



# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

**for the following PROJECT:**

*(Name and location or address)*

Liberty Place Knoxville LP  
0 Division Street  
Knoxville, TN 37919

**THE OWNER:**

*(Name, legal status and address)*

Western Heights LP  
901 N. Broadway St.  
Knoxville, TN 37917

**THE ARCHITECT:**

*(Name, legal status and address)*

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**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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

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*(Paragraphs deleted)*

## **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, including the Guaranteed Maximum Price Amendment (hereinafter the Agreement). A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### **§ 1.1.2 The Contract**

The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 The Work**

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

#### **§ 1.1.4 The Project**

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

#### **§ 1.1.5 The Drawings**

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

#### **§ 1.1.6 The Specifications**

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

#### **§ 1.1.7 Instruments of Service**

Instruments of Service are the Drawings, Specifications and other documents or 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, or other design professionals, to describe and define the Work. Instruments of Service might include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 Initial Decision Maker**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

#### **§ 1.1.9 CONTRACTOR PARTIES**

As used in the Contract Documents, the term "Contractor Parties" means and includes the Contractor, its Subcontractors, Sub-subcontractors (each as defined in Article 5 below), and suppliers, and anyone directly or

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indirectly employed, retained or contracted by any of them or anyone for whose acts any of them is responsible or liable.

#### **§ 1.1.10 LAWS**

As used in the Contract Documents, the terms "Law" and "Laws" mean and include all federal, state and local laws, statutes, codes, ordinances, orders, rules, regulations and requirements, which have been duly authorized and are currently in effect or hereinafter enacted, including judicial opinions and precedential authority in the applicable jurisdiction, and all environmental laws and all rules and regulations relating to life safety and the Americans with Disabilities Act, that are applicable to the Contractor Parties, the Contract, the Work and the Project.

#### **§ 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 performance and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

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

#### **§ 1.2.4 DISCREPANCIES AND CONFLICTS**

Except as otherwise specifically set forth in the Agreement, in the event of a discrepancy or conflict within or between any of the Contract Documents, the following Contract Documents take precedence and apply in the following order:

- .1 the Agreement and these General Conditions;
- .2 unless otherwise stated in the Specifications, the Specifications govern over Drawings;
- .3 Drawings of larger scale govern over those of smaller scale;
- .4 figured dimensions shown on a Drawing govern even though they differ from dimensions scaled on the Drawing;
- .5 descriptive writings govern over legends indicating material or conditions; and
- .6 the provision or interpretation resulting in the greater quantity and quality of Work or materials shall prevail.

#### **§ 1.3 Capitalization**

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

#### **§ 1.4 Interpretation**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. When used in the Contract Documents, unless the context clearly dictates otherwise, the singular includes the plural, and vice versa, and the disjunctive "or" includes the conjunctive "and," and vice versa.

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

**§ 1.5.1** The Instruments of Service, including the Drawings and Specifications, are the property of their respective owners, who retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in

connection with the Project is not to be construed as publication in derogation of any copyrights or other reserved rights.

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

#### § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, or by reputable overnight delivery service providing proof of delivery (e.g., FedEx, UPS, DHL).

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by reputable overnight delivery service providing proof of delivery (e.g., FedEx, UPS, DHL).

§ 1.6.3 For any written notice given under the Contract Documents to be deemed duly served on and received by the Owner, such notice must also be timely given, by one of the methods set forth in Sections 1.6.1 or 1.6.2, as applicable, to the following:

Executive Director/CEO  
Knoxville's Community Development Corporation  
P. O. Box 3550  
Knoxville, Tennessee 37927-3550

#### § 1.7 Digital Data Use and Transmission

The parties may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

*(Paragraphs deleted)*

### 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 designated representative, as appropriate. The term "Owner Parties" means the Owner, Knoxville's Community Development Corporation, and each of their officers, directors, managers, governors, members, partners, general partners, limited partners, shareholders, agents, employees, and affiliated entities of any of them, and any lenders to the Owner with a financial interest in the Project.

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

#### § 2.2 Evidence of the Owner's Financial Arrangements

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

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially increases the Contract Sum. If the Owner fails to provide such evidence, without providing a reason, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately.

§ 2.2.3 Intentionally omitted.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by Law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order.

### § 2.3 Information and Services Required of the Owner

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

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

§ 2.3.3 If the employment of the Architect terminates, the Owner may employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 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 reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness so as not to delay the progress of the Work. 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 so as not to delay the progress of the Work after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. At the Contractor's request, the Owner may furnish the Contract Documents in electronic form. The Contractor acknowledges that discrepancies might exist between the printed and sealed Contract Documents and the electronic versions, and that, in such event, the printed and sealed documents shall control.

### § 2.4 Owner's Right to Stop the Work

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



## § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a 48-hour period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect by whatever reasonable method the Owner deems expedient. Upon such action by the Owner, the Owner or Architect may, pursuant to Section 9.5.1, withhold or nullify a payment or Certificate for Payment, in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner upon demand. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## 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's designated representative shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's designated representative, as appropriate.

§ 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 its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 As an inducement for the Owner to enter the Contract, the Contractor represents, warrants, and agrees that:

- .1 it is financially solvent and able to pay all debts as they mature, and it possesses sufficient working capital to complete the Work, pay all costs associated therewith, and timely and fully perform all obligations in the Contract Documents;
- .2 it is able to provide the services, plant, tools, materials, supplies, equipment, labor, and other items required to complete the Work and timely and fully perform its obligations in the Contract Documents;
- .3 it is authorized to do business in the state, county and city in which the Project is located, and it is properly licensed or registered as necessary by or with all governmental and public and quasi-public authorities having jurisdiction over the Contractor, the Work, and the Project
- .4 it is not listed on the electronic roster of debarred companies ineligible to receive federal contracts, as set forth in the System for Award Management (<https://www.sam.gov/SAM>); and
- .5 it possesses a high level of experience, expertise, and competence in the business of administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this Project, and will perform the Work with the care, skill, and diligence of such a contractor.

§ 3.1.5 The Contractor is an independent contractor and is not an employee, agent, representative, or servant of the Owner Parties or Architect. The Contract Documents do not establish an employer-employee relationship between the Owner and Contractor. All amounts the Contractor is required to pay its workers and employees in any jurisdiction, including compensation and benefits, are the sole responsibility of 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 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 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. The Contractor is responsible for ascertaining correct dimensions and materials, and shall not ascertain dimensions by scaling drawings. These obligations are for the purpose of facilitating coordination and construction by the Contractor and for

the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents that could affect constructability or the Contractor's performance. The Contractor shall, before proceeding with any portion of the Work affected thereby, promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor, as a request for information in such form as the Architect may require. 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 any applicable standards or Laws, but the Contractor shall, before proceeding with any portion of the Work affected thereby, promptly report to the Architect and Owner any such 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 intends to seek additional cost or time because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to any applicable standards or Laws.

### **§ 3.3 Supervision and Construction Procedures**

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

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor Parties, and all other persons or entities performing portions of the Work for, or on behalf of, any of the Contractor Parties.

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

**§ 3.3.4** The Contractor shall review all specified or recommended construction and installation procedures applicable to the Work, including those recommended by manufacturers and suppliers, and shall promptly report to the Owner and Architect any objections the Contractor has to such procedures and advise the Owner and Architect if any procedure deviates from good construction practice or might adversely affect or invalidate any warranty or guarantee.

### **§ 3.4 Labor and Materials**

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

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor Parties. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Upon the Owner's request, the Contractor shall immediately remove from the Project any person the Owner considers to be incompetent or disposed to be disorderly, or for any other reason unsatisfactory or undesirable to the Owner, and that person shall not again be employed on the Project without the written consent of the Owner.

### § 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 anyone other than the Contractor Parties, including abuse, alterations to the Work, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other warranties and guarantees required by the Contract Documents or otherwise applicable to the Work shall be issued in the name of the Owner, or shall be transferred or assigned to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall ensure that such warranties and guarantees are freely assignable by the Owner in the same manner as the Contract under Section 13.2. The Contractor shall perform the Work in a manner that does not adversely affect or invalidate any warranties or guarantees. The Contractor shall include a provision similar to this Section 3.5 in all contracts with Subcontractors and suppliers, and require that all Subcontractors and suppliers include a similar provision in all contracts with Sub-subcontractors.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. All tax savings shall be retained by, returned to, or otherwise benefit the Owner.

### § 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 performance and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor Parties and the Work shall comply with and give all notices required by applicable Laws.

§ 3.7.3 If any of the Contractor Parties 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.

### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. If the Contractor suspends any operations or is delayed or impacted based on such concealed or unforeseen conditions, the Contractor shall provide immediate written notice to the Owner and Architect. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment, if requested and appropriate, be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents or that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.



§ 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 immediately shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take action to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner in writing but shall continue with all other operations that do not affect those remains or features. Any requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features shall be made as provided in Article 15.

### § 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes;
- .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, and the Owner has given prior written approval to incur such costs if they are more than the allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness so as not to delay the progress of the Work.

