences, poles and the like where disturbed or damaged by the Work to be repaired, and shall leave them in the same condition after completion of the Work as before operations started.

.10 The Contractor shall provide and maintain pedestrian walkways and other means of access to and from any building or facility requiring such as a result of the execution of the Work. Such means of access shall be as required by the Contract Documents and/or the Owner's directions.

.11 The Contractor shall, subject to the approval of the Owner, designate areas for eating, provide adequate receptacles, and maintain the area in a sanitary condition free of rodents and pests. Remnants of food shall not be allowed to spread beyond the trash receptacles in the designated eating areas. The trash receptacles for the designated eating areas shall be emptied at least once each work day.

§ 3.13.9 The Contractor shall provide and maintain temporary stairs, main ladders and runways for access to all areas for the use of all trades. The Contractor shall provide additional runways and ladders as may be required for the execution of the Contractor's Work. All such apparatus, equipment and construction shall meet all requirements for safety and all provisions of federal, state or local laws and ordinances applicable thereto. Permanent stairs shall be erected as soon as possible, and the Contractor shall provide same with protective treads, handrails and shaft protection.

§ 3.13.10 The Contractor shall provide suitable toilet facilities, at locations approved by the Owner, for the use of all its employees and those of the Construction Team and shall maintain same in proper sanitary condition acceptable to the Owner. All temporary toilet facilities shall be removed upon completion of the Work. The Contractor, its employees or other members of the Construction Team will not be permitted to use toilet facilities in the building under construction, or other buildings on or near the Project site.

§ 3.13.11 The Contractor shall provide telephone service at the Project site for use by the Contractor, Owner and Architect.

.1 The cost of installation, rent, message unit charges, and removal shall be paid by the Contractor. All long

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distance calls shall be paid by the party making such calls.

.2 The Contractor shall provide a public telephone, conveniently located, for the use of others.

.3 Telephones addressed in this Article shall remain until the completion of the Work.

§ 3.14 CUTTING AND PATCHING

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

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

§ 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 or to which the Work is attached without in each instance having first submitted to the Owner 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 Project site, all staging areas, and surrounding area free from accumulation of waste materials or rubbish caused by the Work. At completion of the Work, the Contractor shall remove or cause to be removed from the Project site, all staging and surrounding areas all waste materials, rubbish, scaffolding, the Contractor's tools, construction equipment, machinery, surplus materials and other materials used on the Project site.

.1 Construction debris and rubbish as generated by the Work shall be removed from the point of origin daily and not allowed to accumulate. It shall be deposited in a trash container provided on the site until hauled away. Scrap materials for reuse in temporary Work shall be segregated and properly stored, protected and covered as for new materials. The result of the above shall be the maintenance of a clean project, with a minimum of fire hazards. The Contractor shall establish and implement a clean-up routine.

§ 3.15.2 If the Contractor fails to keep the Project Site and all staging and surrounding areas clean as required by the Contract Documents and in accordance with the instructions of the Owner, the Owner may, following forty-eight (48) hours' notice, do so and the cost thereof shall be charged to the Contractor. Such charge may be deducted from the next payment owed the Contractor, or if the balance of any payments owed is insufficient to cover the amount owing, the Owner may send an invoice to the Contractor for payment, and the Contractor will pay the invoice upon demand.

§ 3.15.3 Unless the Contract Documents require a higher standard, the Contractor shall leave all Work installed or modified under the Agreement and all existing materials and surfaces affected by the Work and each area of the Project Site clean to the satisfaction of the Owner. This shall include at a minimum: complete dusting, sweeping, vacuuming, mopping, polishing, and other activities as necessary to remove all dust, dirt and other construction residues, and removal of all tools and equipment, construction debris, rubbish, and surplus materials.

§ 3.15.4 Immediately before turning any portion of the Project over to the Owner, the Contractor shall have all glass cleaned by professional window washers. Care shall be taken not to scratch any glass. Acid or other cleaning material which will injure or mar the surface or adjacent Work will not be allowed. Any damage resulting from glass cleaning shall be corrected by the Contractor, including the furnishing of new glass of same character and quality or the replacement of other Work damaged or disturbed.

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§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 Irrespective of any other provisions of the Contract Documents to the contrary, to the fullest extent permitted by law the Contractor shall indemnify, defend and hold harmless the Owner, Owner's parents, subsidiaries, successors, lenders and assigns, Architect, Architect's consultants, and agents and employees of any of them (collectively "Indemnitees") from and against claims, damages, fines, penalties, losses, costs and expenses, including but not limited to attorneys' fees (collectively "Losses"), arising out of or resulting from the actual or alleged violation of Laws, reckless, intentional or negligent acts or omissions or the breach of any requirement of the Contract Documents of or by the Contractor, a Subcontractor, Sub-subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, including without limitation Losses attributable to bodily injury, sickness, disease and property damage (all the foregoing hereinafter being referred to as "Contractor's Wrongful Acts"), except to the extent such Loss is caused by the Indemnitee seeking indemnification or defense hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity and defense that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.1.1 In addition, to the fullest extent permitted by law, the Contractor shall indemnify, defend and hold the Owner, Owner's parents, subsidiaries, successors, lenders and assigns and Architect, and the agents and employees of any of the them, harmless from any claims, liabilities, damages, losses and expenses, including without limitation, actual attorney fees and expenses incurred in litigating, arbitrating or settling any claim, action or arbitration, arising from, or in any way relating to, any failure of the Contractor, or any claim that the Contractor failed, to perform punctually or properly any of its obligations created by the provisions of the Contract Documents.

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

§ 3.19 RECORD DOCUMENTS

§ 3.19.1 The Contractor shall maintain at the Project Site on a current basis for review by the Owner, the Architect, and all members of the Construction Team, the Record Documents, which include: a record copy of all logs, reports, Contract Documents, and Record Drawings, in good order and marked to record all changes made during construction; all approved Shop Drawings, Product Data, Samples, and other Submittals; applicable handbooks; maintenance and operating manuals and instructions; and other related documents and revisions which arise out of the Contract Documents or the Work. As part of the Record Documents, the Contractor shall maintain records of principal building layout lines, elevations of the bottoms of footings, project floor levels and key site elevations certified by a qualified surveyor. The Contractor shall at all times make all records (excluding internal memoranda or reports, privileged communications and documents with incidental references to the Work, or documents which discuss multiple projects) available to the Owner and the Architect, and, at the completion of the Work, shall deliver all such Record Documents to the Owner neatly organized, bound and indexed. The Contractor shall monitor preparation of as-built Drawings by Subcontractors on a monthly basis and shall take corrective action as appropriate when as-builts are not being properly updated. 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 access to the Record Documents, for the Contractor to inspect and copy.

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§ 3.19.2 The Record Drawings shall be prepared and updated during the prosecution of the Work. The prints for Record Drawing use will be a set of blackline prints provided by the Architect to the Contractor at the start of construction. The Contractor shall maintain said set in good condition and shall use colored pencils or other methods reasonably acceptable to the Owner to mark-up said set with "record information" in a legible manner to show: (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 may reasonably request.

§ 3.19.3 The Contractor shall keep note of all the deviations and discrepancies in the underground, concealed conditions and other items of construction and Work on field Drawings. At the completion of the Project the Contractor's notes on the record field Drawings shall be neatly transcribed onto a clean set of Drawings furnished by the Architect. The Contractor shall submit the final Record Drawings to the Architect for review.

§ 3.19.4 During construction, the Contractor shall maintain on the Project site, a separate, clean set of Drawings for the sole purpose of recording changes and actual 'as installed' information. This set shall be accessible for inspection by the Owner and the Architect at all times. The Contractor shall bring this set of Drawings to the scheduled construction progress meetings. The Contractor shall record all information as the Work progresses, clearly and neatly, in color and maintain it on a current basis as directed by the Owner and submit these Drawings to the Owner within thirty (30) days after Substantial Completion. As a general guide, the type of information to be recorded includes, but is not limited to: (i) revisions made except minor or non-critical dimensional changes, (ii) omissions, including Work omitted by Change Order or accepted alternates, (iii) exact dimensioned locations of concealed lines, (iv) locations of all control devices, (v) any additions to Work, (vi) changes in significant details, (vii) and any other information of a similar nature.

§ 3.19.5 Upon substantial completion of the project, the Contractor shall submit to the Owner the Contractor's mechanical and electrical coordination Record Drawings prepared during construction by the Contractor. Examples of such drawings include sheet metal ductwork drawings, piping drawings, fire protection piping drawings, electrical raceway drawings, and the like. Submission shall be on reproducible photo diazo mylar, velum or sepia medium. When the Contractor produces drawings by computer aided drafting, the Contractor shall also submit their coordination drawings on electronic data files compatible with AutoCAD computer software. All such documents shall contain the Owner's Project Number for identification purposes.

§ 3.20 WARRANTIES AND MANUALS

§ 3.20 Unless the Contract Documents require otherwise, the Contractor shall bind and turn over to the Owner two (2) sets of manufacturers' warranties and operating and/or maintenance manuals, instructions or schedules for all equipment and special materials requiring such. Such binders 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, prior to the issuance of the certificate of Substantial Completion.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative: (i) during construction, (ii) until the final payment is due, and (iii) with the Owner's

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concurrence, from time to time during the period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of construction or Contractor's operations, or as otherwise agreed with the Owner, (i) to become generally familiar with the progress and quality of the portion of the Work completed, (ii) to endeavor to guard the Owner against defects and deficiencies in the Work, and (iii) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

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

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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§ 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. The Architect will receive, review, and ensure that all written warranties and related documents required by the Contract and assembled by the Contractor are complete and correct before forward to the Owner, for the Owner's review and records pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

§ 4.2.11 The Architect will interpret and decide matters concerning the requirements of the Drawings and Specifications on written request of either the Owner or Contractor; provided however that the Contractor shall be responsible for reimbursing Owner, at Contractor's sole cost and expense, for Architect's fees for interpreting and deciding matters which the Architect determines to be clear and unambiguous. The Architect's response to such requests will be made in writing within any time limits established pursuant to Section 4.2.14. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Drawings and Specifications 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. The Contractor shall promptly comply, and cause all members of the Construction Team and Subcontractors to comply with the Architect's written interpretations and decisions, subject to its rights under Section 7.2 if any interpretation or decision changes one or more of the Drawings and Specifications.

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

§ 4.2.14 The Architect will review and respond to requests for information or interpretation (RFI) about the Contract Documents or for approval of submittals in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. Unless required otherwise in the Construction Documents, the Architect and Contractor shall follow and shall cause its Consultants, and all members of the Construction Team to follow the request for interpretation control process and schedule described in figure 4.2.14 below, *Document Flow for Request for Information (RFI)*.

TEMPLATE

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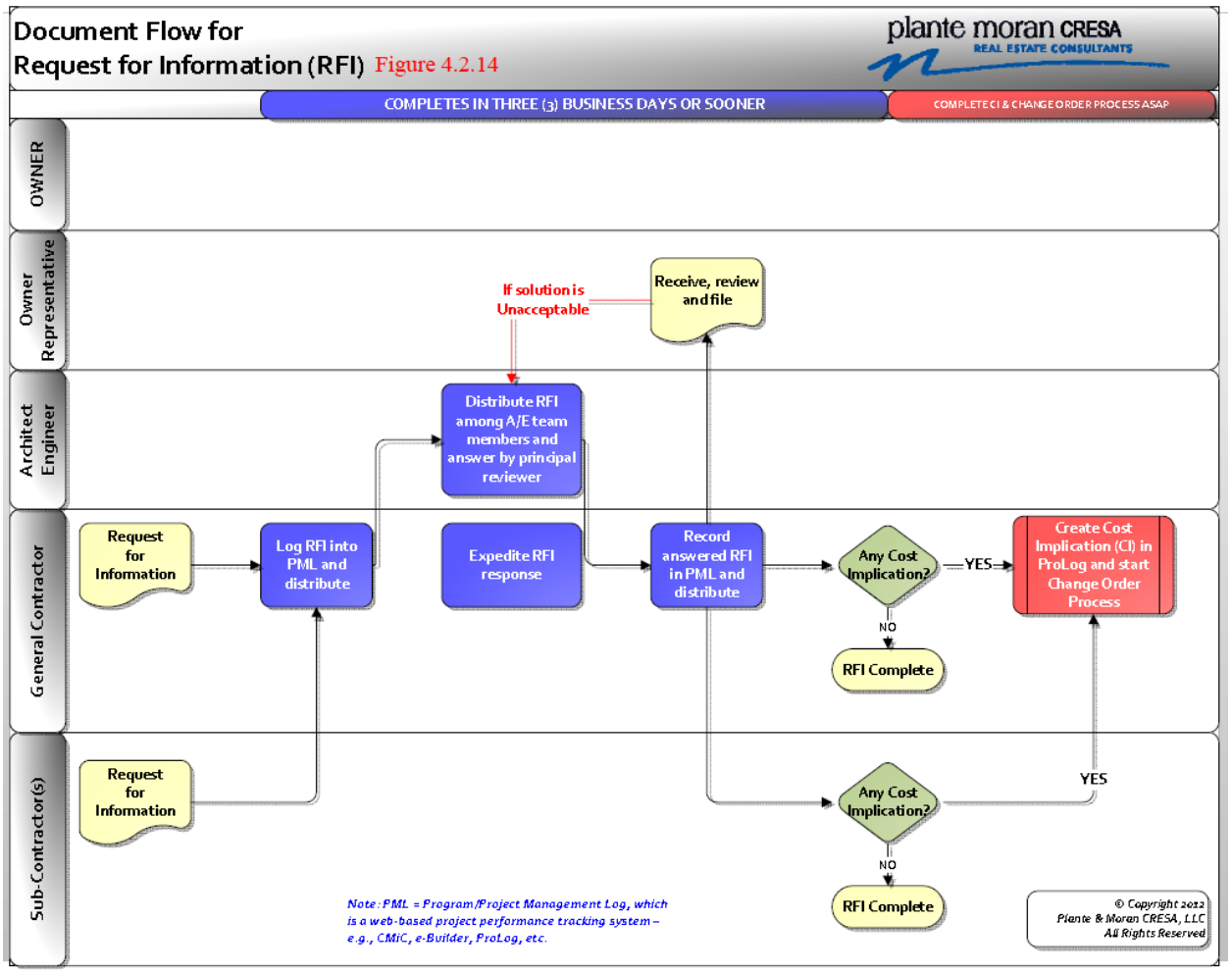