### § 3.9 Superintendent, Project Managers, and Key Employees

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

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

§ 3.9.3 The Contractor shall not employ a proposed superintendent, project manager or other personnel to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not remove, change, or replace any superintendent, project manager, or other key employee, or reassign such personnel to other projects in a manner that affects their ability to perform their duties on the Project, without the Owner's prior written consent, which shall not unreasonably be withheld or delayed. In the event any employee, agent, or consultant of any of the Contractor Parties fails to properly perform or otherwise hinders the Project's progress, the Contractor shall replace such person or entity as reasonably requested by the Owner in writing.

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's approval a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. Upon notice to and written consent of the Owner and Architect, the schedule may be revised at appropriate intervals as required by the conditions of the Work and Project.

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

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

### § 3.11 Documents and Samples at the Site

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

### § 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

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

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

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

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

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Owner's or Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific

deviation as a minor change in the Work, (2) a Change Order authorizes the deviation, or (3) a 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 Owner's or Architect's approval thereof.

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

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

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents, but shall promptly notify the Owner and Architect upon its discovery of any inadequacy in such criteria. The Contractor shall cause such services or certifications to be provided by an appropriately licensed or registered design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable Laws and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. If there are ongoing operations of the Owner at the site, the Contractor shall conduct the Work in a manner that minimizes or eliminates any adverse impact on the operations.

### **§ 3.14 Cutting and Patching**

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

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

### **§ 3.15 Cleaning Up**

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

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the Project. The Contractor shall be responsible for all fines and penalties assessed by authorities having jurisdiction over the Project related to clean up at or around the site, including but not limited to fines and penalties assessed for tracking mud onto public roadways.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents or as otherwise directed by the Owner, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor upon demand, or a deduction in any amounts owed to the Contractor.

#### **§ 3.16 Access to Work**

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

#### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify hold the Owner and Architect harmless from loss and expense (including attorneys' fees) on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, it shall promptly notify the Owner and Architect, and the Contractor shall be responsible for all resulting loss and expense (including attorneys' fees) unless the information is promptly furnished to the Owner and Architect.

#### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by Law, the Contractor shall defend, indemnify and hold harmless the Owner Parties, Architect, Architect's consultants, and agents and employees of any of them (collectively the "Indemnified Parties") from and against all claims, damages, losses, liabilities and expenses, including but not limited to attorneys' and experts' fees and expenses, arising out of, in connection with, or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of any of the Contractor Parties, regardless of whether or not such claim, damage, loss, liability or expense is also caused in part (but not solely) by any of the Indemnified Parties. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of defense or indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In all claims, demands, and suits against any of the Indemnified Parties by an employee of any of the Contractor Parties, the defense and indemnification obligations 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 any of the Contractor Parties under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**§ 3.18.3** If any defense or indemnity obligation of the Contractor under this Section 3.18 or elsewhere in the Contract is held to be unenforceable, the Contractor shall defend, indemnify and hold harmless the indemnified persons and entities to the fullest extent permitted by Law. Further, the Contractor's liability resulting from its defense and indemnity obligations under the Contract is not limited or affected in any way by insurance coverage.

### **ARTICLE 4 ARCHITECT**

#### **§ 4.1 General**

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

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

#### **§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The

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Architect will have authority to act on behalf of the Owner only to the extent provided in the agreement between the Owner and the Architect.

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

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

#### § 4.2.4 Communications

The Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review the amounts due the Contractor and will issue Certificates for Payment in such amounts as the Architect determines are properly due, or notify the Owner in writing of the Architect's reasons for withholding certification in whole or in part.

§ 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 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner or Architect to any of the Contractor Parties. The Architect must advise and obtain the consent of the Owner prior to rejecting any Work and prior to requiring any inspection or testing 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 Owner and Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the

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Owner, for the Owner's review and records, written warranties, manuals, and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

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

§ 4.2.12 Interpretations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations, 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 rendered in good faith.

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

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

## ARTICLE 5 SUBCONTRACTORS AND SUPPLIERS

### § 5.1 Definitions

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

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect (at any tier) 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.

§ 5.1.3 The term "supplier" means a person or entity who has a direct or indirect (at any tier) contract with the Contractor to provide materials, equipment, tools, construction equipment, machinery, water, heat, utilities, transportation or any other items or facilities in connection with the Work, and no labor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. The Contractor shall disclose the existence and extent of any financial interest, whether direct or indirect, it or any of its principals or employees has in Subcontractors or Sub-subcontractors it proposes for the Project. If requested, the Contractor also shall furnish evidence satisfactory to the Owner showing that a proposed Subcontractor or Sub-subcontractor is competent, qualified, able, legally authorized, and properly licensed or registered, if necessary, to perform its portion of the Work. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity listed on the electronic roster of debarred companies ineligible to receive federal contracts, as set forth in the System for Award Management (<https://www.sam.gov/SAM>), that is not competent, qualified, able, legally authorized, and properly licensed or

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registered, if necessary, to perform its portion of the Work, or to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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

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

**§ 5.2.5** Upon request, the Contractor shall provide the Owner copies of its contracts with Subcontractors, Sub-subcontractors and suppliers.

### **§ 5.3 Subcontractual Relations**

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

### **§ 5.4 Contingent Assignment of Subcontracts**

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

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's subsequent rights and obligations under the subcontract. Assignment does not relieve the Contractor of its obligations under the assigned subcontract or the Contract Documents.

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

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

§ 6.1.2 Intentionally omitted.

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

§ 6.1.4 Intentionally omitted.

### § 6.2 Mutual Responsibility

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

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

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of any of the Contractor Parties' delays, improperly timed activities or defective construction. If a Claim has been asserted in accordance with Article 15, the Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

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

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

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible, and the Contractor shall be responsible for such costs allocated to it.

## 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, only 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 written 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. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

## § 7.2 Change Orders

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

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

## § 7.3 Construction Change Directives

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

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

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

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

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall furnish an itemized estimate and keep and present, in such form as the Architect may prescribe, an itemized accounting of actual costs together with appropriate supporting data. Such estimates and accountings shall itemize services, labor, materials, equipment and all agreements to provide any significant portion of the Work. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following costs that are directly attributable to the change:

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

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



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

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, plus an amount for overhead and profit as set forth in Section 7.3.4. When both additions and credits covering related Work or substitutions are involved in a change, the amount for overhead and profit shall be figured on the basis of net cost decrease or 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, amounts not in dispute for such changes in the Work shall be included in Applications for Payment if accompanied by a Change Order indicating the parties' agreement with respect to such costs. For any portion of such costs that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

#### § 7.4 Minor Changes in the Work

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

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

§ 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 stated.

#### § 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date(s) of any insurance or bonds required to be furnished by the Contractor and Owner.



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

### § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by a Construction Change Directive; (3) by labor disputes, fire, unusual delay in deliveries by a party other than a Contractor Party, unavoidable casualties, or other causes beyond any of the Contractor Parties' control, including terrorism, war, acts of God, epidemics or pandemics; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Owner and Architect determine, justify delay (provided such delay is not caused in part by any of the Contractor Parties), then the Contract Time shall be extended by the amount of time such cause will delay Substantial Completion, as the Architect may determine. The Contractor's sole remedy for any such excusable delay shall be an extension of the Contract Time by Change Order, along with the Contractor's documented increase in actual general conditions costs directly attributable to such excusable delay. The Contractor shall have no other right to claim any other damages for delay, including but not limited to, any delay, acceleration, impact or other damages arising out of any delay, however caused.

§ 8.3.1.1 Except as otherwise set forth in the Contract, no extension of time shall be granted because of seasonal or normal variations in temperature, humidity or precipitation, which conditions shall be wholly at the risk of the Contractor, whether occurring within the time originally scheduled for completion or within the period of any extension granted.

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

*(Paragraph deleted)*

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. If the Agreement is based on a Guaranteed Maximum Price, the term "Contract Sum," as used in this AIA Document A201-2007, means "Guaranteed Maximum Price," except as used in Sections 9.1, 9.4.2 and 14.2.4.

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

### § 9.2 Schedule of Values

Unless previously agreed to and attached as an exhibit to the Agreement, the Contractor shall submit a schedule of values to the Owner and Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work, including but not limited to a specific line item for the Contractor's general conditions costs. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner and Architect. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any requested changes to the schedule of values shall be submitted to the Owner and Architect and supported by such data to substantiate its accuracy as the Owner and Architect may require.

### § 9.3 Applications for Payment

§ 9.3.1 On or before the day set forth in the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, as required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of invoices, requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives.

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

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

§ 9.3.4 With each Application for Payment, the Contractor shall submit to the Architect and Owner lien waivers, in form and substance required by the Owner, from itself and all Subcontractors, Sub-subcontractors, and suppliers, releasing and waiving all payment and lien claims against the Owner and the Project associated with all Work performed by the Contractor Parties for each period of time for which the Owner has previously made payment, and any similar documents and information the Owner reasonably requests. The Owner's receipt of these lien waivers, documents, and information is a condition precedent to the Owner's obligation to make progress payments to the Contractor.

#### § 9.4 Certificates for Payment

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

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

#### § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, as 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 the whole or part of a Certificate for Payment or,

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because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, as 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 asserted or reasonable evidence indicating probable assertion of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment, or to furnish satisfactory evidence of payment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time;
- .7 failure of the Contractor to comply with any Laws; or
- .8 failure to carry out the Work in accordance with, or any other failure to comply with, the Contract Documents.

Even if the Architect certifies a payment, the Owner may withhold all or part of a payment, and may also set-off any amounts due the Contractor under this Contract or otherwise, for any of the reasons set forth in this Section 9.5.1.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment, or the Contractor disputes the Owner's decision regarding a payment, under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, or if the Owner reasonably believes it is necessary, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

## **§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, unless the Owner reasonably disputes such certification and withholds payment under Section 9.5.1 and notifies the Contractor and Architect in writing of the reason therefor, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

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

**§ 9.6.3** Intentionally omitted.

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

**§ 9.6.5** The Contractor's and Subcontractors' payments to Sub-subcontractors and suppliers shall also be treated as provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

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

§ 9.6.8 If any liens are at any time asserted or recorded against the Project as a result of activities of any of the Contractor Parties or any other person or entity making a claim by reason of having provided Work, and if the Contractor is owed and has been paid for the Work for which the lien is asserted or recorded, the Contractor, at its sole expense, shall promptly take and diligently prosecute appropriate action to have the lien discharged within 15 days after it is asserted or recorded, or any lesser period necessary to prevent judgment, execution, or foreclosure of the lien. If the Contractor fails to do so, the Owner may take any action reasonably necessary to protect its interests, including payment or settlement of the lien and any related legal action, and the Contractor shall reimburse the Owner, or the Owner may deduct from amounts it owes the Contractor under this Contract or otherwise, any amounts and damages the Owner pays or incurs, including attorneys' fees and expenses. Provided the Contractor is owed the amount at issue and the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all claims, losses, liabilities, damages and expenses, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. If permitted by Law, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

#### § 9.7 Failure of Payment

Subject to the Owner's and Architect's rights to withhold payment and certification of payment as set forth in 9.5.1, if the Architect does not issue a Certificate for Payment, through no fault of any of the Contractor Parties, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within 30 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' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

#### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and Laws so that the Owner can legally and practicably occupy and utilize the Work for its intended use. In addition to all other requirements in the Contract Documents, the Work shall not be considered to have reached Substantial Completion until all required inspections, permits, approvals, and certificates have been made and obtained from all applicable public authorities, including receipt of a Certificate of Occupancy, all Project systems included in the Work are operational as designed and specified, and all finishes required by the Contract Documents are in place.

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

§ 9.8.3 Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete, and may revise the Contractor's list. If the inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can legally and practicably occupy and 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 Owner or Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner and 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; establish responsibilities of the

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Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the Owner's comprehensive punch 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 or the Contract Documents.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Unless otherwise provided in the Contract Documents, upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof, less such amounts necessary to protect the Owner with respect to (1) those portions of the Work that remain incomplete or are otherwise not in accordance with the requirements of the Contract Documents, and (2) unsettled Claims.

**§ 9.8.6** If an inspection requested by the Contractor reveals that Substantial Completion has not been achieved, the Contractor shall pay for additional inspections at the Architect's standard hourly rate in effect at the time of inspection, at no expense to the Owner.

### **§ 9.9 Partial Occupancy or Use**

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

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

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

### **§ 9.10 Final Completion and Final Payment**

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

**§ 9.10.2** In addition to any other requirements for final payment or release of retainage in the Contract Documents or required by Law, neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) assignment to the Owner of, and all information on, all warranties and guarantees, such as manufacturers' warranties and Subcontractor and supplier warranties and guarantees, (6) delivery to the Owner of all operating, servicing, maintenance and cleaning instructions for the Work, and all parts lists, equipment manuals and special tools for mechanical and electrical components of the Work, (7) all



required approvals by any applicable public authority, (8) any other items required of the Contractor by the Contract Documents, and (9) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner or necessary under the then existing mechanic's liens or similar laws or other Law. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor, at the Owner's option, shall furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund or otherwise pay to the Owner all money that the Owner pays in discharging or defending against the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

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

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

**§ 9.10.6** The Contractor shall achieve final completion of the Work, which includes completion and correction of all items on the Owner's comprehensive punch list referred to in Section 9.8.4 and performance of all other obligations to be performed prior to final payment, no later than 30 days following the date of Substantial Completion.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

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

### **§ 10.2 Safety of Persons and Property**

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

- .1 employees on the Work and other persons who might 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 any of the Contractor Parties; 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 bearing on safety of persons or property or their protection from damage, injury, or loss. The Contractor shall promptly notify the Owner and Architect of any damage, injury, or loss to persons or property of the type referred to in Section 10.2.1.

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

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the safeguards. The Contractor shall provide all facilities and follow all procedures required by occupational or employment safety, security, health, and hygiene provisions or regulations, including but not limited to providing protective gear and equipment.

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

**§ 10.2.5** Unless the Owner or Architect instructs otherwise, the Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by any of the Contractor Parties. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed, retained, or contracted by either of them, or by anyone for whose acts either of them is liable, and not attributable to the fault or negligence of any of the Contractor Parties. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. If the party intends to make a Claim related to the injury or damage, it shall make the Claim in accordance with Section 15.1.

**§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with all Laws, standards, handling criteria, and requirements included in the Contract Documents regarding hazardous wastes, materials, and substances, including asbestos-containing materials, lead-based paints, petroleum (or any constituent thereof), mold, radon, and polychlorinated biphenyl (PCB), (hereinafter "Hazardous Materials") in performing the Work. Unless specifically consented to by the Owner in writing or specifically required by the Contract Documents, no underground or above-ground storage tanks or drums shall be placed on the site, and no Hazardous Materials shall be brought onto the site, handled on the site, or otherwise incorporated into the Work by any of the Contractor Parties. If the Contractor encounters any material or substance that could be a Hazardous Material, the Contractor shall immediately (1) stop Work in the affected area until receipt of written notification from the Owner that Work shall proceed, (2) notify the Owner and Architect of the condition in writing and consult and cooperate with the Owner with respect to the Owner's investigation and response, and (3) take all reasonable precautions to prevent or contain the movement, spread, and disturbance of the suspected Hazardous Materials, and to protect all persons and property.

**§ 10.3.2** Upon receipt of the Contractor's notice of the presence of potential Hazardous Materials, the Owner shall obtain the services of an environmental consulting firm or asbestos abatement or lead-based paint contractor, as appropriate, to verify the presence or absence of the material or substance reported by the Contractor and, in the event any Hazardous Materials are found to be present, to investigate, document, and remediate the condition as required by Law. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of such environmental consulting firm or asbestos abatement or lead-based paint contractor(s). The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has a reasonable objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been investigated and, if necessary, remediated, abated or contained as required by Law, or the appropriate governmental approvals have been obtained, Work in the affected area shall resume upon the Owner's written notification to the

Contractor. If the Contractor did not breach this Section 10.3, and so requests in writing, to the extent attributable to the presence of potential Hazardous Materials, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by Law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance identified by the Contractor in accordance with this Section 10.3 presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents and the Contractor complies with all obligations under this Section 10.3. The Contractor shall remove and properly dispose of any and all materials and substances used in performing the Work, including chemical substances, lubricants, empty containers, contaminated materials, and any other (rags, gloves, mops, etc.).

**§ 10.3.5** To the full extent permitted by Law, the Contractor shall defend, indemnify and hold harmless the Owner Parties from and against all claims, damages, losses, liabilities, and expenses, including attorneys' fees and expenses, arising out of or resulting from any Hazardous Materials brought to the site and negligently handled by any of the Contractor Parties, or the Contractor's failure to comply with any requirement of this Section 10.3, including any and all governmentally mandated removal or cleanup of any such Hazardous Materials.

**§ 10.3.6** If, without negligence or a breach of this Section 10.3 on the part of any of the Contractor Parties, the Contractor is held liable by a government agency for the cost of remediation of any Hazardous Material by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all reasonable costs and expenses thereby incurred; provided the Contractor gives prompt written notice of the potential claim to the Owner and a reasonable opportunity to assume the defense and handling of the potential claim.

#### **§ 10.4 Emergencies**

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

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required in Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

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

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance or bonds required by the Contract Documents, the Contractor shall provide written notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement insurance or bonds by the Contractor or its Subcontractors, as applicable. The furnishing of notice by the Contractor shall not relieve the Contractor or its Subcontractors of any obligation to provide any required insurance or bonds.

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*(Paragraphs deleted)*

**§ 11.2 Intentionally omitted**

**§ 11.3 Waivers of Subrogation**

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

**§ 11.3.2** Intentionally omitted.

*(Paragraphs deleted)*

**§ 11.4 Intentionally omitted**

**§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the builder's risk property insurance required by the Agreement shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear. The Owner shall pay the Contractor its just shares of insurance proceeds received by the Owner, and by appropriate agreements the Contractor shall make payments to its Subcontractors and suppliers in a similar manner.