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

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

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

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§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Construction 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 Construction Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.3.1 Work performed for the Contractor by a Subcontractor shall be performed pursuant to a written Subcontract, which shall (in addition to the requirements of Sections 5.3 and 5.4) contain provisions that:

- **.1** requires that such portion of the Work be performed in accordance with the requirements of the Contract Documents;
- **.2** requires timely submission of Subcontractor's applications for payment and ancillary materials in order to enable the Contractor to apply for payment in accordance with the provisions of Article 9;
- **.3** waives all rights the contracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils covered by the property insurance described in Article 11;
- **.4** recognizes the rights of the Owner pursuant to the Contingent Assignment of Subcontracts contained in these General Conditions and require the Subcontractor (upon notice by the Owner that the Owner has terminated the Agreement with the Contractor pursuant to the terms of Article 14, and that the Owner has elected to retain the Subcontractor pursuant to the terms of its Subcontract with the Contractor) to complete the unperformed obligations under such Subcontract and, if requested by the Owner, to enter into an appropriate agreement evidencing the fact that the Subcontractor is bound to the Owner under its Subcontract in the manner in which it had been bound to the Contractor;
- **.5** requires the Subcontractor performing labor at the Project Site to carry and maintain the insurance described in Article 11, unless otherwise approved by the Owner, and to deliver certificates of insurance to the Contractor prior to commencement of its portion of the Work;
- **.6** includes the following sentence: "Owner is an intended third-party beneficiary of this Subcontract.";
- **.7** requires dispute resolution in the manner provided in Article 15;
- **.8** requires each Subcontractor to make all claims for changes or extensions of time to the Contractor strictly (not substantially) in the manner provided in the Agreement;
- **.9** limits claims and damages in the manner provided in the Agreement; and
- **.10** are in no way inconsistent with any provision of the Agreement.

Sub-subcontracts and Supply Contracts shall be subject to identical conditions, except: (i) suppliers that are not performing any Work on the Project Site are not subject to the insurance requirements described in Article 11; and (ii)

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Subcontractors and Sub-subcontractors may satisfy the insurance requirements described in Article 11 by being named as an additional insured under the Contractor's insurance policies or, in the case of a Sub-subcontractor, by being named as an additional insured under a Subcontractors insurance policies.

§ 5.3.1.2 Upon request, the Contractor shall deliver a copy of any Subcontract, sub-subcontract or Supply Contract to the Owner.

§ 5.3.2 COORDINATION OF SUBCONTRACTORS

§ 5.3.2.1 The Contractor shall provide supervisory, administrative, management, inspection and related services as required to properly coordinate, schedule and sequence the Work of the Subcontractors with each other (to avoid both duplication and omission of Work) and with the activities and responsibilities of the Contractor, the Owner and the Architect to complete the Work in accordance with the requirements of the Contract Documents with respect to cost, time and quality and to ensure that the other goals of the Work are otherwise met or exceeded.

§ 5.3.2.2 The Contractor shall schedule and conduct with the Subcontractors and sub-subcontractors construction progress and any other meetings deemed necessary to discuss such matters as procedures, progress, problems, safety, inspections, sequencing, and scheduling, and shall prepare and promptly distribute minutes. Construction progress meetings will be conducted by the Contractor weekly unless otherwise directed by the Owner and attended by all Subcontractors and sub-subcontractors whose Work has not been completed. Executive level progress meetings will be held on a monthly basis. All progress meeting minutes shall be provided to the Owner by the Contractor within five (5) days after the meeting and distributed to all attendees promptly after they have been approved by the Owner. The Owner will act promptly in providing its approval. The Contractor in consultation with the Owner and the Architect shall develop, implement and maintain a process of "partnering" involving both of them and all Subcontractors and sub-subcontractors so that (i) the goals and objectives of each are clearly understood and accepted by all, and (ii) potential problems, bad feelings, personal difficulties and the like are identified and resolved promptly.

.1 The partnering objective shall be to identify and develop mutual goals, which may include, as examples, achieving Value Engineering savings, meeting the financial goals of each party, limiting cost growth, limiting review periods for contract submittals, avoiding and resolving disputes, facilitating early completion and minimizing lost time because of injuries. The partnering process shall emphasize open communication, collegiality and cooperation among all parties, as well as prompt and efficient dispute resolution at the lowest appropriate level of management. Claims and disputes not resolved in the partnering process shall be subject to the procedures specified in Article 15.

§ 5.3.2.3 Schedule of Subcontractors' Work. The Contractor shall require each Subcontractor to agree to be contractually bound to the requirements of the applicable Bid Package Construction Schedule and the Construction Schedule (or if the Construction Schedule has not been prepared, then the Master Design and Construction Schedule). The Contractor shall require each Subcontractor to agree to cooperate with the Contractor in developing a detailed CPM manpower-based schedule applicable to its portion of the Work within forty-five (45) days after award of contract unless otherwise specified. The Contractor shall assist in the development of all Subcontractor schedules and shall prepare such schedules if any Subcontractor fails to do so. The Contractor shall require all Subcontractors to meet as often as necessary with the Contractor to complete their detailed CPM schedules. However, the Bid Package Construction Schedule and the Construction Schedule (or if the Construction Schedule has not been prepared, then the Master Design and Construction Schedule) will take precedence over any schedules prepared by Subcontractors with respect to time of completion for each bid package. If any such schedule indicates that additional time or effort will be required to maintain these schedules, the Contractor, Subcontractor shall agree to work additional time, including weekends if necessary, or to add manpower, all at no extra cost to the Owner. The contractor will require all their subcontractors to include the requirements in Sections 5.3.2.3 and 5.3.2.4 in their sub-subcontractor contracts.

.1 The Contractor shall prepare and deliver to the Owner and each of the Construction Team that are part of a particular bid package a "short term/two week look ahead schedule," and it will take appropriate action to enforce compliance therewith.

§ 5.3.2.4 Subcontractors' Performance. The Contractor shall ensure satisfactory and timely (with reference to both Milestone and Substantial Completion Dates) performance from each of the Subcontractors. The Contractor shall take appropriate measures when any Subcontractor is not performing its obligations satisfactorily.

§ 5.3.2.5 Payments to Subcontractors. Upon award of the Subcontract, the Contractor shall have each Subcontractor prepare and submit a Schedule of Values allocating that portion of the Cost of the Work attributable to its Subcontract

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to the various portions of the Work. Each Schedule of Values shall be prepared in a form and substance acceptable to the Contractor (which form shall previously have been approved by the Owner) and supported by such data as may be necessary to substantiate its accuracy. The Contractor shall develop and implement procedures for the review and processing of applications by Subcontractors for progress and final payments. Payment packages shall include, but shall not be limited to, each of the following documents: schedule of values, sworn statements, and appropriate forms of full or partial construction lien waivers or other similar waivers and releases of claims.

§ 5.3.2.6 Safety Programs. The Contractor shall provide a general review of safety programs developed by each of the Subcontractors, including verification that each Subcontractor has submitted its report of the recommended safety precautions and programs, as required by the Contract Documents. If the Contractor observes a safety violation, the Contractor shall require a Subcontractor to correct it. After written notification to the Subcontractor to correct the safety violation, if the Subcontractor does not correct the problem in a timely fashion, the Contractor shall cause the Work to be corrected by other means. The performance of such services by the Contractor shall not relieve the Subcontractors of their responsibilities for performance of the Work and for the safety of persons and property, and for compliance with all federal, state and local statutes, rules, regulations and orders applicable to the conduct of the Work. The Contractor shall conduct regular safety meetings with Subcontractors' superintendents to ensure the Subcontractors' compliance with federal, state or local statutes, rules, and regulations relating to the workers' safety or any other aspect of the Work.

§ 5.3.2.7 Work. The Contractor shall determine in general that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents, and shall guard the Owner against defects and deficiencies in the Work. As appropriate, the Contractor shall require special inspection or testing, or make recommendations to the Architect regarding special inspection or testing, of Work not in accordance with the provisions of the Contract Documents whether or not such Work has been then fabricated, installed or completed, and shall reject Work which does not conform to the requirements of the Contract Documents. The Contractor shall coordinate any inspections which may be required by any governmental agencies.

§ 5.3.2.8 Interpretation. The Contractor shall consult with the Architect and the Owner if any Subcontractor requests interpretations of the meaning and intent of any of the Contract Documents, and shall assist in the resolution of questions, which may arise.

§ 5.3.2.9 Insurance Certificates. The Contractor shall receive certificates of insurance from the Subcontractors, and shall review such certificates for compliance with the requirements of the Contract Documents, and shall forward the original certificates to the Owner's Designated Representative. No member of the Construction Team shall be permitted to commence any portion of the Work or have a presence at the Project Site without complying with all insurance requirements of the Contract Documents. The Contractor shall monitor the same to ensure the certificates of insurance remain current, and shall advise the Subcontractors of the impending expiration of their respective certificates, but the failure of Contractor to give such advice shall not, as between the Contractor and any of the Subcontractors, excuse the obligation of the Subcontractors to maintain current, unexpired certificates.

§ 5.3.2.10 Systems Readiness. The Contractor shall, in the company of the Architect and the Owner's maintenance personnel, observe the Subcontractors' evaluation of utilities, operational systems and equipment for readiness, and shall assist in their initial start-up and testing.

§ 5.3.2.11 Contractor and Subcontractors' Warranty Acknowledgment. The Contractor shall execute and deliver to the Owner, and shall cause anyone giving warranties that is contractually bound to the Contractor to execute and deliver to the Owner, the following Warranty Acknowledgment before a Certificate of Final Completion is issued:

Warranty Acknowledgment

> (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 our contract.

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This Warranty shall be in addition to 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 general warranty and is not in lieu of any of them. This warranty shall not 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.

§ 5.3.2.12 Products.

.1 To the extent a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall require the Subcontractor to present an affidavit from the manufacturer when requested by the Owner or required in the Specifications, certifying that the product complies with the particular Standard or Specification. When requested by the Owner or specified, support test data shall be submitted to substantiate compliance.

.2 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made. However, the Contractor may suggest substitutes as part of its Value Engineering responsibilities

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

§ 5.4.2 If any assignment under this Section 5.4 becomes effective, the Owner shall be deemed to have agreed to defend and indemnify the Contractor against and hold it harmless from all claims, losses or expenses (including attorneys' fees) arising from or in connection with the assigned Subcontract as a result of any work performed or obligation accrued after the assignment becomes effective, and the Contractor shall be deemed to have agreed to defend and indemnify the Owner against and hold it harmless from all claims, losses or expenses (including attorneys' fees) arising from or in connection with the assigned Subcontract as a result of any work performed or obligation accrued before the assignment becomes effective, except for Owner's obligation to pay Contractor for the Work performed by the Subcontractor as set forth in the Contract Document.

§ 5.4.2.1 Upon the Owner's reasonable request, the Contractor shall execute further documentation conditionally assigning each Subcontract to the Owner on the terms stated above (and the Contractor shall cause the Subcontractor to acknowledge said assignment). Copies of the executed Subcontracts shall be delivered to the Owner upon the Owner's request.

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right, but shall have no obligation, to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. The Contractor shall promptly notify the Owner in writing upon becoming aware that such independent action will in any way compromise the Contractor's

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ability to meet its responsibilities under the Contract Documents. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 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 activities of the Owner's own forces and of each separate contractor with the Work of members of the Construction Team, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement. The resulting Construction Schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised. The Construction Time and Contract Sum or Guaranteed Maximum Price will be adjusted accordingly, if as agreed by Contractor and Owner.

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

§ 6.1.5 When 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 in ample time to prevent any delays to the Project's progress.

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.2.6 Subject to the provisions of, and rights to recover from, any property insurance that the Owner is responsible to maintain, the Contractor shall, at its expense, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, or use of any contingency or otherwise, promptly remedy damage caused by any member of the Construction Team to completed or partially completed construction or to property of the Owner or separate contractors.

§ 6.2.7 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

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§ 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 assume responsibility therefore and the Owner and Architect will in their reasonable discretion allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

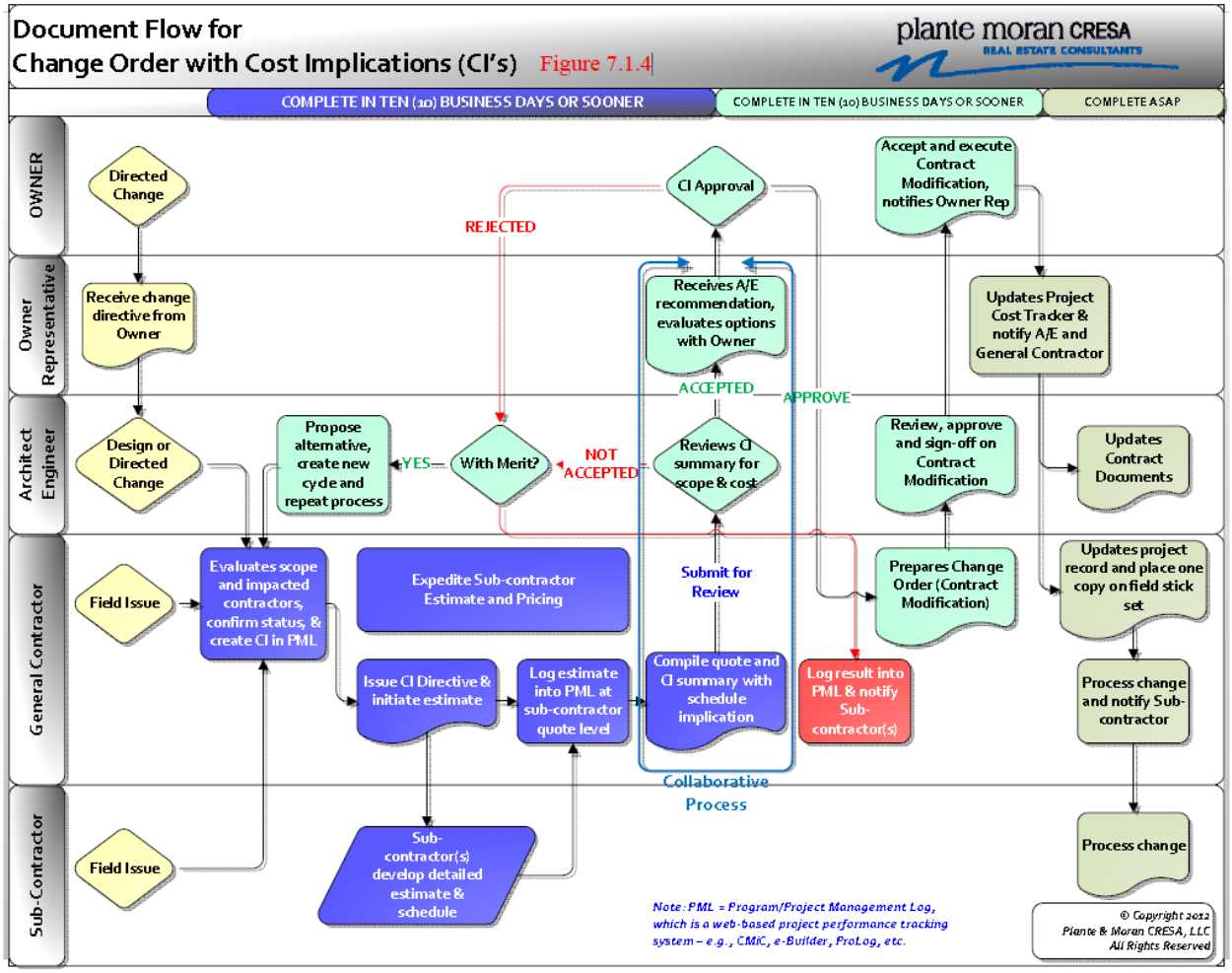
§ 7.1 GENERAL

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

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

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

§ 7.1.4 Unless required otherwise in the Construction Documents, the Architect and Contractor shall follow and shall cause their respective Consultants, Subcontractors and/or Suppliers to follow the change order process and schedule described in Figure 7.1.4 below, *Document Flow for Change Order with Cost Implications (CI's)*.



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§ 7.1.5 To the extent provided in Section 11.4, changes in the Work may be made without notice to the Contractor's sureties, and absence of such notice shall not relieve such sureties of any of their obligations to the Owner. If notice of any extra Work or change in the Work affecting the general scope of the Work or the provisions of the Contract Documents is required by the provisions of any bond, to be given to any surety issuing such bonds, the giving of any such notice shall be the Contractor's sole responsibility.

§ 7.2 CHANGE ORDERS

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

- **.1** The change in the Work;
- **.2** The amount of the adjustment, if any, in the Contract Sum; and
- **.3** The extent of the adjustment, if any, in the Construction 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 associated with such change and any and all adjustments to the Contract Sum or Guaranteed Maximum Price and the Construction Time. The Contractor shall include the Work covered by such Change Orders in its Applications for Payment as if such Work were originally part of the Contract Documents.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Construction Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Construction Time being adjusted accordingly. Notwithstanding anything to the contrary herein, the Construction Time shall be adjusted only if the Contractor demonstrates to the Owner that the changes in the Work required by the Construction Change Directive adversely affect the critical path of the Work.

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

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

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** As provided in Section 7.3.7.

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of

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those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit, but not to exceed ten percent (10%) on changes in the Work performed by a Subcontractor and five percent (5%) for changes in the work performed by the Contractor. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Actual costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Actual costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Actual rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; and

.4 Actual costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect, in consultation with the Owner, 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, and that the Owner confirms, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Construction 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.

§ 7.3.11 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. Only the Owner shall have the right to issue a written Change Order or Constructive Change Directive to the Contractor authorizing an addition, deletion or other revision in the scope of the Work and/or an adjustment in the Contract Sum or Guaranteed Maximum Price or the Construction Schedule.

§ 7.4 MINOR CHANGES IN THE WORK

The Owner, or the Architect after consulting with the Owner, may order minor changes in the Work not involving adjustment in the Contract Sum or Guaranteed Maximum Price or extension of the Construction Time. Such changes shall be effected by written order and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly. Architect shall not, without written approval of Owner, order changes in the Work under this Section 7.4 that (i) are inconsistent with the intent of the Contract Documents; (ii) render the Drawings and Specifications not in material conformity with the Work; or (iii) materially affect the quality, utility or general aesthetics of the Work or any component, or result in the use of materials or equipment which are not equivalent to or better than the materials and equipment set forth in the Drawings and Specifications prior to such change.

§ 7.5 CONTRACTOR CHANGE ORDER REQUESTS

§ 7.5.1 In addition to the Contractor's remedies under Article 8 in the case of delays (which shall be governed solely by Article 8 and to which this Section 7.5 shall not apply), if the Contractor believes any act, error or omission of the Owner or persons for whom Owner is responsible, including but not limited to the Architect and Owner's separate contractors, constitutes a change in the Work entitling it to additional compensation, it shall within twenty-one (21) days after the date the Contractor discovers, or should with the exercise of appropriate diligence have discovered, the pertinent act, error or omission of the Owner (provided that the necessity of extra cost and/or time is already

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determinable, even if such extra cost and/or time has not yet been incurred), submit a Contractor Change Order Request stating the amount of the additional compensation to which it is entitled and justifying the request. The Contractor shall submit such additional information as may reasonably be required by the Owner to evaluate the Contractor Change Order Request. The Owner shall evaluate the request within ten (10) days and advise the Contractor within such ten (10) day period whether to grant, grant in part, or deny the Contractor Change Order Request. Any additional compensation granted shall be recorded in the form of a Change Order. If the Contractor disagrees with the Owner's decision, the Contractor shall pursue the remedies it has under Article 15. Failure of the Contractor to timely submit a Contractor Change Order Request strictly (not substantially) in accordance with the requirements of this Section 7.5 shall constitute a waiver of and shall forever bar any recovery arising out of the pertinent act, error or omission of the Owner, even if the Owner was not prejudiced thereby.

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 and shall have the same meaning as defined in Section 1.1.13.

§ 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 Construction Time is a reasonable period for performing the Work.

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

§ 8.2.3 The Contractor shall see to the diligent, expeditious performance of the Work, with adequate resources so that all the Work will be completed within the Construction Time. The Contractor shall require overtime, multiple shifts and any other action necessary to complete of the Work within the Construction Time, all without additional cost to the Owner except as otherwise specifically provided in Section 8.4 or in a Change Order or Construction Change Directive. 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 Construction 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 prosecute 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 or compensation from 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.

.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 8.4.2 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

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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 Except as otherwise provided in this Section 8.3, the Contractor shall be fully responsible for the timely completion of the Work in accordance with the Construction Schedule. The Contractor shall cause all members of the Construction Team to meet all Milestone Dates in the Construction Schedule. The Contractor agrees to use its best efforts to avoid the occurrence of any cause for delay, to avoid any extension of performance dates, and to mitigate the effect of any delay that does occur. The Construction Time will be extended only under the exact circumstances described in this Section 8.3 and then if and only if the Contractor complies strictly (not substantially) with the requirements of this Section 8.3.

§ 8.3.2 Notices in connection with delays shall be made by the Contractor to the Owner in accordance with this Section 8.3.2. The Contractor shall use its best efforts to provide verbal notice to the Owner within twenty-four (24) hours after the commencement of a delay. It must in any event do so as soon as possible and not later than three (3) days after commencement of the delay. Any verbal notice given shall be confirmed in writing within four (4) days. If the Contractor fails to deliver verbal notice within three (3) days after the commencement of a delay, it shall not be entitled to any relief pertaining to the period of time before it gave verbal notice. If the Contractor fails to confirm any verbal notice within four (4) days after the verbal notice was given, it shall not be entitled to any relief for the period of time beginning after the passage of such four (4) days and ending when the confirmation is actually received by the Owner. And, if the Contractor fails to provide verbal notice within ten (10) days after the commencement of a delay or to confirm any verbal notice within ten (10) days after the verbal notice was given, the Contractor shall be barred from seeking any relief whatsoever relating to the delay. Immediately following the commencement of any such cause for delay, representatives of the Contractor and Owner shall confer for the purpose of determining the probable length of the delay and a course of action which would end or eliminate the occurrence or event which is causing delay. The Contractor shall also within twenty-one (21) days after the cessation of such delay notify the Owner of the date of such cessation and the total amount of delay, if any, in performance dates which the Contractor is entitled to claim by reason of any such occurrence. If the Contractor intends to request an extension of time for any delay, it shall accompany the notice of cessation of delay with a Change Order Request stating the specific extension or adjustment requested and justifying the reason for the request. The Contractor shall thereafter submit such additional information as may be required by the Owner to evaluate the Change Order Request. The Owner shall decide whether to grant, grant in part or deny the Change Order Request. Any extension of time or adjustment granted shall be memorialized in the form of a Change Order. Acceptance and execution of any such Change Order by the parties shall constitute an accord and satisfaction that forever bars any and all claims arising out of or in connection with the delay giving rise to the Change Order. If the Contractor disagrees with the Owner's decision, it may pursue the remedies available to it under Article 15. However, failure of the Contractor to timely assert any alleged delay or claim for extension strictly (not substantially) in accordance with the provisions of this Section 8.3.2 shall constitute a waiver of and shall forever bar that claim, even if the Owner was not prejudiced thereby.

§ 8.3.3 Except in the case of changes to the Work covered by Article 7, the Contractor shall not be entitled to an extension of time unless the event or circumstance giving rise to a delay constitutes a Force Majeure Event and the Contractor can demonstrate that the activity delayed will result in a Critical Delay.

.1 A delay is a "Critical Delay" if and only to the extent it adversely affects the critical path of the Work as established in the Construction Schedule or subsequent Subcontractor schedules that fall within the Construction Schedule. Under this Subsection 8.3.3.1, when two (2) or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delay(s) would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Construction Time should be adjusted, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.