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

**ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

**§ 12.1 Uncovering of Work**

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

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



## § 12.2 Correction of Work

### § 12.2.1 Before Substantial Completion

The Contractor, at its sole expense, shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected or non-conforming Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's and the Owner's other consultants' services and expenses made necessary thereby, shall be at the Contractor's expense.

### § 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5 and Section 12.2.1, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any other warranty or guarantee required by or contained in the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor under this Section 12.2.2.1, but not any other remedy. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

### § 12.3 Acceptance of Nonconforming Work

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

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



## § 13.2 Successors and Assigns

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, a buyer or grantee of all or part of the Project, or to an entity affiliated with the Owner, if the lender, buyer, grantee or affiliate assumes the Owner's rights and obligations under the Contract Documents. But the Owner may provide a collateral assignment of this Agreement to a lender without its assuming the Owner's rights and obligations under this Agreement. The Contractor shall execute all documents and consents reasonably required to facilitate the assignment.

## § 13.3 Rights and Remedies

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

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as specifically agreed upon in writing. Further, no failure to enforce a provision of the Contract Documents constitutes a waiver of any obligation to subsequently or otherwise comply with the provision, or a waiver of any other provision.

## § 13.4 Tests and Inspections

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

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

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including the costs of additional testing, inspections and repeated procedures, the cost of uncovering, replacement and correction and compensation for the Architect's and the Owner's other consultants' services and expenses, shall be at the Contractor's expense.

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

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing. The Contractor shall require reports to be created in connection with all testing and inspections of the Work and shall provide copies of the reports to the Owner and Architect in a timely manner.

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

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest as specified in the Agreement.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of any of the Contractor Parties, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.5.2; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of any of the Contractor Parties, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for Substantial Completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon 30 days' notice to the Owner and Architect (which period shall constitute an opportunity to cure), terminate the Contract and recover from the Owner payment for Work performed, as well as reasonable overhead and profit on the Work performed.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of any of the Contractor Parties because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters necessary to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract, in whole or in part, if the Contractor

- .1 refuses or fails to supply proper supervision or enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the Contract Documents or the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 disregards or violates any applicable Laws;
- .4 fails to timely perform the Work in accordance with Section 3.10;
- .5 refuses or fails to promptly correct rejected or non-conforming Work or remedy property damage for which it is responsible; or
- .6 otherwise is guilty of a material breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner, terminate the Contract, in whole or in part. But if the Contractor can reasonably cure the reason for termination within seven days, the Owner shall give it the opportunity by providing written notice of the default before termination. Upon termination under this Section 14.2, the Owner 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 or more of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Within seven days after termination under this Section 14.2, the Contractor shall submit to the Owner and Architect a complete and current accounting of the Contractors' liabilities and obligations related to the Project, with supporting documentation, including copies of all agreements and change orders with each Subcontractor and supplier, copies of all bills, invoices, pay requests and change order requests with respect to each Subcontractor and supplier, and evidence of all payments made by the Contractor to, and lien waivers from, each Subcontractor and supplier. Upon the Owner's request, the Contractor shall require each Subcontractor and supplier to submit a similar accounting, with supporting documentation, directly to the Owner.

§ 14.2.4 In the event of termination under this Section 14.2, upon final completion of the Work, the Owner shall pay the Contractor the unpaid balance of the Contract Sum less the costs of finishing the Work, including compensation for the Architect's and the Owner's other consultants' services and expenses made necessary thereby, and other costs and damages incurred by the Owner and not expressly waived by the Owner. If the Owner's costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner upon demand. This obligation for payment shall survive termination of the Contract.

§ 14.2.5 If the Owner terminates the Contract under this Section 14.2, in whole or in part, it shall not affect the Owner's rights and remedies under the Contract Documents or Law, and shall not terminate the Contractor's liability under the Contract Documents with respect to any portions of the Work or acts or omissions of any of the Contractor Parties.

§ 14.2.6 If termination under this Section 14.2 is found to be wrongful or improper, it shall be treated as a termination for convenience under Section 14.4.

#### § 14.3 Suspension by the Owner for Convenience

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

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

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract, in whole or in part, for the Owner's convenience and without cause.

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly performed and costs directly incurred by reason of the termination.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 Claims

##### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract or the Project. The

responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### **§ 15.1.2 Time Limits on Claims**

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

#### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by the Contractor for an increase in the Contract Sum or Contract Time under this Section 15.1.3.1 shall be initiated in writing, by notice as provided in this Section 15.1, within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later, or the Claims are waived.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party.

#### **§ 15.1.4 Continuing Contract Performance**

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

**§ 15.1.4.2** Intentionally omitted.

#### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for additional costs or compensation, including an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to perform the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's notice of such Claim shall include an estimate of cost and of probable effect of delay on progress of the Work and a request for a specified amount of increase in the Contract Time. In the case of a continuing delay, only one Claim is necessary. The Contractor shall have the burden of demonstrating the effect of any claimed delay on the Contract Time and shall furnish the Architect and Owner with documentation relating thereto as the Architect and Owner reasonably require.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, the notice of Claim shall be include documentation and data obtained from nearest NOAA weather station (or other independently verified source approved by the Owner) 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. Adverse weather conditions shall mean the number of weather delay days in excess of the Standard Baseline of average climactic range for each month as determined by the National Oceanic and Atmospheric Administration for the location of the Project.

**§ 15.1.6.3** The Standard Baseline set forth in Section 15.1.6.2 shall mean the normal and anticipated number of calendar days for each month during which activity is expected to be prevented and suspended by cause of adverse weather conditions. Suspension of activity for the number of calendar days each month as listed in the Standard Baseline is included in the Work and shall not constitute the basis for a delay Claim. The Standard Baseline is as follows:

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JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
12	11	8	7	7	6	7	5	4	5	5	11

**§ 15.1.6.4 ABNORMAL WEATHER AND WEATHER DELAY DAYS**

- .1 Abnormal weather is defined as the occurrence of one or more of the following conditions, which prevents exterior activity or access to the site within a twenty-four hour period:
  - .a Precipitation (rain, snow, or ice) in excess of one-tenth inch (0.10") liquid measure;
  - .b Temperatures that do not rise above 32 degrees Fahrenheit by 10:00 a.m.; or
  - .c Standing snow in excess of one inch (1.00").
- .2 Abnormal weather may include, if appropriate, "dry-out" or "mud" days when all of the following are met:
  - a. Following rain above the Standard Baseline;
  - b. Only if there is a hindrance to site access or sitework, such as excavation, backfill, and footings; and
  - c. At a rate no greater than one make-up day for each day or consecutive days or rain beyond the Standard Baseline that total one inch or more, liquid measure, unless otherwise authorized in writing by the Owner.
- .3 A weather delay day may be counted only if abnormal weather prevents work on the project for 50% or more of the Contractor's scheduled workday, including a weekend day or holiday if the Contractor has scheduled Work activity that day.

**§ 15.1.6.5 DOCUMENTATION REGARDING WEATHER**

The Contractor shall:

- .1 Maintain daily and submit to the Owner monthly a Daily Jobsite Work Log showing which, and to what extent, activities have been affected by weather;
- .2 Maintain a rain gauge, thermometer, and clock at the site, and keep daily records of precipitation, temperature, and the time during the Project; and
- .4 Use the Standard Baseline data when documenting actual delays due to abnormal weather.

**§ 15.1.7 Waiver of Claims for Consequential Damages**

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

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

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

**§ 15.2 Initial Decision**

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

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5)

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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 one or both parties to authorize retention of such persons at their expense.

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

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party request mediation. If such a demand is made and the party receiving the demand fails to request mediation within 30 days after receipt thereof, then both parties waive their rights to mediate and 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 or disputing such Claim may proceed in accordance with applicable Law to comply with the lien notice or filing deadlines, or to seek to discharge or otherwise defend against such lien.

### § 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, 15.1.2, 15.1.3, 15.2.6.1, and, if applicable, 15.1.7, 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 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.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator’s fee and any other mediation 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. The Owner and Contractor shall include a similar mediation provision in all agreements with Subcontractors and Separate Contractors, thereby providing for mediation among all persons and entities performing any work on the Project.

*(Paragraphs deleted)*



# **Additions and Deletions Report for** **AIA® Document A201® – 2017**

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## **PAGE 1**

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## ARTICLE 1 GENERAL PROVISIONS

...

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. Contractor, including the Guaranteed Maximum Price Amendment (hereinafter the Agreement). A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

...

The Contract Documents form the ~~Contract for Construction~~. Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

...

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

...

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

...

Instruments of Service are the Drawings, Specifications and other documents or 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 consultants, or other design professionals, to describe and define the Work. Instruments of Service might~~ include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

...