.2 Subject to the restrictions contained in Section 8.3.3.4 below, "Force Majeure Event" means only the following: (i) strikes, lockouts, or picketing (legal or illegal) of an area-wide, trade-wide, Owner-wide, or industry-wide nature (a strike, lockout or picket (legal or illegal) specific to the Project Site, or directed at the Contractor or a Subcontractor shall not be considered an area-wide, trade-wide or industry-wide strike, and is not a Force Majeure Event unless it occurs after the Contractor has used its best efforts to avoid it); (ii) governmental action and condemnation; (iii) riot, civil commotion, insurrection, and war; (iii) fire or other casualty, accident, acts of God or the public enemy; (iv) unusual

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adverse weather conditions not reasonably expected for the location of the Work and the time of the year in question documented by data substantiating such weather conditions; (v) unavailability of fuel, power, supplies or materials; (vi) the passage or unexpected interpretation or application after the Commencement Date of the Work of any statute, law, regulation or moratorium of any governmental authority; or (vii) Owner Delay.

.3 The Contractor acknowledges that in preparing the Construction Schedule and in agreeing to the times or dates of completion required by the Contract Documents it will make a reasonable allowance for such events that are not Force Majeure Events.

.4 Adjustments in the Construction Time will be permitted for any Force Majeure Event, including an Owner Delay, only to the extent such delay (i) is not caused or contributed to, and could not have been anticipated, by the Contractor using the degree of diligence required by the Contract Documents, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, and (iii) is of a duration of not less than one (1) day.

§ 8.3.4 The Owner's exercise of any of its rights under the Contract Documents or the Owner's good faith exercise of any of its remedies, including requirement of correction or re-execution of any Defective Work, regardless of the extent, number or frequency of the Owner's good faith exercise of such rights or remedies, shall not under any circumstances be construed as unreasonable interference with the Contractor's performance of the Work or an event of default.

§ 8.3.5 The Contractor shall use its best efforts to mitigate the effects of any delay, whether or not it is caused by a Force Majeure Event.

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

§ 8.3.7 If the Contractor, but for a Force Majeure event or Owner Delay resulting in a Critical Delay, would have completed the Work prior to the expiration of the Construction Time, the Contractor shall not be entitled to recovery of damages arising out of any event or delay whatsoever which prevented such early completion of the Work, provided, however, that this provision shall not preclude recovery of delay damages by the Contractor pursuant to Section 8.4.2 below to the extent a delay causes it to complete the Work after the scheduled completion date.

§ 8.4 NO DAMAGE FOR DELAY

§ 8.4.1 Except only as provided in Section 8.4.2 below, an extension in the Construction Time or adjustment of the Construction Schedule, to the extent permitted under Section 8.3, and the Contractor's rights in connection with a suspension of the Work, as provided in the Agreement, shall be the sole and exclusive remedies (in lieu of all other remedies whatsoever) of the Contractor for any delay, interference, hindrance in the performance of the Work, loss of productivity, manpower inefficiencies, impact damages and similar claims and damages, whether or not contemplated by the parties. Except only as provided in Section 8.4.2, in no event shall the Contractor be entitled to any compensation or recovery of any damages in connection with any 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 Construction Time, but only in accordance with the provisions of this Article 8.

§ 8.4.2 In the event of Owner Delay, the Contractor shall be entitled to an equitable adjustment in the Contract Sum or Guaranteed Maximum Price. This adjustment shall be based solely upon and limited to additional direct out-of-pocket expenses to the extent they are incurred directly as a result of the Owner Delay. Without limiting the generality of the foregoing, such out-of-pocket expenses shall be calculated on an "actual cost" basis, and shall exclude home office expense and other overhead, profit and the value of lost opportunities. However, the Contractor shall use its best efforts to avoid or reduce delay damages to any member of the Construction Team caused by Owner Delay.

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ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The initial schedule of values shall be consistent with the Contract Sum prepared by the Contractor and include actual subcontractor bids. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.2.1 Unless otherwise provided in the Contract Document, the Contractor shall include a separate allocation for project closeout in the schedule of values. The following scheduled values are not part of retainage, and shall be listed on the Application for Payment:

As-Built (Record Drawings) Documents	1.0% of Contract Sum or Guaranteed Maximum Price
Training and O&M Manuals	1.0% of Contract Sum or Guaranteed Maximum Price
Attic Stock Materials	0.5% of Contract Sum or Guaranteed Maximum Price
Punchlist Completion	2.0% of Contract Sum or Guaranteed Maximum Price
Warranty and Guaranty Documents	0.5% of Contract Sum or Guaranteed Maximum Price

§ 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 Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 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 material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 The Contractor must provide copies of its insurance certificates, bonds, and the same for all of the Subcontractors and sub-subcontractors prior to submitting the first Application for Payment.

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.3.1 Except with respect to liens resulting from Owner's failure to make properly due payments to Contractor, the

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Contractor hereby expressly undertakes to hold harmless, indemnify and defend the Indemnitees, at the Contractor's sole cost and expense, from, for and against any and all costs (including without limitation reasonable attorney fees), liabilities, actions, lawsuits, claims or proceedings brought against Indemnitees as a result of any lien or claim of lien filed against the Work, the site of any of the Work, the Project site or any improvements thereon, payments due the Contractor or any portion of the property of any of the Indemnitees.

§ 9.3.3.2 In the event of any lien or claim of lien, Owner may withhold from payments otherwise due Contractor, such amounts as Owner deems suitable to protect it from the adverse effect of such lien or claim of lien. The Owner shall release any payments or portions thereof withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond which is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than two hundred percent (200%) of such lien or lien claim. By posting such bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3, including, without limitation, the duty to defend, hold harmless and indemnify the Indemnitees. Except with respect to liens resulting from Owner's failure to make properly due payments to Contractor, the cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not cause any adjustment to the Contract Sum.

§ 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 Contract Sum or Guaranteed Maximum Price includes all applicable taxes and shall not be changed as the result of the Contractor's failure to include any applicable tax, or as a result of any change in the Contractor's tax liabilities.

§ 9.3.6 Each Consolidated Application for Payment shall be accompanied by the following, all in form and substance reasonably satisfactory to the Owner:

.1 a duly executed and acknowledged sworn statement in statutory form with all information provided, together with properly notarized sworn statements, current through the previous draw, from the Contractor and all of the Subcontractors; and

.2 except as otherwise provided, duly executed unconditional releases in the form required by the Owner establishing payment or satisfaction of all obligations as reflected on the sworn statements referred to in Section 9.3.6.1, provided, however, that the Contractor may furnish with each Application for Payment applicable waivers of lien or releases and properly notarized sworn statements covering the immediately preceding Application for Payment, as opposed to the current Application for Payment, (i.e., 30 day lag), provided Final Payment shall not be forthcoming until final construction lien waivers or releases from all members of the Construction Team have been delivered.

.3 In addition to the final construction lien waiver, the Owner may require the Contractor and Subcontractors to provide a signed and notarized affidavit that releases and discharges the Owner and Owner's agents from all liability to the Contractor and Subcontractor, which has arisen or which shall arise in connection with any work performed or materials delivered to the Project.

.4 A written narrative summarizing the progress of the Project, including behind schedule Work that may adversely affect the critical path of the Work as established in the Construction Schedule or subsequent Subcontractor schedules that fall within the Construction Schedule. 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 Construction Time.

.5 An updated Schedule of Value, which unless objected to by the Architect shall be used as a basis for reviewing the Contractor's Application for Payment.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a separate contractor;
- **.6** reasonable evidence that the Work will not be completed within the Construction Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- **.7** failure to carry out the Work in accordance with the Contract Documents;
- **.8** failure to have supplied operations and maintenance manuals, Record Documents, schedules, cost projections, and/or other information that may be required by other sections of the Contract Documents on a timely basis;
- **.9** any other failure of the Contractor to perform its obligations under the Agreement; or
- **.10** stop work notices.

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

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

§ 9.6 PROGRESS PAYMENTS

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

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

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

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 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 and suppliers shall not be withheld 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.

§ 9.6.8 Owner shall retain out of each progress payment a "Retainage" as provided in Section 9.6.8 of the Agreement. Retainage will be paid upon Final Completion and acceptance of the Work in accordance with Section 9.10 of these General Conditions. 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. The Contractor acknowledges and agrees that payments by the Owner shall only be made in respect of Applications for Payments, or portions thereof, reasonably approved by the Owner. 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.

§ 9.6.9 Whenever the Owner reasonably determines, after notice to the Contractor, that there is a basis for concern that payments properly owing to any Subcontractor, sub-subcontractor, supplier or laborer are not being made on a timely basis, the Owner may elect, but shall not be obligated, to make payments to the joint order of the Contractor and such Subcontractor, supplier or laborer with any such payments satisfying any payment obligation otherwise owing by the Owner to the Contractor. The Owner may also elect at any time to require that payments be made through a construction escrow, in which event the Contractor shall supply all customary forms and indemnities as may be required to satisfy the conditions to disbursement established by the applicable escrowee. All requirements relating to payments and retainages, and applicable submittals to be made by the Contractor, shall be subject to reasonable modification and approval of any lender of the Owner supplying funds to the Project.

§ 9.6.10 Whenever the Owner reasonably determines, after notice to the Contractor, that there is a basis for concern that payments properly owing to any Subcontractor, sub-subcontractor, supplier or laborer are not being made on a timely basis, and the Owner elects to make payments to the joint order of the Contractor and such Subcontractor, supplier or laborer with any such payments satisfying any payment obligation otherwise owing by the Owner to the Contractor, the Owner shall be able to back charge the Contractor twenty-five dollars ($25.00) for each such issued joint checks to partially defray Owner's administrative time and expenses. If the Owner and Contractor agree to establish a construction escrow payment account, the Owner shall be able to back charge the Contractor for reasonable administrative time and expenses for establishing and administrating such an escrow account. The Owner shall be able to deduct such back charges from payment(s) to the Contractor.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Construction Time shall be extended

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appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work shall not be considered suitable for Substantial Completion review until all systems included in the Work are properly and operationally constructed in accordance with the Contract Documents, all required governmental inspections and certifications have been made and posted, training of Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract Documents are in place. The only remaining Work shall be minor in nature, so that the Owner could occupy the building on the date of Substantial Completion and completion of the Work by the Contractor would not materially interfere or hamper the Owner's (or those claiming by, through or under Owner) normal operations. At Substantial Completion, the Contractor attests that all remaining Work is solely of a Punchlist nature and will be completed within forty five (45) consecutive calendar days.

§ 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 punchlist of items to be completed or corrected prior to final payment. Failure to include an item on such punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. *(Also see Section 9.10.7)*

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

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 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.

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (i) 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, (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (iii) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (iv) consent of surety, if any, to final payment and (v), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

- **.1** liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents; or
- **.3** terms of special warranties required by the Contract Documents.
- **.4** any defect or condition which is latent or not reasonably discoverable at the time of final payment.

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

§ 9.10.6 The amount of the Final Payment shall be the Contract Sum or Guaranteed Maximum Price less the amount paid to date. 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.

§ 9.10.7 Project Closeout. The requirements for Project Closeout begin at the start of a project. This section outlines the integration of the closeout process into the construction phase. Project closeout requirements generally comprise of the following:

Certificate of Substantial Completion by the Architect

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Certificate of occupancy, including proof of all final/closed inspection permits
Operation & Maintenance Manuals
As-Built (Record) Drawings
Training of Owner's Personnel
Attic Stock Materials
Documents – Warranty, Asbestos free, Smoke & Flame Spread, etc.
Punchlist Completion (signed by the Architect and the Owner)
Copies of Shop Drawings, Product Data and Samples

§ 9.10.7.1 Operations and Maintenance Manuals and Training

.1 Upon reaching seventy-five percent (75%) completion according to the Subcontractor's Application for Payment, The Contractor shall cause Subcontractors to submit to the Owner via the Contractor Operations and Maintenance Manuals and record copies of submittals.

.2 The Contractor shall cause Subcontractors to schedule and conduct training for Owner personnel as specified. Training sessions shall include an agenda, video tape of the session, a sign-in sheet to document attendance, and documentation for the trainees. Each Subcontractor shall submit the video tape (labeled), attendance sign in sheet, and training documentation to the Contractor in the same quantities required for the Operations and Maintenance Manuals.

.3 Owner shall withhold an amount stipulated in Section 9.2.1 until receiving the Operations and Maintenance Manuals and training of Owner's operating personnel.

§ 9.10.7.2 As-Built (Record) Drawings

.1 The Contractor shall cause all Subcontractors to review As-Built Drawings with the Contractor on a weekly basis.

.2 Owner shall withhold an amount stipulated in Section 9.2.1 until receiving the final As-Built Drawings.

.3 Where the governmental and/or municipal agency/agencies having jurisdiction over the Project requires a certified (signed and sealed by a Registered Professional Engineer) set of civil and utilities As-Built Drawings of the Project, the Contractor shall deliver to the agency/agencies the necessary As-Build Drawings that is acceptable to the agency/agencies and provide one copy to the Owner.