### **§ 1.1.9 CONTRACTOR PARTIES**

As used in the Contract Documents, the term "Contractor Parties" means and includes the Contractor, its Subcontractors, Sub-subcontractors (each as defined in Article 5 below), and suppliers, and anyone directly or indirectly employed, retained or contracted by any of them or anyone for whose acts any of them is responsible or liable.

### **§ 1.1.10 LAWS**

As used in the Contract Documents, the terms "Law" and "Laws" mean and include all federal, state and local laws, statutes, codes, ordinances, orders, rules, regulations and requirements, which have been duly authorized and are

currently in effect or hereinafter enacted, including judicial opinions and precedential authority in the applicable jurisdiction, and all environmental laws and all rules and regulations relating to life safety and the Americans with Disabilities Act, that are applicable to the Contractor Parties, the Contract, the Work and the Project.

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution-performance and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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#### § 1.2.4 DISCREPANCIES AND CONFLICTS

Except as otherwise specifically set forth in the Agreement, in the event of a discrepancy or conflict within or between any of the Contract Documents, the following Contract Documents take precedence and apply in the following order:

- .1 the Agreement and these General Conditions;
- .2 unless otherwise stated in the Specifications, the Specifications govern over Drawings;
- .3 Drawings of larger scale govern over those of smaller scale;
- .4 figured dimensions shown on a Drawing govern even though they differ from dimensions scaled on the Drawing;
- .5 descriptive writings govern over legends indicating material or conditions; and
- .6 the provision or interpretation resulting in the greater quantity and quality of Work or materials shall prevail.

...

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. When used in the Contract Documents, unless the context clearly dictates otherwise, the singular includes the plural, and vice versa, and the disjunctive "or" includes the conjunctive "and," and vice versa.

...

§ 1.5.1 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and are the property of their respective owners, who retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights.~~ The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of ~~the Architect's or Architect's consultants' any copyrights or other reserved rights.~~

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

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§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, ~~by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement or by reputable overnight delivery service providing proof of delivery (e.g., FedEx, UPS, DHL).~~

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by ~~courier providing proof of delivery, reputable overnight delivery service providing proof of delivery (e.g., FedEx, UPS, DHL).~~

§ 1.6.3 For any written notice given under the Contract Documents to be deemed duly served on and received by the Owner, such notice must also be timely given, by one of the methods set forth in Sections 1.6.1 or 1.6.2, as applicable, to the following:

Executive Director/CEO  
Knoxville's Community Development Corporation  
P. O. Box 3550  
Knoxville, Tennessee 37927-3550

...

The parties ~~shall~~ may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

#### § 1.8 ~~Building Information Models Use and Reliance~~

~~Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

...

§ 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, designated representative, as appropriate.~~ The term "Owner Parties" means the Owner, Knoxville's Community Development Corporation, and each of their officers, directors, managers, governors, members, partners, general partners, limited partners, shareholders, agents, employees, and affiliated entities of any of them, and any lenders to the Owner with a financial interest in the Project.

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§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially ~~changes~~ increases the Contract Sum. If the Owner fails to provide such evidence, ~~as required, without providing a reason,~~ within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor

may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended ~~appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~appropriately.

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

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, Law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. ~~The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~

...

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

§ 2.3.3 If the employment of the Architect terminates, the Owner ~~shall~~may employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 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 reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable ~~promptness.~~promptness so as not to delay the progress of the Work. 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 so as not to delay the progress of the Work after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. At the Contractor's request, the Owner may furnish the Contract Documents in electronic form. The Contractor acknowledges that discrepancies might exist between the printed and sealed Contract Documents and the electronic versions, and that, in such event, the printed and sealed documents shall control.

...

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

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~48-hour period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. ~~Such action by the Owner and amounts charged to the Contractor are both subject~~



~~to prior approval of the Architect and the neglect by whatever reasonable method the Owner deems expedient. Upon such action by the Owner, the Owner or Architect may, pursuant to Section 9.5.1, withhold or nullify a payment or Certificate for Payment Payment, in whole or in part, to the extent reasonably necessary to reimburse the Owner for 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. Owner upon demand. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~

...

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

...

**§ 3.1.4** As an inducement for the Owner to enter the Contract, the Contractor represents, warrants, and agrees that:

- .1 it is financially solvent and able to pay all debts as they mature, and it possesses sufficient working capital to complete the Work, pay all costs associated therewith, and timely and fully perform all obligations in the Contract Documents;
- .2 it is able to provide the services, plant, tools, materials, supplies, equipment, labor, and other items required to complete the Work and timely and fully perform its obligations in the Contract Documents;
- .3 it is authorized to do business in the state, county and city in which the Project is located, and it is properly licensed or registered as necessary by or with all governmental and public and quasi-public authorities having jurisdiction over the Contractor, the Work, and the Project
- .4 it is not listed on the electronic roster of debarred companies ineligible to receive federal contracts, as set forth in the System for Award Management (<https://www.sam.gov/SAM>); and
- .5 it possesses a high level of experience, expertise, and competence in the business of administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this Project, and will perform the Work with the care, skill, and diligence of such a contractor.

**§ 3.1.5** The Contractor is an independent contractor and is not an employee, agent, representative, or servant of the Owner Parties or Architect. The Contract Documents do not establish an employer-employee relationship between the Owner and Contractor. All amounts the Contractor is required to pay its workers and employees in any jurisdiction, including compensation and benefits, are the sole responsibility of the 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 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. The Contractor is responsible for ascertaining correct dimensions and materials, and shall not ascertain dimensions by scaling drawings. These obligations are for the purpose of facilitating coordination and construction by the Contractor and ~~are not~~ for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; ~~however, the Contractor shall Documents that could affect constructability or the Contractor's performance. The Contractor shall, before proceeding with any portion of the Work affected thereby, promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor Contractor, as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~



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

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

**PAGE 7**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures ~~may~~ might not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or ~~procedures.~~ procedures to the Owner and Architect. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Owner or Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative 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 their agents and employees, and Contractor Parties, and all~~ other persons or entities performing portions of the Work for, or on behalf of, ~~the Contractor or any of its Subcontractors.~~ any of the Contractor Parties.

...

**§ 3.3.4** The Contractor shall review all specified or recommended construction and installation procedures applicable to the Work, including those recommended by manufacturers and suppliers, and shall promptly report to the Owner and Architect any objections the Contractor has to such procedures and advise the Owner and Architect if any procedure deviates from good construction practice or might adversely affect or invalidate any warranty or guarantee.

**§ 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 performance~~ and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the ~~Contractor's employees and other persons carrying out the Work.~~ Contractor Parties. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Upon the Owner's request, the Contractor shall immediately remove from the Project any person the Owner considers to be incompetent or disposed to be disorderly, or for any

other reason unsatisfactory or undesirable to the Owner, and that person shall not again be employed on the Project without the written consent of the Owner.

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§ 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 anyone other than the Contractor Parties, including abuse, alterations to the ~~Work not executed by the Contractor,~~ Work, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other ~~special-warranties and guarantees~~ required by the Contract Documents or otherwise applicable to the Work shall be issued in the name of the Owner, or shall be ~~transferable-transferred or assigned~~ to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall ensure that such warranties and guarantees are freely assignable by the Owner in the same manner as the Contract under Section 13.2. The Contractor shall perform the Work in a manner that does not adversely affect or invalidate any warranties or guarantees. The Contractor shall include a provision similar to this Section 3.5 in all contracts with Subcontractors and suppliers, and require that all Subcontractors and suppliers include a similar provision in all contracts with Sub-subcontractors.

...

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. All tax savings shall be retained by, returned to, or otherwise benefit the Owner.

...

§ 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-performance~~ and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor ~~shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.~~ Parties and the Work shall comply with and give all notices required by applicable Laws.

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

...

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. If the Contractor suspends any operations or is delayed or impacted based on such concealed or unforeseen conditions, the Contractor shall provide immediate written notice to the Owner and Architect. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable ~~adjustment~~ adjustment, if requested and appropriate, be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those

indicated in the Contract Documents ~~and or~~ that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 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 immediately 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 in writing but shall continue with all other operations that do not affect those remains or features. ~~Requests~~ Requests ~~for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may shall~~ be made as provided in Article 15.

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- .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;~~ taxes;

...

- .3 whenever costs are more than or less than allowances, and the Owner has given prior written approval to incur such costs if they are more than the allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable ~~promptness.~~ promptness so as not to delay the progress of the Work.

### § 3.9 Superintendent, Project Managers, and Key Employees

...

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

§ 3.9.3 The Contractor shall not employ a proposed ~~superintendent~~ superintendent, project manager or other personnel to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not ~~change the superintendent without the Owner's~~ remove, change, or replace any superintendent, project manager, or other key employee, or reassign such personnel to other projects in a manner that affects their ability to perform their duties on the Project, without the Owner's prior written consent, which shall not unreasonably be withheld or delayed. In the event any employee, agent, or consultant of any of the Contractor Parties fails to properly perform or otherwise hinders the Project's progress, the Contractor shall replace such person or entity as reasonably requested by the Owner in writing.