§ 9.10.7.3 Attic Stock Materials

.1 Upon reaching ninety percent (90%) completion according to the Subcontractor's application for payment, the Contractor shall cause the Subcontractors to turn over to the Owner via the Contractor all stock parts and attic stock materials.

.2 Owner shall withhold an amount stipulated in Section 9.2.1 until receiving the required attic stock materials.

§ 9.10.7.4 Documents – Warranty, Asbestos Free, Smoke & Fire Spread, etc.

.1 Upon reaching ninety percent (90%) completion, according to the Subcontractor's Application for Payment, the Contractor shall cause the Subcontractors to submit to the Owner via the Contractor all required documents.

.2 Owner shall withhold an amount stipulated in Section 9.2.1 until receiving the required documents.

§ 9.10.7.5 Punchlist

.1 One (1) week before Substantial Completion, Subcontractors shall submit to the Contractor a complete Punchlist and a list of incomplete items. The list shall include room number, description of work, and date for completion.

.2 The Contractor shall review the Subcontractor's list and add items, if necessary. In the event that Contractor's list comprises 25% or more of the items then the Subcontractors list, then at the Contractor's sole discretion, a review fee of up to five hundred dollars ($500) may be deducted from the Subcontractor's Contract Sum and paid to the Contractor. For example, if a Subcontractor's list has 20 items, and after reviewing the Contractor finds an additional 6 items (which exceeded 25% more items), the Contractor shall be entitled to receive a review fee.

.3 Punchlists prepared by the Architect or Owner will be distributed to the Subcontractors. Subcontractors will be given the opportunity to complete the items within fourteen (14) days of receipt of lists. Upon completion, the Subcontractor shall conduct a walk-through with the

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Contractor, Architect, and Owner to confirm satisfactory completion.

.4 Payment in an amount no less than four (4) times the estimated value of Punchlist items, as determined by the Contractor, and Architect will be withheld until the Punchlist is complete.

.5 In the event the Punchlist is reported complete; but found not to be complete, at the Contractor's sole discretion, an amount of up to one thousand dollars ($1,000) may be deducted from the Contract Sum owing to the Subcontractor and paid to the Contractor. If after fourteen (14) days, the Punchlist is still not complete or incomplete items are discovered during a walkthrough, the Owner and/or Contractor may immediately complete the items. The Owner and/or Contractor shall deduct the costs to complete the Punchlist from the amount owing the Subcontractor, including reasonable fee for supervision, plus up to two thousand five hundred dollars ($2,500) administrative costs to be paid to the Owner.

.6 The final acceptance of all Punchlist and incomplete work items is subject to the approval of the Architect and Owner.

.7 Owner shall withhold an amount no less than stipulated in Section 9.2.2 until the Subcontractor satisfactorily completes all the required Punchlist items.

§ 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 shall continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss. The Contractor shall make good any such damage, injury or loss at no cost to the Owner, except to the extent directly caused by agents or employees of the Owner. The Contractor shall adequately protect the Work and adjacent property as required by law, the Contract Documents, or as otherwise required, to cause no damage to the Work and adjacent property during the execution of the Work. This requirement shall also apply to structures above and below ground as conditions of the site require. The Contractor shall also provide recommendations and information to the Owner regarding: (i) the assignment of responsibilities for safety precautions and programs by the Subcontractors and the Owner for the safety of members of the Construction Team, the Owner, and the general public; (ii) temporary facilities; and (ii) equipment, materials and services for common use of Subcontractors. The Contractor shall verify that the requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 10.1.2 The Contractor is solely responsible to the Owner for health and safety at the Project Site and, accordingly, shall be solely responsible for initiating, monitoring, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. The foregoing does not relieve the Subcontractors of their responsibility to the Contractor for the safe performance of their Work in accordance with all Applicable Laws.

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§ 10.1.3 The Contractor shall develop and implement a health and safety plan that complies with all Applicable Laws covering all activities on the Project Site except those activities performed solely by the Owner. The Contractor shall provide the Owner a copy of such health and safety plan prior to commencement of Work. The Owner shall have no duty to review the plan and shall assume no duty by doing so. The plan shall be included in all bidding documents, 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 reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

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

§ 10.2.2 The Contractor shall comply with and give notices required by Applicable Laws and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Work, adequate safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible for all measures necessary to protect any property adjacent to the Project Site and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

- **.1** The various parts of the structure and adjoining structures that cannot be maintained in their final positions with stability until other connecting or abutting parts or members are constructed and permanently secured shall be substantially braced and held in place. The Contractor shall protect the Project against all damage from the elements, overloading of the structure, and undermining or displacement due to conditions of the site or due to any other methods of construction.
- **.2** The Work shall be executed in a manner which will cause as little inconvenience as possible to the Owner in the Owner's use of the property and existing facilities and structures. Where applicable the Contractor shall provide and maintain adequate, dust tight, protective coverings, enclosures and barricades about the Work and shall keep the same in repair throughout the entire Work. Enclosures of appropriate fire rated construction shall be installed by the Contractor where necessary to divide the Work area from the Owner's occupied areas.
- **.3** During the prosecution of the Work, the Owner will use and occupy the buildings and site adjacent to and surrounding the Project Site. At all times during the construction period, safe and convenient access shall be maintained to and from these buildings and any other portions of the site occupied by the Owner and/or Subcontractors.

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss covered by the Owner's insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in

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whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

§ 10.2.7 The Contractor shall not permit any part of the structure or site to be loaded with a weight that will endanger the structural integrity of the structure or site or the safety of workmen or any other persons on or about the Work. When required 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 adjourning land and/or property owners or other parties.

§ 10.2.8 The Contractor shall take all necessary precautions for the safety of employees and visitors on the site of the Project and shall comply with applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public. The Contractor shall post danger signs warning against the hazards created by such features of construction such as protruding nails, hoists, holes, elevator hatchways, scaffolding, window openings, stairways, falling material and other such features.

§ 10.2.9 When all or a portion of the Work is suspended for any reason, the Contractor shall be responsible for securely fastening down all coverings and protecting the Work from injury by any cause.

§ 10.2.10 The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages occur, the accident shall be reported immediately by telephone or messenger to the Owner. The obligations in this Section are in addition to the Contractor's reporting obligations under Applicable Laws.

§ 10.2.11 INJURY OR DAMAGE TO PERSON OR PROPERTY
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS
§ 10.3.1 The Contractor shall not, nor shall it permit any member of the Construction Team to bring on, keep, store, use, release or dispose of any Hazardous or potentially Hazardous Material on, in or about the Project Site except permitted materials and as required by Section 10.3.8., subject to the requirements of Section 10.3.9. The Contractor also shall not permit the inclusion of asbestos, polychlorinated biphenyls or urea formaldehyde in any construction materials.

§ 10.3.2 The Contractor shall be responsible for the removal and cleanup of all Hazardous Materials and wastes brought to the Project Site or generated at the Project Site by any member of the Construction Team at its expense, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise.

§ 10.3.3 The Contractor shall cause the presence, use, storage and/or disposal of Permitted Materials by any member of the Construction Team to be in strict (not substantial) compliance in every respect with all Applicable Laws and shall promptly notify the Owner if any amount of Permitted Materials or any other Hazardous Materials are released on the Project Site at any time in a quantity that would have to be reported or remediated under any Applicable Laws.

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§ 10.3.4 The Contractor shall at its expense, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise, fully and promptly remediate each and every release of Permitted Materials and any other Hazardous Materials in full compliance with all Applicable Laws, to the most stringent standards available under all Applicable Laws, and in cooperation with the Owner, except to the extent of contamination (i) that existed before Work began at the Project Site and neither the Contractor nor any other member of the Construction Team has exacerbated such pre-existing contamination after recognizing the presence and general location of such contamination, or (ii) was caused directly by the Owner, the Architect, a contractor of the Owner who is not a member of the Construction Team, or any third party. Notwithstanding anything to the contrary herein, the Contractor shall nonetheless be responsible to remediate the hazardous condition if and to the extent, after recognizing the presence and general location of such condition that was pre-existing at the Site, or after it should have recognized such presence and general location, it exacerbates such contamination. If the **c**ontamination existed before Work began at the Project Site and it was not exacerbated by the Contractor or any member of the Construction Team (after it recognized or should have recognized the presence and general location of such contamination) or the contamination was caused directly by the Owner, the Architect, a contractor of the Owner who is not a member of the Construction Team, or any third party, then all expenses associated with the remediation of the condition shall be borne by the Owner.

§ 10.3.5 The Contractor shall at its expense, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise, be solely responsible to the Indemnitees for and shall defend, indemnify and hold them harmless from and against all claims, damages costs, fines, judgments and liabilities, including attorneys fees and costs, arising out of or in connection with the generation, release, transportation, storage, use, disposal or presence of permitted materials or Hazardous Materials at the Project Site by or due to any member of the Construction Team or for any noncompliance with Section 10.3 by any member of the Construction Team. The indemnity in this Section 10.3.5 does not include claims, fines, etc., to the extent they arise from (i) contamination that existed before Work began at the Project Site which was not exacerbated by the Contractor or any member of the Construction Team (after it recognized or should have recognized the presence and general location of such contamination) or (ii) contamination that was caused directly by the Owner, the Architect, a contractor of the Owner who is not a member of the Construction Team, or any third party.

§ 10.3.6 The Owner shall not be responsible for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. The Contractor's responsibility under the foregoing indemnification shall include any and all governmentally mandated removal and/or clean-up of any such Permitted Materials or Hazardous Materials.

§ 10.3.7 If the Contractor shall receive any notice, whether oral or written, of any inquiry, test, investigation, enforcement proceeding, environmental audit or the like by or against the Contractor, any member of the Construction Team, or the Work with regard to any Hazardous Materials at or emanating from the Project Site, the Contractor shall immediately notify the Owner and Architect.

§ 10.3.8 If any member of the Construction Team encounters on the Project Site material, which it believes is a Hazardous Material in any form (other than Permitted Materials being used in an appropriate manner or asbestos, asbestos containing materials or polychlorinated biphenyl (PCBs) which have been rendered harmless), the Contractor shall (i) immediately stop Work in the area affected, (ii) report the condition to the Owner and Architect as expeditiously as possible, and (iii) clear all persons from the area of exposure. The Work in the affected area shall not be resumed until the Hazardous Material has been removed or rendered harmless as evidenced by written agreement of the Owner and the Contractor. The term "rendered harmless" shall be interpreted to mean that the levels are less than any applicable exposure standards set forth in OSHA regulations and all Applicable Laws. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project Site by any member of the Construction Team. Except for the Permitted Materials, no member of the Construction Team shall use any fill or other materials to be incorporated into the Work, which are Hazardous Material, toxic or comprised of any items that are Hazardous Material or toxic.

§ 10.3.9 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, and agents and employees or either of them from and against claims, damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from performance of the Work in an area affected

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by Hazardous Materials (excluding Permitted Materials and other Hazardous Materials brought to the site by the Contractor or persons for whom it is responsible and excluding all claims, damages, etc., arising out of or resulting from any exacerbation of pre-existing contamination after they recognized or should have recognized the presence or general location of such pre-existing contamination), if (i) in fact, the material presents the risk of bodily injury or death 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, but only to the extent that such damage, loss or expense is not due to the negligence of the person seeking indemnity after the presence and general location of the contamination was known to or should have been known by such person, or (ii) the Contractor is held liable for the cost of remediation of a Hazardous Material.

§ 10.3.10 The Contractor shall not be required to cause performance without its consent of any Work relating to asbestos or PCB or other Hazardous Material, except as otherwise required under this Section 10.3. The Contractor agrees to excavate and stockpile on site soils with levels of contamination such that it can be safely and lawfully handled without special protective equipment if the Owner so requests. In such a circumstance, the Contractor shall comply with all Applicable Laws, shall be fully responsible for any non-compliance with all Applicable Laws, and shall indemnify, defend and hold harmless the Owner for any and all claims arising from the Contractor's failure to so comply with an Applicable Law.

§ 10.3.11 The Contractor shall take care to minimize the use of any Hazardous Materials to the extent consistent with the orderly conduct of the Work. To the maximum extent practical, the Contractor shall cause Permitted Materials which contain Hazardous Materials (and any explosive materials which are not Hazardous Materials) to be stored off the Project Site and off Owner's premises. Except for Permitted Materials, all Hazardous Materials used, stored or generated at the Project Site by the Construction Team shall be used, stored, transported and disposed of in strict (not substantial) conformity with Applicable Laws, codes, rules, regulations, guidelines and orders of governmental authorities having jurisdiction, and the Contractor shall maintain -- and provide promptly to Owner upon demand -- appropriate and complete documentation evidencing the Contractor's compliance with all such laws, codes, rules, regulations, guidelines and orders.

§ 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.