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's ~~information approval~~ a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall Upon notice to and written consent of the Owner and Architect, the schedule may be revised at appropriate intervals as required by the conditions of the Work and Project.

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

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

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

...

§ 3.12.5 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 Owner and Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

...

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Owner's or Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, ~~or~~ (2) a Change Order authorizes the deviation, or (3) a 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 Owner's or Architect's approval thereof.

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§ 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~~ Law.

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



Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

...

The Contractor shall confine operations at the site to areas permitted by applicable ~~laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities,~~ Laws and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. If there are ongoing operations of the Owner at the site, the Contractor shall conduct the Work in a manner that minimizes or eliminates any adverse impact on the operations.

...

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. The Contractor shall be responsible for all fines and penalties assessed by authorities having jurisdiction over the Project related to clean up at or around the site, including but not limited to fines and penalties assessed for tracking mud onto public roadways.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract ~~Documents,~~ Documents or as otherwise directed by the Owner, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor upon demand, or a deduction in any amounts owed to the Contractor.

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The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify hold the Owner and Architect harmless from loss and expense (including attorneys' fees) on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, ~~the Contractor shall be responsible for the loss~~ it shall promptly notify the Owner and Architect, and the Contractor shall be responsible for all resulting loss and expense (including attorneys' fees) unless the information is promptly furnished to the Owner and Architect.

...

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

**§ 3.18.2** In ~~claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable,~~ the indemnification obligation all claims, demands, and suits against any of the Indemnified Parties by an employee of any



of the Contractor Parties, the defense and indemnification obligations 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 any of the Contractor or a Subcontractor Parties under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**§ 3.18.3** If any defense or indemnity obligation of the Contractor under this Section 3.18 or elsewhere in the Contract is held to be unenforceable, the Contractor shall defend, indemnify and hold harmless the indemnified persons and entities to the fullest extent permitted by Law. Further, the Contractor's liability resulting from its defense and indemnity obligations under the Contract is not limited or affected in any way by insurance coverage.

...

**§ 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, Owner~~ and Architect. Consent shall not be unreasonably withheld.

...

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

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

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

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

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such ~~amounts~~ amounts as the Architect determines are properly due, or notify the Owner in writing of the Architect's reasons for withholding certification in whole or in part.

**§ 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 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise

such authority shall give rise to a duty or responsibility of the ~~Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions~~ Owner or Architect to any of the Contractor Parties. The Architect must advise and obtain the consent of the Owner prior to rejecting any Work and prior to requiring any inspection or testing 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 Owner and Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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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; receive and forward to the Owner, for the Owner's review and records, written ~~warranties~~ warranties, manuals, and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

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

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

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## **ARTICLE 5 SUBCONTRACTORS AND SUPPLIERS**

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§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect (at any tier) 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.

§ 5.1.3 The term "supplier" means a person or entity who has a direct or indirect (at any tier) contract with the Contractor to provide materials, equipment, tools, construction equipment, machinery, water, heat, utilities, transportation or any other items or facilities in connection with the Work, and no labor.

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§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. The Contractor shall disclose the existence and extent of any financial interest, whether direct or indirect, it or any of its principals or employees has in Subcontractors or Sub-subcontractors it proposes for the Project. If requested, the Contractor also shall furnish evidence satisfactory to the Owner showing that a proposed Subcontractor or Sub-subcontractor is competent, qualified, able, legally authorized, and properly licensed or registered, if necessary, to perform its portion of the Work. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity listed on the electronic roster of debarred companies ineligible to receive federal contracts, as set forth in the System for Award Management (<https://www.sam.gov/SAM>), that is not competent, qualified, able, legally authorized, and properly licensed or registered, if necessary, to perform its portion of the Work, or to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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

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§ 5.2.5 Upon request, the Contractor shall provide the Owner copies of its contracts with Subcontractors, Sub-subcontractors and suppliers.

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

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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's subsequent rights and obligations under the subcontract. Assignment does not relieve the Contractor of its obligations under the assigned subcontract or the Contract Documents.

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

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

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§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with ~~Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.~~ Contractors.

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

...

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

...

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

§ 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 any of the Contractor Parties' delays,~~ improperly timed activities or defective construction. ~~The~~ If a Claim has been asserted in accordance with Article 15, the Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

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

...

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and ~~the Architect will allocate the cost among those responsible.~~ allocate the cost among those responsible, and the Contractor shall be responsible for such costs allocated to it.

...



§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only 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 written 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.

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§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings ~~of those performing the Work~~ attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall furnish an itemized estimate and keep and present, in such form as the Architect may prescribe, an itemized accounting of actual costs together with appropriate supporting data. Such estimates and accountings shall itemize services, labor, materials, equipment and all agreements to provide any significant portion of the Work. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited ~~to the following:~~ to the following costs that are directly attributable to the change:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or ~~custom,~~ Law, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or ~~consumed;~~ in the Work or delivered and suitably stored at the site for subsequent incorporation in the Work;

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

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be ~~actual net cost as confirmed by the Architect.~~ determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, plus an amount for overhead and profit as set forth in Section 7.3.4. When both additions and credits covering related Work or substitutions are involved in a change, the ~~allowance amount~~ allowance amount for overhead and profit shall be figured on the basis of net cost decrease or 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 amounts not in dispute for such changes in the Work shall be included in Applications for Payment if accompanied by a Change Order indicating the parties' agreement with respect to such costs. For any portion of such costs that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

...

~~The Architect~~ Architect, after consulting with the Owner, may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the



Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

...

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

...

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically ~~defined.~~ stated.

...

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective ~~date of insurance~~ date(s) of any insurance or bonds required to be furnished by the Contractor and Owner.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by ~~changes ordered in the Work;~~ a Construction Change Directive; (3) by labor disputes, fire, unusual delay in deliveries, ~~unavoidable casualties,~~ adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; ~~deliveries by a party other than a Contractor Party, unavoidable casualties, or other causes beyond any of the Contractor Parties' control, including terrorism, war, acts of God, epidemics or pandemics;~~ (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect ~~determines, justify delay.~~ Owner and Architect determine, justify delay (provided such delay is not caused in part by any of the Contractor Parties), then the Contract Time shall be extended ~~for such reasonable time as the Architect may determine.~~ by the amount of time such cause will delay Substantial Completion, as the Architect may determine. The Contractor's sole remedy for any such excusable delay shall be an extension of the Contract Time by Change Order, along with the Contractor's documented increase in actual general conditions costs directly attributable to such excusable delay. The Contractor shall have no other right to claim any other damages for delay, including but not limited to, any delay, acceleration, impact or other damages arising out of any delay, however caused.

§ 8.3.1.1 Except as otherwise set forth in the Contract, no extension of time shall be granted because of seasonal or normal variations in temperature, humidity or precipitation, which conditions shall be wholly at the risk of the Contractor, whether occurring within the time originally scheduled for completion or within the period of any extension granted.

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

...

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. ~~If the Agreement is based on a Guaranteed Maximum Price, the term "Contract Sum," as used in this AIA Document A201-2007, means "Guaranteed Maximum Price," except as used in Sections 9.1, 9.4.2 and 14.2.4.~~

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial

inequity to the Owner or Contractor, the applicable unit prices shall be equitably ~~adjusted~~adjusted, if requested and appropriate.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, Unless previously agreed to and attached as an exhibit to the Agreement, the Contractor shall submit a schedule of values to the Owner and Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work, the Work, including but not limited to a specific line item for the Contractor's general conditions costs. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner and Architect. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any requested changes to the schedule of values shall be submitted to the Owner and Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.~~Owner and Architect may require.

...

~~§ 9.3.1 At least ten days before the date established for each progress payment, On or before the day set forth in the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if as required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of invoices, requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.~~

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

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

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

~~§ 9.3.4 With each Application for Payment, the Contractor shall submit to the Architect and Owner lien waivers, in form and substance required by the Owner, from itself and all Subcontractors, Sub-subcontractors, and suppliers, releasing and waiving all payment and lien claims against the Owner and the Project associated with all Work performed by the Contractor Parties for each period of time for which the Owner has previously made payment, and any similar documents and information the Owner reasonably requests. The Owner's receipt of these lien waivers, documents, and information is a condition precedent to the Owner's obligation to make progress payments to the Contractor.~~

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~~§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor~~

deviations from the Contract Documents prior to final completion, and to specific qualifications expressed by ~~the Architect.~~ the Architect to the Owner. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

...

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, ~~to the extent as~~ 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 the whole or part of 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

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- .2 third party claims ~~filed~~ asserted or reasonable evidence indicating probable ~~filing~~ assertion of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or ~~equipment~~; equipment, or to furnish satisfactory evidence of payment;

...

- .6 reasonable evidence that the Work will not be completed within the Contract Time, ~~and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;~~ Time;
- .7 failure of the Contractor to comply with any Laws; or
- ~~.7 repeated~~ .8 failure to carry out the Work in accordance with the Contract Documents, with, or any other failure to comply with, the Contract Documents.

Even if the Architect certifies a payment, the Owner may withhold all or part of a payment, and may also set-off any amounts due the Contractor under this Contract or otherwise, for any of the reasons set forth in this Section 9.5.1.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for ~~Payment~~ Payment, or the Contractor disputes the Owner's decision regarding a payment, under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, or if the Owner reasonably believes it is necessary, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

...

§ 9.6.1 After the Architect has issued a Certificate for Payment, unless the Owner reasonably disputes such certification and withholds payment under Section 9.5.1 and notifies the Contractor and Architect in writing of the reason therefor, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Documents.

...

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

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

~~§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that and Subcontractors' payments to Sub-subcontractors and suppliers shall also be treated as 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, or a Certificate of Substantial Completion shall not constitute acceptance of Work not in accordance with the Contract Documents.~~

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

~~§ 9.6.8 If any liens are at any time asserted or recorded against the Project as a result of activities of any of the Contractor Parties or any other person or entity making a claim by reason of having provided Work, and if the Contractor is owed and has been paid for the Work for which the lien is asserted or recorded, the Contractor, at its sole expense, shall promptly take and diligently prosecute appropriate action to have the lien discharged within 15 days after it is asserted or recorded, or any lesser period necessary to prevent judgment, execution, or foreclosure of the lien. If the Contractor fails to do so, the Owner may take any action reasonably necessary to protect its interests, including payment or settlement of the lien and any related legal action, and the Contractor shall reimburse the Owner, or the Owner may deduct from amounts it owes the Contractor under this Contract or otherwise, any amounts and damages the Owner pays or incurs, including attorneys' fees and expenses. Provided the Contractor is owed the amount at issue and the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, claims, losses, liabilities, damages and expenses, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, If permitted by Law, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.~~

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~~If Subject to the Owner's and Architect's rights to withhold payment and certification of payment as set forth in 9.5.1, if the Architect does not issue a Certificate for Payment, through no fault of the Contractor, any of the Contractor Parties, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven-30 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' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.~~

...



§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and Laws so that the Owner can ~~occupy or legally~~ and practicably occupy and utilize the Work for its intended use. In addition to all other requirements in the Contract Documents, the Work shall not be considered to have reached Substantial Completion until all required inspections, permits, approvals, and certificates have been made and obtained from all applicable public authorities, including receipt of a Certificate of Occupancy, all Project systems included in the Work are operational as designed and specified, and all finishes required by the Contract Documents are in place.

...

§ 9.8.3 Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. ~~If the Architect's complete, and may revise the Contractor's list. If the~~ inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can ~~occupy or legally and~~ practicably occupy and 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 Owner or Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner and 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; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the Owner's comprehensive punch 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.~~ Completion or the Contract Documents.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. ~~Upon~~ Unless otherwise provided in the Contract Documents, upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. ~~Such payment shall be adjusted for Work that is incomplete or thereof, less such amounts necessary to protect the Owner with respect to (1) those portions of the Work that remain incomplete or are otherwise not in accordance with the requirements of the Contract Documents.~~ Documents, and (2) unsettled Claims.

§ 9.8.6 If an inspection requested by the Contractor reveals that Substantial Completion has not been achieved, the Contractor shall pay for additional inspections at the Architect's standard hourly rate in effect at the time of inspection, at no expense to the Owner.

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§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required or contained in by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Owner and 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.

...

§ 9.9.3 Unless otherwise agreed ~~upon, in writing,~~ 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.



...

**§ 9.10.2** ~~Neither~~ In addition to any other requirements for final payment or release of retainage in the Contract Documents or required by Law, neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) ~~documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) assignment to the Owner of, and all information on, all warranties and guarantees, such as manufacturers' warranties and Subcontractor and supplier warranties and guarantees,~~ (6) delivery to the Owner of all operating, servicing, maintenance and cleaning instructions for the Work, and all parts lists, equipment manuals and special tools for mechanical and electrical components of the Work, (7) all required approvals by any applicable public authority, (8) any other items required of the Contractor by the Contract Documents, and (9) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. ~~the Owner or necessary under the then existing mechanic's liens or similar laws or other Law. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may~~ the Contractor, at the Owner's option, shall furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund or otherwise pay to the Owner all money that the Owner may be compelled to pay in discharging pays in discharging or defending against the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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- .3 terms of ~~special warranties required by~~ warranties or guarantees contained in, or required by, the Contract Documents; or

...

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

**§ 9.10.6** The Contractor shall achieve final completion of the Work, which includes completion and correction of all items on the Owner's comprehensive punch list referred to in Section 9.8.4 and performance of all other obligations to be performed prior to final payment, no later than 30 days following the date of Substantial Completion.

...

- .1 employees on the Work and other persons who ~~may~~ might be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control ~~of the Contractor, a Subcontractor, or a Sub-subcontractor;~~ of any of the Contractor Parties; and

...

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, Laws bearing on safety of persons or property or their protection from damage, injury, or loss. The Contractor shall promptly notify the Owner and Architect of any damage, injury, or loss to persons or property of the type referred to in Section 10.2.1.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall provide all facilities and follow all procedures required by occupational or employment safety, security, health, and hygiene provisions or regulations, including but not limited to providing protective gear and equipment.

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

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

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

...

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. If the party intends to make a Claim related to the injury or damage, it shall make the Claim in accordance with Section 15.1.

...

§ 10.3.1 The Contractor is responsible for compliance with ~~any~~ all Laws, standards, handling criteria, and requirements included in the Contract Documents regarding hazardous materials or substances. ~~If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately wastes, materials, and substances, including asbestos-containing materials, lead-based paints, petroleum (or any constituent thereof), mold, radon, and polychlorinated biphenyl (PCB), (hereinafter "Hazardous Materials") in performing the Work. Unless specifically consented to by the Owner in writing or specifically required by the Contract Documents, no underground or above-ground storage tanks or drums shall be placed on the site, and no Hazardous Materials shall be brought onto the site, handled on the site, or otherwise incorporated into the Work by any of the Contractor Parties. If the Contractor encounters any material or substance that could be a Hazardous Material, the Contractor shall immediately (1) stop Work in the affected area and until receipt of written notification from the Owner that Work shall proceed, (2) notify the Owner and Architect of the condition.~~ the condition in writing and consult and cooperate with the Owner with

respect to the Owner's investigation and response, and (3) take all reasonable precautions to prevent or contain the movement, spread, and disturbance of the suspected Hazardous Materials, and to protect all persons and property.

**§ 10.3.2** Upon receipt of the Contractor's ~~notice~~, notice of the presence of potential Hazardous Materials, the Owner shall obtain the services of a ~~licensed laboratory~~ an environmental consulting firm or asbestos abatement or lead-based paint contractor, as appropriate, to verify the presence or absence of the material or substance reported by the Contractor and, in the event ~~such material or substance is found to be present, to cause it to be rendered harmless.~~ any Hazardous Materials are found to be present, to investigate, document, and remediate the condition as required by Law. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of ~~persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance.~~ such environmental consulting firm or asbestos abatement or lead-based paint contractor(s). The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has ~~an a~~ reasonable objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has ~~been rendered harmless, been investigated and, if necessary, remediated, abated or contained as required by Law, or the appropriate governmental approvals have been obtained.~~ Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Owner's written notification to the Contractor. If the Contractor did not breach this Section 10.3, and so requests in writing, to the extent attributable to the presence of potential Hazardous Materials, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by ~~law,~~ Law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, ~~Architect, Architect's consultants,~~ and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance identified by the Contractor in accordance with this Section 10.3 presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. ~~The Owner shall be responsible for hazardous 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.~~ Documents and the Contractor complies with all obligations under this Section 10.3. The Contractor shall remove and properly dispose of any and all materials and substances used in performing the Work, including chemical substances, lubricants, empty containers, contaminated materials, and any other (rags, gloves, mops, etc.).

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. To the full extent permitted by Law, the Contractor shall defend, indemnify and hold harmless the Owner Parties from and against all claims, damages, losses, liabilities, and expenses, including attorneys' fees and expenses, arising out of or resulting from any Hazardous Materials brought to the site and negligently handled by any of the Contractor Parties, or the Contractor's failure to comply with any requirement of this Section 10.3, including any and all governmentally mandated removal or cleanup of any such Hazardous Materials.

**§ 10.3.6** If, without negligence ~~on the part of the Contractor,~~ or a breach of this Section 10.3 on the part of any of the Contractor Parties, the Contractor is held liable by a government agency for the cost of remediation of ~~a hazardous material or substance solely~~ any Hazardous Material by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all ~~cost and expense thereby incurred.~~ reasonable costs and expenses thereby incurred; provided the Contractor gives prompt written notice of the potential claim to the Owner and a reasonable opportunity to assume the defense and handling of the potential claim.

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

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

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

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance or bonds required by the Contract Documents, the Contractor shall provide written notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor, insurance or bonds by the Contractor or its Subcontractors, as applicable. The furnishing of notice by the Contractor shall not relieve the Contractor or its Subcontractors of any contractual obligation to provide any required coverage insurance or bonds.