§ 10.5 SECURITY

§ 10.5.1 All members of the Construction Team shall cooperate with the Owner's security personnel and shall comply with all of the Owner's security requirements. Such requirements shall include, without limitation, if requested by the Owner, delivering to the Owner's security personnel, prior to the commencement of the Work on each day, a list of all personnel who will be permitted access to the Work. The foregoing, however, shall not relieve the Contractor of any obligation to provide a safe and secure workplace for all parties entering the Project Site.

.1 The Contractor shall be responsible for providing Project site security to the extent necessary to safeguard the building, tools, materials, and completed Work. The Contractor's written plan for Project site security shall be submitted to the Owner for approval within twenty (20) days of the execution of the Agreement.

.2 The entrances to the Project site will remain open during normal working hours for the use of all members of the Construction Team. Prior to and after normal working hours, all entrances and exits will be closed and secured by the Contractor. The Contractor shall provide to the Owner copies of keys (2 each) for all doors and gates secured.

§ 10.5.2 The Owner reserves the right to bar access to any individual for reasonable security reasons. Furthermore, the Owner reserves the right to limit the location of entries to the Work which may be used by members of the Construction Team.

§ 10.6 DUST; SMOKE; FUME

§ 10.6.1 The Contractor shall cause each member of the Construction Team to conduct operations in such a manner, which will control blowing dust. The amount of dust resulting from the operations of each of the Construction Team shall be controlled to prevent the spread of dust to adjacent public and private properties, to avoid creation of a nuisance in the surrounding area, and to avoid violation of any Applicable Law. Temporary methods consisting of

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sprinkling or similar methods will be permitted to control dust. Use of water will not be permitted when it will result in, or create, hazardous or objectionable conditions such as ice, flooding and pollution. Dust control shall be performed as the Work proceeds and whenever a dust or nuisance or hazard occurs.

§ 10.6.2 Smoke pipes, exhausts and fumes from boilers, engines, or other devices, shall in all cases be extended above roofs of buildings, or a substitute arrangement made subject to approval of the Architect and the Owner.

§ 10.6.3 The Contractor shall enforce the Architect's or the Owner's instructions regarding signs, advertisements, fires and smoking. No smoking will be permitted, except in designated areas.

§ 10.7 FIRE PRECAUTIONS

§ 10.7.1 All members of the Construction Team shall take all necessary precautions to guard against and eliminate all possible fire hazards and to prevent fire damage to any construction Work, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private. The members of the Construction Team shall comply with all conditions and requirements set forth herein, and shall immediately correct any hazardous conditions resulting from their operations when brought to their attention.

.1 Materials and/or equipment stored in cardboard cartons, wood crates, or other combustible containers, shall be stored in an orderly manner and shall be readily accessible.

.2 Before starting Work, the Contractor shall consult with the Owner and Architect regarding established rules and regulations relative to fire protection requirements and procedures governing any welding and cutting operations. The Contractor shall strictly (not substantially) conform and shall cause all members of the Construction Team to strictly (not substantially) conform with such rules and regulations in carrying out the Work. No such operations shall be carried out without proper safeguards for fire safety.

.3 No open fires will be permitted. No tar or other melting kettles will be allowed within fifty (50) feet of any building.

.4 All tarpaulins used during the course of the Work shall be of flameproof type and shall be secured in place against damage or flapping from wind.

.5 All oil soaked rags, papers and other similar combustible material shall be removed from any building at the close of each day's Work, or more often if necessary, and placed in metal containers with self-closing lids.

.6 Gasoline, benzene or like combustible material shall not be poured into sewers, manholes, or traps, but shall be disposed of, together will all flammable or waste material subject to spontaneous combustion, in a manner to avoid hazard or damage to persons or property.

.7 All heating devices in connection with temporary heating facilities shall be of the least hazardous type, shall have all proper safety provisions and shall be installed at such locations and in such manner as will minimize the hazard. Oil fired stoves, gas fired heaters and heating units shall be of types approved by Underwriters Laboratories and shall have proper safety combustion controls. Oil fired heaters shall have integral fuel tanks not to exceed fifteen (15) gallons capacity for each unit. No more than one (1) day's supply of fuel shall be permitted to each heater which are inside of any building or facility.

.8 Temporary heating facilities shall be inspected regularly to assure that they are in a safe and proper operating condition at all times. The Contractor shall provide continuously during operation properly trained personnel for said inspections.

.9 Temporary structures of combustible construction shall not be placed inside of any structure. Such temporary structures shall be detached at a sufficiently safe distance from any building. Totally non-combustible temporary structures may, if necessary and feasible, be located inside of the structure.

.10 Heaters and/or stoves installed in field offices or storage structures shall have fire resistant material underneath and at all sides, partitions and walls. Pipe sleeves shall be used where stove pipes run through walls or roof.

§ 10.7.2 The Contractor shall provide necessary personnel and fire fighting equipment to effectively control fires resulting from welding, flame cutting, or other operations involving the use of flame, sparks, or sparking devices. During such operations, all highly combustible or flammable materials shall be removed from the immediate working area. If removal is impossible the same shall be protected with fire blankets or suitable non-combustible shields.

§ 10.7.3 Not more than one day's supply of flammable liquids or gases, such as oil, gasoline, solvent, propane, or roofing materials, shall be brought into any building at any one time. All flammable liquids having a flash point of

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110 degrees F, or below, which must be brought into any building, shall be confined to Underwriters Laboratories labeled safety cans. The bulk supply of any flammable liquid shall be stored at a sufficiently safe distance from any building and from yard storage of building materials. Spigots on drums containing flammable liquids are prohibited on the Project site. Drums are to be equipped with approved vented pumps.

§ 10.7.4 Only a reasonable working supply of flammable building materials shall be located inside of or on the roof of any building.

§ 10.8 FIRE PROTECTION

§ 10.8.1 The Contractor shall maintain free access to the building areas for firefighting equipment and shall at no time block off main roadways or fire aisles without providing adequate auxiliary roadways and means of entrance for firefighting equipment, including heavy fire department trucks, where applicable.

§ 10.8.2 The Contractor shall at all times cooperate with the Owner and keep the municipal fire department informed of the means of entrance and changes to roadways or fire aisles as needed to provide fire department access to or around to Project site.

§ 10.8.3 The Contractor shall, during the entire construction period and until the completion of the Work, provide and maintain all material, equipment and services necessary for an adequate fire protection system, which shall meet the approval of the Owner and/or the Architect. The system shall, at a minimum, meet the requirements set forth in the Contract Documents and of Applicable Laws. These requirements shall be augmented and/or the installations relocated, as may be necessary to meet, at all times, the demands of adequate protection in all areas and shall not be reduced prior to the completion of the Work without the written approval of the Owner and/or the Architect.

§ 10.8.4 The Contractor shall maintain during construction an appropriate number of fire extinguishers to meet Factory Mutual (FM) requirements. Fire extinguishers shall be in good working order, conveniently located, clearly visible and readily accessible for proper protection of the Work.

§ 10.8.5 Fire extinguishers shall be an approved type, equivalent to 2-1/2 gallon water pressurized, suitable for the hazards to be encountered. In areas of flammable liquid, asphalt, or electrical hazards, fire extinguishers shall be equivalent to the carbon dioxide type or dry chemical type. During freezing weather, extinguishers shall be enclosed in heated cabinets or be of an antifreeze type.

§ 10.8.6 All other parties with temporary structures on the Project shall provide and maintain fire extinguishers in each of such structures.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by any member of the Construction Team or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- **.1** Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- **.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- **.3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- **.4** Claims for damages insured by usual personal injury liability coverage;
- **.5** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- **.6** Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- **.7** Claims for bodily injury or property damage arising out of completed operations; and

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.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, shall be written on an occurrence basis, and shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The insurance policy's definition of "occurrence" must also include coverage for improper construction or faulty workmanship if the resulting damage occurs without the insured's expectation or foresight.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. Contractor shall ensure that no insurance certificate shall include language that "failure to provide such notice shall impose no obligation or liability of any kind upon the insurer, its agents or representatives." An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor immediately.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (i) the Owner, the Owner's Representative Consultant (Program Manager), the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (ii) the Owner and Owner's Representative Consultant (Program Manager) as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 The entire amount of Contractor's liability insurance policy coverage limits, identified in the policy and on the Certificate of Insurance, must, under the policy, be available to pay damages for which the insured Contractor becomes liable, or for which the insured assumes liability under the indemnity agreement herein contained, and such coverage amount shall not be subject to reduction or set off by virtue of investigation or defense costs incurred by Contractor's insurer.

§ 11.1.6 The entire amount of the Contractor's liability insurance policy coverage limits shall be payable by the Contractor's insurer, with no deductible to be paid by, or self-insured retention to be attributed to, the Contractor unless this requirement is waived by the Owner. Contractor's insurance policy shall be primary to any policies carried by the Owner. Contractor is not permitted to be self-insured for the policies required by Section 11.1. Contractor's Certificate of Insurance must set forth the nature and amount of any such deductible or self-insured retention.

§ 11.1.7 If Contractor's liability insurance coverage is subject to any exclusions, reduction of policy limits or limitations not common to the type of coverage being provided, such exclusions or limitations shall be noted on the Certificate of Insurance.

§ 11.1.8 In the event that any of the policies of insurance or insurance coverage identified on the Contractor's Certificate of Insurance are canceled or modified, or in the event that Contractor incurs liability losses, either due to activities under this Contract, or due to other activities not under this Contract but covered by the same insurance, and such losses exhaust the aggregate limits of Contractor's liability insurance, then in that event the Owner may in its discretion either suspend Contractor's operations or activities under this Contract or terminate this Contract, and withhold payment for work performed on the Contract.

§ 11.1.9 The maintenance in full current force and effect of such form and amount of insurance as Owner shall have accepted, shall be a condition precedent to the Contractor's exercise or enforcement of any rights under the Contract.

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§ 11.1.10 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Article 11, the Owner may, but shall not be obligated to, upon five (5) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand. Upon purchase of such insurance, the Owner shall issue and the Contractor shall execute a Change Order reducing the Contract Sum or Guaranteed Maximum Price by the cost of the insurance. The Contractor shall furnish all necessary information to incept and maintain such Replacement Insurance.

§ 11.1.11 When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent 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 prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.

§ 11.1.12 Insurance coverage required under the Agreement shall be written with insurance carriers authorized to do business in the state where the Project is located. All insurance coverage procured by the Contractor shall be provided by insurance companies having policy holder ratings not lower than "A-" and financial ratings not lower than "VII" as reported in Best's Insurance Guide, latest edition in effect as of the date of the Contract, and subsequently in effect as of the date of renewal of any policies required by the Contract Documents. Except as set forth in Section 5.3.1.1, the minimum insurance requirements specified in this Agreement apply to each member of the Construction Team.

§11.1.13 The Contractor's liability and indemnification obligations to the Owner under the Agreement shall not be relieved or diminished by securing insurance coverage in accordance with the Owner's requirements or by the Owner's acceptance of certificates of insurance or policies. Any acceptance of insurance coverage by the Owner shall not be construed as accepting in any way deficiencies in the insurance.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount with deductibles as reasonably determined by Owner. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents. The Owner shall provide a copy of the builder's risk policy for review by the Contractor. If the Contractor believes additional coverage is necessary, the Contractor shall notify the Owner in writing within seven (7) days of receiving the policy. Providing that the Owner agrees, the Owner shall have an option to purchase or to reimburse the Contractor for acquiring the additional coverage. Owner is not obligated to reimburse the Contractor for acquiring additional coverage unless the Owner has agreed and authorized in writing for the Contractor to do so.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements.

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

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§ 11.3.1.3 Except as otherwise provided in the Contract Documents, if the property insurance requires deductibles, the Contractor shall be responsible to pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site only with Owner's written approval.

§ 11.3.1.5 In the event of partial occupancy or use in accordance with Section 9.9 the Owner and the Contractor shall take reasonable steps to coordinate with and obtain consent of their respective insurance company or companies so that the Owner's partial occupancy or use will not cause cancellation, lapse or reduction of insurance.

§ 11.3.1.6 Other than acts of the Owner or God (fire, lightning, hail, rainstorm, or other serious adverse weather event), each member of the Construction Team shall be responsible for the first Two Thousand Five Hundred Dollars ($2,500) of any loss of or damage to property to the extent of any damage caused by its negligence or intentional acts. If more than one member of the Construction Team causes a loss or damage to property in the same occurrence, each member of the Construction Team shall pay a proportion of the Two Thousand Five Hundred Dollars ($2,500), determined in the discretion of the Contractor and the Owner. *(The intent is that these two dollar amounts should match the Owner's Builder's Risk Insurance Deductible.)*

§ 11.3.1.7 Each member of the Construction Team shall be solely responsible for insuring against any loss or damage to all owned, borrowed or rented property, including but not limited to tools, materials, supplies, equipment, forms, scaffolding, towers, staging, bunkhouses and other temporary structures including their contents, which do not form a permanent part of the Project. The Owner shall in no event be liable for any loss or damage to any of the aforementioned items, or the Work connected with the Contractor or the Architect, or employees, agents or servants of same, which is not to be included in and remain a permanent part of the Project.

§ 11.3.1.8 The Owner's property insurance policy excludes losses based on, among other things, errors in design, faulty workmanship, faulty materials, wear and tear, gradual deterioration, mysterious disappearance and fraudulent or dishonest acts. The property insurance policy also excludes losses due to settling, cracking, shrinking, bulging or expansion of pavements, foundations, walls, floors, and ceilings. The Contractor is liable and indemnifies the Owner from all losses.

§ 11.3.1.9 The Contractor shall report to the Owner each claim immediately after an occurrence of a loss. The Owner grants, and shall cause its insurer to grant, reciprocal waivers of subrogation in favor of the Contractor and all other members of the Construction Team.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner .

§ 11.3.3 LOSS OF USE INSURANCE

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

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance unless the damages are caused in whole or in part by the Contractor or Contractor's negligence.

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§ 11.3.6 Before an exposure to loss may occur, the Owner shall provide the Contractor with a copy evidence of insurance coverages required by this Section 11.3. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least thirty (30) days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other for damages caused by fire or other causes of loss to the extent covered by property, general liability, workers compensation, employers liability and automobile insurance obtained pursuant to this Section 11.3 or other property, general liability, workers compensation, employers liability and automobile insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner and made payable to the Owner for the insureds Contractor, Subcontractors, suppliers and anyone contracting directly or indirectly with them to the extent of any pending Application for Payment and Work properly performed and unpaid, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 (Intentionally Deleted)

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle with insurers.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.1.1 Bonds shall be executed by a responsible surety licensed in the state where the Work is located with a Best's rating of no less than A, XII or better and shall remain in effect for a period not less than three (3) years following the later of (i) the date of Substantial Completion or (ii) the time required to resolve any items of incomplete Work and the payment of any disputed amounts.

§ 11.4.1.2 Bonds under this Section 11.5 must display the surety's bond number. A rider including substantially the following provisions shall be attached to each bond:

.1 Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other Modification of the Contract Documents, the Subcontracts and the Subcontracts. Any addition, alteration, change, extension of time, or other Modification of the Contract Documents, the Subcontracts or the Subcontracts, or a forbearance on the part of either the Owner, the Contractor or one or more Subcontractors to one or more of the others, shall not release the Surety of its obligations and notice to the Surety of such matters is hereby waived.

.2 Surety agrees that it is obligated under the bonds to any successor, grantee or assignee of the Owner or the Contractor.

§ 11.4.1.3 Each Subcontractor's surety shall also agree, in the form of a rider to each bond or via a separate agreement, that before it may seek exoneration, release, or any kind of relief from its obligations under the bond as a result of any default by the Owner or the Contractor in the performance of any obligations to the Subcontractor under the Subcontract, the surety shall cause written notice of such default (specifying said default in detail) to be given to the Owner and the Contractor, and both of them shall have thirty (30) days from time after receipt of such notice within which to cure such default or cause it to be cured, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured immediately. Such Notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to the Owner and the Contractor.

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§ 11.4.1.4 Each Subcontractor's Performance Bond and the Labor and Material Payment Bond shall each be "dual obligee" type bonds naming both the Owner and the Contractor as obligees.

§ 11.4.1.5 Each Subcontractor shall cause the attorney-in-fact who executes the required bonds on behalf of its surety to affix thereto a certified and current copy of his or her power of attorney indicating the monetary limit of such power.

§ 11.4.1.6 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement or any Subcontract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 11.4.1.7 The Contractor shall keep the sureties informed of the progress of the Work, and, without limiting the requirements of Section 11.5.1.2(1) above, where necessary, obtain the sureties' consent to, or waiver of: (i) notice of changes in the Work; (ii) request for reduction or release of retainage; (iii) request for Final Payment; and (iv) any other material required by the surety. The Owner shall be notified by the Contractor, in writing, of all communications with the surety requesting or pertaining to consents or waivers. The Owner may, in the Owner's sole discretion, inform sureties of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges and benefits pursuant to any bond issued in connection with the Work.

§ 11.4.1.8 The Contractor may, in its discretion, determine other members of the Construction Team who will be required to supply bonds. All such bonds shall be (i) purchased solely at the expense of the Contractor (or the persons supplying them), without reimbursement under the Contract Sum or Guaranteed Maximum Price or otherwise, and (ii) dual obligee bonds, naming the Owner as one of the obligees.

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

§ 11.5 PROJECT MANAGEMENT PROTECTIVE LIABILITY "WRAP-UP" INSURANCE

§ 11.5.1 The parties anticipate the possibility of implementing a Project Management Protective Liability "wrap-up" Insurance Program for the Work, either in the form of an Owner Controlled Insurance Program (OCIP) or a Contractor Controlled Insurance Program (CCIP) as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract; and agree to cooperate with one another in this respect and to participate in any such program in whatever manner may be appropriate to their role under the Agreement. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance. Any such program shall be incorporated into these General Conditions by written Modification signed by Owner, Architect and Contractor.

§ 11.5.2 To the extent damages are covered by Project Management Protective Liability "Wrap-up" Insurance Program, the Owner and Contractor waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

§ 11.5.3 The Owner shall not require the Contractor to include the Owner, Owner's Representative Consultant, or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.4.

§ 11.6 INSURANCE IN GENERAL

§ 11.6.1 Insurance coverage required under the Agreement shall be written with insurance carriers authorized to do business in the state where the Project is located. Insurance coverage shall be in a form and provided by an insurer acceptable to the Owner with an A.M. Best rating of A, XII or better and shall name the applicable member of the Construction Team as a "named insured", as opposed to an "additional insured".

§ 11.6.2 At the written request of the Owner to the Contractor, the Contractor shall provide to the Owner a copy of any insurance policy required herein within five (5) calendar days of such written request (or a binder if a policy is not yet available). If the Contractor fails to submit a copy of any insurance policy within five (5) calendar days of such written request or if the insurance is in form or insurer unacceptable to the Owner, Owner shall have the right, but not the obligation, to purchase insurance ("Replacement Insurance") in the name of the applicable member of the Construction Team. Upon purchase of Replacement Insurance the Owner shall issue and the Contractor shall execute a Change

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Order reducing the Contract Sum or Guaranteed Maximum Price by the cost of the Replacement Insurance. The Contractor shall furnish all necessary information to incept and maintain such Replacement Insurance.

§11.6.3 The Contractor's liability and indemnification obligations to the Owner under the Agreement shall not be relieved or diminished by securing insurance coverage in accordance with the Owner's requirements or by the Owner's acceptance of certificates of insurance or policies. Any acceptance of insurance coverage by the Owner shall not be construed as accepting in any way deficiencies in the insurance.

§ 11.6.4 Except as set forth in Section 5.3.1.1, the minimum insurance requirements specified in this Agreement apply to each member of the Construction Team.

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 Construction Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

If, within the stipulated warranty period in Section 5.3.2.11, 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.

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Owner and/or the Architect may reject defective or unsatisfactory Work. The Contractor shall promptly cause all Work rejected by the Owner and/or Architect, whenever observed prior to Final Completion, to be corrected without extension of the Construction Time or increase in the Contract Sum or Guaranteed Maximum Price and without use of any contingency. If any additional testing, inspections and compensation for the Architect's services and expenses are incurred because of corrective Work, the Contractor shall pay them promptly upon demand.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within the stipulated warranty period in Section 5.3.2.11 and after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall, without interfering materially with the Owner's facilities, personnel and operations, correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The 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. The Owner shall give such notice promptly after discovery of the condition. During the period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance

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with Section 2.4. 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.

§ 12.2.2.2 Upon completion of any Work under or pursuant to Section 12.2.2 the stipulated warranty period in Section 5.3.2.11 shall begin anew with respect to the Work requiring correction.

§ 12.2.2.3 (Intentionally Deleted)

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

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

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

§ 12.2.6 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.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents or otherwise defective, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum or Guaranteed Maximum Price will be reduced by an equitable amount which reflects the loss of value to the Owner caused by the Defective Work. Such adjustment shall be effected whether or not final payment has been made, and if it occurs after Final Payment is made, the Contractor shall immediately pay the Owner whatever sum is owed.

§ 12.4 OWNER'S RIGHT TO CORRECT OR REMOVE DEFECTIVE WORK

§ 12.4.1 If the Contractor fails to cause Defective Work to be corrected within a reasonable time after receipt of notice from the Owner, the Owner may correct it and the Contractor shall pay the Owner all costs of correction (including the value of the Owner's staff time) upon demand. Alternatively, in the event of such failure, the Owner may (without being deemed a bailee) remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting from the sale proceeds all costs, expenses and damages that should have been borne by the Contractor (including the value of the Owner's staff time and reasonable attorneys' fees). If the proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum or Guaranteed Maximum Price shall be reduced by the deficiency, plus Interest. If payments then or thereafter due the Contractor are not sufficient to cover the amount owed, the Contractor shall pay the difference to the Owner upon demand.

§ 12.4.2 The Owner's right to store and sell such Defective Work shall not give rise to a duty to do so. Instead, the Owner may upon ten (10) day's prior written notice simply dispose of such Defective Work as it sees fit. All costs of disposal shall be borne by the Contractor, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise.

§ 12.4.3 Periods of Limitation. Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations, which the Contractor might have under the Contract Documents or applicable law. Establishment of the Correction Period relates only to the specific obligation of the Contractor to correct the Work

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under this Article 12 and has no relationship to the time within which the obligation to comply with the Agreement may be sought to be enforced by the Owner, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations under the Agreement.

§ 12.4.4 The Owner's Right to Stop the Work. If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents as required by Section 12.2.2 or fails to carry out the Work in accordance with the Contract Documents, the Owner may, by written order, direct 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.

§12.5 DAMAGE

§ 12.5.1 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.

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

§ 12.5.3 Nothing in this Section 12.5 either limits the parties' rights to obtain recovery from any applicable property insurance or entitles the insurer to pursue a subrogation claim.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 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 such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

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

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§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

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

§ 13.5 TESTS AND INSPECTIONS

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

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

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense without increase in the Contract Sum or Guaranteed Maximum Price, and without use of any contingency.

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

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

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the prime interest rate as published in the Wall Street Journal on the first day of the month when owed payment become delinquent; however, shall not exceed twelve percent (12%) per annum.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by Applicable Law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 SUBMISSION TO PROCEEDINGS

§ 13.8.1 If the Owner is a party to any litigation or arbitration with respect to the Project involving a common question

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of law or fact (whether as plaintiff, defendant or third party defendant), the Contractor consents to being joined in such action and to the jurisdiction of the court in which the action is instituted (if the Contractor is named as a defendant or impleaded as a third-party defendant) and to service of process by that court; and the Contractor waives any right to contest its joinder in such action on the grounds of improper jurisdiction or venue.

§ 13.9 NO PERSONAL LIABILITY

§ 13.9.1 In carrying out any of the provisions of the Agreement, or in exercising any power or authority granted to them by or within the scope of the Agreement, there shall be no personal liability upon, and Architect, Contractor and Subcontractor waive any claim against, the members of the Owner's Board of Directors or any officers, employees, representatives of the Owner, or Owner Representation Consultant either personally or as public officials, it being understood that in all such matters they act solely as agents and representatives of the Owner.

§ 13.10 INTEGRATION

§ 13.10.1 The Contract Documents shall, if possible, be construed to render each of their provisions valid and enforceable. However, if any part, term or provision of the Contract Documents is held by the final judgment of any court of competent jurisdiction to be illegal, invalid or unenforceable, the validity of the remaining portions or provisions shall not be impaired or affected, and the rights and obligations of the parties shall be construed as having been written to include terms that are the maximum protection enforceable under law, and shall be enforced as if the Contract Documents did not contain the particular part, term or provision held to be illegal, invalid or unenforceable.

§ 13.11 THIRD-PARTY BENEFICIARIES

§ 13.11.1 Nothing contained in the Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Contractor. There are no third-party beneficiaries to the Agreement. However, it is understood and agreed that the Owner is and shall be designated an intended third-party beneficiary of all contracts for design or engineering services, Subcontracts, sub-subcontracts and other agreements between Contractor and third parties pertaining to the Work.

§ 13.12 NON-DISCRIMINATION EMPLOYMENT PROVISION

§ 13.12.1 During the performance of the Work, the Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their sex, race, creed, color, religion, age, height, weight, marital status, national origin, ancestry, sexual orientation, disability, or veteran status. Such action shall include, but not be limited to, the following: 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.

§ 13.12.2 The Contractor will, in all solicitations, or advertisements for employees, placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to sex, race, creed, color, religion, age, height, weight, marital status, national origin, ancestry, sexual orientation, disability, or veteran status.