#### § 11.2 Owner's Insurance

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

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

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



## **§ 11.2 Intentionally omitted**

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

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

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

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

## **§ 11.4 Intentionally omitted**

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

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

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



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

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The ~~Contractor~~ Contractor, at its sole expense, shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected or non-conforming Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's and the Owner's other consultants' services and expenses made necessary thereby, shall be at the Contractor's expense.

...

§ 12.2.2.1 In addition to the Contractor's obligations under ~~Section 3.5,~~ Section 3.5 and Section 12.2.1, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by other warranty or guarantee required by or contained in the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty under this Section 12.2.2.1, but not any other remedy. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

...

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

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

...

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

...

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

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§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, ~~if the lender a buyer or grantee of all or part of the Project, or to an entity affiliated with the Owner, if the lender, buyer, grantee or affiliate assumes the Owner's rights and obligations under the Contract Documents. But the Owner may provide a collateral assignment of this Agreement to a lender without its assuming the Owner's rights and obligations under this Agreement.~~ The Contractor shall execute all documents and consents reasonably required to facilitate the assignment.

...

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

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as ~~may be specifically agreed upon in writing~~ specifically agreed upon in writing. Further, no failure to enforce a provision of the Contract Documents constitutes a waiver of any obligation to subsequently or otherwise comply with the provision, or a waiver of any other provision.

...

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

...

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including ~~those of repeated procedures and compensation for the Architect's~~ the costs of additional testing, inspections and repeated procedures, the cost of uncovering, replacement and correction and compensation for the Architect's and the Owner's other consultants' services and expenses, shall be at the Contractor's expense.

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

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing. The Contractor shall require reports to be created in connection with all testing and inspections of the Work and shall provide copies of the reports to the Owner and Architect in a timely manner.

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

...

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, any of the Contractor Parties, for any of the following reasons:

...

- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; and has not notified the Contractor of the reason for withholding certification as provided in Section 9.5.2; or

...

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven-30 days' notice to the Owner and ~~Architect,~~ Architect (which period shall constitute an opportunity to cure), terminate the Contract and recover from the Owner payment for Work executed, performed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination. ~~the Work performed.~~

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

...

§ 14.2.1 The Owner may terminate the ~~Contract~~ Contract, in whole or in part, if the Contractor

- .1 repeatedly-refuses or fails to supply proper supervision or enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the Contract Documents or the respective agreements between the Contractor and the Subcontractors or suppliers; Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; disregards or violates any applicable Laws;
- .4 fails to timely perform the Work in accordance with Section 3.10;
- .5 refuses or fails to promptly correct rejected or non-conforming Work or remedy property damage for which it is responsible; or
- .4—.6 otherwise is guilty of substantial-a material breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and Owner, terminate the Contract, in whole or in part. But if the Contractor can reasonably cure the reason for termination within seven days, the Owner shall give it the opportunity by providing written notice of the

default before termination. Upon termination under this Section 14.2, the Owner may, subject to any prior rights of the surety:

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§ 14.2.3 When the Owner terminates the Contract for one or more of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Within seven days after termination under this Section 14.2, the Contractor shall submit to the Owner and Architect a complete and current accounting of the Contractors' liabilities and obligations related to the Project, with supporting documentation, including copies of all agreements and change orders with each Subcontractor and supplier, copies of all bills, invoices, pay requests and change order requests with respect to each Subcontractor and supplier, and evidence of all payments made by the Contractor to, and lien waivers from, each Subcontractor and supplier. Upon the Owner's request, the Contractor shall require each Subcontractor and supplier to submit a similar accounting, with supporting documentation, directly to the Owner.

§ 14.2.4 ~~If~~In the event of termination under this Section 14.2, upon final completion of the Work, the Owner shall pay the Contractor the unpaid balance of the Contract Sum ~~exceeds less the~~ costs of finishing the Work, including compensation for the Architect's and the Owner's other consultants' services and expenses made necessary thereby, and other costs and damages incurred by the Owner and not expressly waived, ~~such excess shall be paid to the Contractor. If such~~ waived by the Owner. If the Owner's costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. ~~The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this~~ Owner upon demand. This obligation for payment shall survive termination of the Contract.

§ 14.2.5 If the Owner terminates the Contract under this Section 14.2, in whole or in part, it shall not affect the Owner's rights and remedies under the Contract Documents or Law, and shall not terminate the Contractor's liability under the Contract Documents with respect to any portions of the Work or acts or omissions of any of the Contractor Parties.

§ 14.2.6 If termination under this Section 14.2 is found to be wrongful or improper, it shall be treated as a termination for convenience under Section 14.4.

...

§ 14.3.2 The Contract Sum and Contract Time shall be equitably adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. ~~Adjustment of the Contract Sum shall include profit. No~~ adjustment shall be made to the extent

...

§ 14.4.1 The Owner may, at any time, terminate the ~~Contract~~ Contract, in whole or in part, for the Owner's convenience and without cause.

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; ~~costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement performed and costs directly incurred by~~ reason of the termination.

...

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

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

...

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by ~~either party~~ the Contractor for an increase in the Contract Sum or Contract Time under this Section 15.1.3.1 shall be initiated in writing, by notice as provided in this Section 15.1, within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is ~~later~~ later, or the Claims are waived.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. ~~In such event, no decision by the Initial Decision Maker is required.~~

...

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

...

If the Contractor wishes to make a Claim for additional costs or compensation, including an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to ~~execute~~ perform the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

...

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's notice of such Claim shall include an estimate of cost and of probable effect of delay on progress of the ~~Work~~ Work and a request for a specified amount of increase in the Contract Time. In the case of a continuing delay, only one Claim is necessary. The Contractor shall have the burden of demonstrating the effect of any claimed delay on the Contract Time and shall furnish the Architect and Owner with documentation relating thereto as the Architect and Owner reasonably require.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, ~~such Claim shall be documented by data~~ the notice of Claim shall include documentation and data obtained from nearest NOAA weather station (or other independently verified source approved by the Owner) 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. Adverse weather conditions shall mean the number of weather delay days in excess of the Standard Baseline of average climactic range for each month as determined by the National Oceanic and Atmospheric Administration for the location of the Project.

§ 15.1.6.3 The Standard Baseline set forth in Section 15.1.6.2 shall mean the normal and anticipated number of calendar days for each month during which activity is expected to be prevented and suspended by cause of adverse weather conditions. Suspension of activity for the number of calendar days each month as listed in the Standard Baseline is included in the Work and shall not constitute the basis for a delay Claim. The Standard Baseline is as follows:



JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
12	11	8	7	7	6	7	5	4	5	5	11

**§ 15.1.6.4 ABNORMAL WEATHER AND WEATHER DELAY DAYS**

- .1 Abnormal weather is defined as the occurrence of one or more of the following conditions, which prevents exterior activity or access to the site within a twenty-four hour period:
  - .a Precipitation (rain, snow, or ice) in excess of one-tenth inch (0.10") liquid measure;
  - .b Temperatures that do not rise above 32 degrees Fahrenheit by 10:00 a.m.; or
  - .c Standing snow in excess of one inch (1.00").
- .2 Abnormal weather may include, if appropriate, "dry-out" or "mud" days when all of the following are met:
  - a. Following rain above the Standard Baseline;
  - b. Only if there is a hindrance to site access or sitework, such as excavation, backfill, and footings; and
  - c. At a rate no greater than one make-up day for each day or consecutive days or rain beyond the Standard Baseline that total one inch or more, liquid measure, unless otherwise authorized in writing by the Owner.
- .3 A weather delay day may be counted only if abnormal weather prevents work on the project for 50% or more of the Contractor's scheduled workday, including a weekend day or holiday if the Contractor has scheduled Work activity that day.

**§ 15.1.6.5 DOCUMENTATION REGARDING WEATHER**

The Contractor shall:

- .1 Maintain daily and submit to the Owner monthly a Daily Jobsite Work Log showing which, and to what extent, activities have been affected by weather;
- .2 Maintain a rain gauge, thermometer, and clock at the site, and keep daily records of precipitation, temperature, and the time during the Project; and
- .4 Use the Standard Baseline data when documenting actual delays due to abnormal weather.

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**§ 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~~ one or both parties to authorize retention of such persons at ~~the Owner's~~ their expense.

...

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

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

...

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting or disputing such Claim may proceed in accordance with applicable ~~law~~ Law to comply with the lien notice or filing ~~deadlines~~ deadlines, or to seek to discharge or otherwise defend against such lien.

...

**§ 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 15.1.2, 15.1.3, 15.2.6.1, and, if applicable, 15.1.7,~~ 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 Contract and 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.

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§ 15.3.4 The parties shall share the mediator's fee and any ~~filing other mediation~~ 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. The Owner and Contractor shall include a similar mediation provision in all agreements with Subcontractors and Separate Contractors, thereby providing for mediation among all persons and entities performing any work on the Project.

**§ 15.4 Arbitration**

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

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

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

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

**§ 15.4.4 Consolidation or Joinder**

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

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

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

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:46:36 CT on 12/02/2022 under Order No. 2114284114 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*