§ 13.12.3 The Contractor will furnish all information and reports required by Applicable Law, and by the rules, regulations and orders of any government agency or authority having jurisdiction. The Contractor shall permit access to the Contractor's books, records, and accounts by the administrative agency and the Secretary of Labor for the purposes of investigation to ascertain compliance with such rules, regulations and orders.

§ 13.12.4 In the event of the Contractor's noncompliance with the non-discrimination clauses of the Contract Documents, or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for future Owner contracts in accordance with procedures authorized in Applicable Law, or by rule, regulation or order of any government agency or authority having jurisdiction.

§ 13.12.5 The Contractor will include the provisions of Sections 13.11.1 through 13.11.4 of this Article in every Subcontract or purchase order unless exempted by rules, regulations, or other orders of the President's Committee on Equal Employment Opportunity issued pursuant to Applicable Law, so that such provisions will be binding upon each Subcontractor. The Contractor will take such action with regards to any Subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance.

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Provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a Subcontractor as a result of such direction by the administering agency, the Contractor may request the United States of America to enter into such litigation to protect the interests of the United States of America.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor shall have the right to and may terminate the Contract only upon the occurrence of one of the following reasons:

.1 the Work is stopped for a period of one hundred twenty (120) consecutive days through no act or fault of the Contractor or any member of the Construction Team, due to an issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped, or an act of government, such as a declaration of national emergency making material unavailable;

.2 Upon no less than seven (7) days' written notice of intent to suspend or terminate, Contractor may suspend Work or terminate the Agreement for the Owner's nonpayment of Contract amounts due in accordance with this Agreement where (i) the Owner has failed to make payment within thirty (30) days after receiving written notice of such nonpayment from Contractor; (ii) the Owner has failed to timely object to the unpaid portion of a properly submitted payment request by the Contractor setting forth the reasons for its objection; and (iii) the Owner has also failed to pay the Contractor undisputed amounts properly submitted and approved for payment. Otherwise, in the event of a dispute as to payment or otherwise, the Contractor shall be obligated to continue its performance and shall have the right, but not the obligation, to immediately submit the dispute to arbitration pursuant to the Rules of the American Arbitration Association.

.3 In the event Contractor believes Owner is in material breach of this Agreement for reasons other than nonpayment, the Contractor, if the material breach shall continue for thirty (30) days after written notice thereof shall have been given by the Contractor to Owner, may suspend work or terminate this Agreement where (i) the Owner has failed to remedy or take reasonable measures to remedy the breach after receiving written notice of such breach from the Contractor; (ii) the Owner has failed to timely object to the Contractor's allegations of material breach setting forth the reasons for its objections; and (iii) the breach is ongoing. Otherwise, in the event the breach is disputed, the Contractor shall be obligated to continue its performance and shall have the right, but not the obligation, to immediately submit the dispute to Arbitration pursuant to the Rules of the American Arbitration Association.

.4 Repeated suspensions by the Owner, other than such suspensions as are agreed to by the Contractor, which constitute in the aggregate more than one hundred eighty (180) days.

§ 14.1.2 Upon the occurrence of one of the events listed in Section 14.1.1, the Contractor may, upon ten (10) days' additional written notice to the Owner, and provided that the condition giving rise to the Contractor's right to terminate is continuing, terminate the Agreement.

§ 14.1.3 Upon termination by the Contractor, the Owner will pay to the Contractor the sum determined by Section 14.4.3. Such payment will be the sole and exclusive remedy to which the Contractor is entitled in the event of termination of the Agreement by the Contractor pursuant to Section 14.1; and the Contractor will be entitled to no other compensation or damages whatsoever as a result of the termination of the Agreement and expressly waives any right to claim them.

§ 14.1.4 (Intentionally Deleted)

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Agreement may be terminated by Owner for cause without prejudice to any right or remedy available to Owner under the Contract Documents or at law or in equity after giving the Contractor and the surety, if any, seven (7) days' written notice provided that Contractor fails to take appropriate steps within such seven-day period to cure or if the default is of a nature that it cannot be cured immediately, commence, within 7 days, a cure of the cause for termination and diligently pursue it to completion, provided however that additional time to cure shall not exceed an additional 30 days. Reasons for termination for cause may include:

.1 the Contractor institutes proceedings or consents to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable federal or state law ;

.2 a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing;

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.3 the Contractor admits in writing its inability to pay its debts generally as they become due;
.4 the Contractor makes a general assignment for the benefit of its creditors;
.5 a receiver, liquidator, trustee or assignee is appointed because of the Contractor's bankruptcy or insolvency;
.6 a receiver is appointed for all or any substantial portion of the Contractor's properties;
.7 the Contractor abandons the Work;
.8 the Contractor fails to promptly and diligently perform the Services, or the Work is not prosecuted diligently in accordance with the requirements of the Contract Documents, or enough properly skilled workers or proper materials are not supplied for the Work;
.9 the Contractor submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is untrue in any material respect;
.10 the Contractor fails to make prompt payment of amounts properly owing to Subcontractors, or otherwise breaches its obligations under any Subcontract or the Agreement;
.11 a Lien is claimed against any part of the Work or the Project Site by a member of the Construction Team, other than by reason of Owner's failure to pay Contractor amounts to which it is entitled under the Agreement, and not promptly bonded or insured over by the Contractor;
.12 the Contractor disregards or violates any Applicable Laws;
.13 any representation made by the Contractor in the Agreement proves untrue, or the Contractor otherwise violates any provision of the Agreement;
.14 the Contractor persistently fails to comply with the requirements of the Contract Documents; or
.15 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When the Owner terminates the Contract for one of the reasons stated in 14.2.1, 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 (7) days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until final completion of the Work and determination of the sums due pursuant to Section 14.2.5 below.

§ 14.2.4 If requested by the Owner following a termination for cause, the Contractor shall remove any part or all of its equipment, machinery and supplies from the Project Site within seven (7) days from the date of such request, and in the event of the Contractor's failure to do so, Owner shall have the right to remove or store such equipment, machinery and supplies at the Contractor's expense.

§ 14.2.5 If the unpaid balance of the Contract Sum or Guaranteed Maximum Price exceeds all costs to the Owner of completing the Work, including increased costs resulting from Contractor's default for the Owner's staff time, then the Contractor shall be paid for all Work performed by the Contractor to the date of termination, but in no case shall the amount paid to the Contractor cause the Contract Sum or Guaranteed Maximum Price to be exceeded. If the costs to the Owner of completing the Work exceed such unpaid balance, the Contractor shall pay the difference, plus Interest, to the Owner within thirty (30) days after the Owner's demand. The costs to the Owner of completing the Work shall include (but only to the extent caused or exacerbated by the Contractor's default) the cost of any additional architectural, legal, managerial, and administrative services required, any costs incurred in retaining another Contractor or other Subcontractors, any additional interest or fees which Owner incurs or must pay by reason of a delay in completion of the Work, attorneys' fees and expenses, and any other damages, costs, and expenses Owner may incur by reason of completing the Work.

§ 14.2.6 If the Agreement is terminated by Owner, Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of Owner, for any equipment owned by the Contractor which Owner elects to retain and which is not otherwise included in the Contract Sum or Guaranteed Maximum Price. To the extent that Owner

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elects to take legal assignment of Subcontracts (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in Section 14.2.5, execute and deliver all such papers and take all such steps, including the legal assignment of such Subcontracts, as Owner may require for the purpose of fully vesting in Owner the rights and benefits of the Contractor under such Subcontracts.

§ 14.2.7 If the Owner erroneously or improperly terminates the Contractor for cause, then the Owner's action shall be deemed to be a termination for convenience, subject to the provisions of 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, postpone, delay or interrupt the Work in whole or in part for such period of time as Owner may determine (a "Suspension"). In the event of any Suspension, the Owner shall have the right, in its discretion, upon written notice to the Contractor, to keep the Agreement in effect during the period of such Suspension; provided, however, that if the Suspension equals a period of seven (7) days, the Contractor shall be reimbursed for the actual out-of-pocket costs incurred by the Contractor or its Subcontractors directly as a result of such Suspension (such as reasonable demobilization and remobilization costs), and an appropriate extension of the Construction Time shall also be granted. If the Work is suspended for a period of more than ninety (90) days, the Contractor may terminate the Agreement in accordance with Section 14.1

§ 14.3.2 The Contract Sum and Construction Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. No adjustment shall be made to the extent

- **.1** that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- **.2** that an equitable adjustment for any particular cost 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 specifically set forth above, no Suspension shall give rise to any cause of action or claim against the Owner for damages, loss of profits, expenses or other remuneration of any kind.

§ 14.3.5 Notwithstanding any other provisions of the Agreement, if, such Suspension arose on account of the Contractor's failure to fulfill the Contractor's obligations under the Agreement or on account of any other fault of any member of the Construction Team, the Owner may withhold payment of so much of any monies which otherwise may be payable to the Contractor under the Contract Documents as will be sufficient to pay for the costs or damage that the Owner will suffer, and the Contractor shall not be entitled to any recovery on account of the Suspension. Such monies may be applied toward any damages or expenses sustained by the Owner as a result of such failure including, without limitation, any excess costs incurred by the Owner in completing the Work by the use or employment of other licensed professionals or otherwise. The Contractor shall remain liable to the Owner for all such damages and expenses in excess of any such monies being withheld by the Owner. The failure of the Owner to withhold monies from the Contractor shall not be construed as an acknowledgment by the Owner that no such damages or expenses exist and shall not prevent the Owner from thereafter making any claim against the Contractor therefor.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract in whole or in part 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 written notice from the Owner of such termination for the Owner's convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Section:

- **.1** cease operations as directed by the Owner in the notice and deliver to the Owner the originals or legible copies of all Drawings, Specifications, reports and other data, records and materials in the Construction's Manager's custody and control pertaining to the portion of the Work for which the employment of the Contractor was terminated;

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.2 enter into no additional Subcontracts, except as necessary to complete continuing portions of the Contract;

.3 terminate, on the most favorable terms possible, all Subcontracts to the extent they relate to the Work terminated ;

.4 complete the performance of Work not terminated; and

.5 take actions that may be necessary or that the Owner may direct, for the protection and preservation of the terminated Work and of materials, plant and equipment in transit or stored.

§ 14.4.3 Upon such termination, the Owner shall pay, and the Contractor, as its sole remedy, may recover payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination, for items theretofore properly and timely fabricated off the Project Site, delivered and stored in accordance with the Owner's instructions, and for any actual out-of-pocket costs it incurs in complying with Section 14.4.2, such as reasonable demobilization costs. The Contractor hereby waives all other claims whatsoever against Owner based on the termination.

§ 14.4.4 In any recovery by the Contractor, the Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims which the Owner has against the Contractor under the Agreement and (iii) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor.

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, 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.

§ 15.1.1.1 Changes in Law. If changes in ordinances, laws, requirements, or regulations or changes (which could not reasonably have been anticipated prior to the execution of the Contract) in judicial or agency interpretations of such ordinances, laws, requirements or regulations occur after execution which require an alteration of the Work or otherwise may result in a price or time impact, Contractor shall so notify Owner in writing consistent with Section 15.1.4 and comply with the procedures set out therein. Changes in the following areas of law are deemed to be within the scope of the Work hereunder and shall not be the basis for any change in price or time: requirements affecting the use or handling by Contractor of toxic or hazardous materials, Occupational Safety and Health Act requirements relating to Contractor's prosecution or conduct of the Work during the Project, or laws or requirements relating to operation of the business of construction contracting, engineering, or equipment manufacturing, or taxes affecting any such business.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party with a copy sent to the Architect. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later except as provided in Sections 7.5.1, 8.3.2 and 8.4.2.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

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§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Construction Time, written notice shall be given pursuant to Section 8.3.2. 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.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be made and governed by the provisions of Section 8.3.2 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.

§ 15.1.6 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 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

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

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

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (i) be in writing; (ii) state the reasons therefor; and (iii) 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 Construction Time or both. The initial decision shall be final and binding

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on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

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

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

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

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

§ 15.3 MEDIATION

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

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

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

§ 15.4 ARBITRATION

Excepting claims waived as provided for in Sections 9.10.4 and 9.10.5, only those Claims that the Owner agrees in writing to arbitrate shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Article 15.3.

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

§ 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.

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§ 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 The Owner, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (i) the arbitration agreement governing the other arbitration permits consolidation, (ii) the arbitrations to be consolidated substantially involve common questions of law or fact, and (iii) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 The Owner, at its sole discretion, may elect that any and all arbitration arising out of or relating to this Contract shall include by consolidation, joinder or joint filing any additional person or entity not a part to the Contract between the Owner and Contractor to the extent necessary to the final resolution of the matter under Claim , provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

[end of AIA Document A201-2007]

TEMPLATE

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