

# **AIA**® Document A201™ – 2007

## **General Conditions of the Contract for Construction**

for the following PROJECT:

*(Name and location or address)*

A new Seaside School District campus, which will include the following components, which are further:

- (1) Closing existing buildings that operate in the City of Seaside's tsunami zone;
- (2) Constructing a new facility on land donated by Weyerhaeuser Company, which will operate as Seaside High School and Broadway Middle School; and
- (3) Renovation and expansion of Seaside Heights Elementary School.

### **THE OWNER:**

*(Name and address)*

SEASIDE SCHOOL DISTRICT 10  
1801 SOUTH FRANKLIN STREET  
SEASIDE, OREGON 97138

### **THE ARCHITECT:**

*(Name and address)*

DULL OLSON WEEKES-IBI GROUP ARCHITECTS INC.  
907 SW STARK STREET  
PORTLAND, OREGON 97205

**THESE GENERAL CONDITIONS APPLY TO THE AGREEMENT  
BETWEEN THE OWNER AND CONTRACTOR, AIA DOCUMENT  
A133-2009, AS AMENDED, DATED \_\_\_\_\_, 2017.**

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### **ADDITIONS AND DELETIONS:**

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

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

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

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties and supersedes all 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 and the Contractor shall, however, be entitled to performance and enforcement of obligations of the other under the Contract intended to facilitate performance of their respective duties.

#### § 1.1.3 THE WORK

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

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

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

#### § 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, Drawings, Specifications, and other documents, including those in electronic form, of the tangible creative work performed by the Architect and the Architect's consultants for the Project under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 THE INDEMNITEES The "Indemnitees" are Owner and its officers, directors, volunteers, agents, representatives, and employees.

#### § 1.1.9 AFFILIATED ENTITY OR AFFILIATED ENTITIES

The term "Affiliated Entity" shall mean the Contractor (if self-performing a portion of the Work), a parent, subsidiary, affiliate, or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor, or the Contractor itself, owns any interest in excess of ten percent (10%) in the aggregate; or any person or entity that has the right to control the business or

affairs of the Contractor. The term "Affiliated Entity" includes any member of the immediate family of any person identified above.

#### **§ 1.1.10 CONSTRUCTION MANAGER/GENERAL CONTRACTOR**

All references to the term "Contractor" in these General Conditions shall mean the Construction Manager/General Contractor identified in the Agreement.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

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

**§ 1.2.2** The terms of any document that forms the Contract are subject to the following order of precedence:

- .1 Modifications;
- .2 The Agreement;
- .3 These General Conditions and supplementary conditions;
- .4 Drawings, Specifications, and Addenda issued before execution of the Contract, subject to Section 1.2.4;
- .5 Other documents incorporated by the terms of the Contract Documents.

**§ 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. Dimensions not expressly provided in the Contract Documents are to be computed, rather than determined by scale or rule.

**§ 1.2.4** If there is an inconsistency within or between (1) any Drawings, Specifications, or Addenda issued before execution of the Contract, or (2) any Drawings, Specifications, or Addenda and applicable standards, codes, and ordinances, and the inconsistency is not clarified by a Modification or by the Architect, then the Contractor shall provide the better quality or greater quantity of Work without requiring a change to the Contract Sum. The terms and conditions of this Section 1.2.4, however, shall not relieve the Contractor of any of the obligations set forth in Section 3.2.

**§ 1.2.5** The organization of the Specifications into divisions, sections and articles, and the 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.

### **§ 1.3 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, or substitute for those documents that may be used on the Project, or (4) the titles of or terms defined in the Owner's policies incorporated in these General Conditions.

### **§ 1.4 INTERPRETATION**

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

### **§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and

other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. The submittal or distribution of the Instruments of Service to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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

## **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

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

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

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

### **§ 2.1.2 [Deleted]**

**§ 2.1.3** Notwithstanding anything to the contrary in any Contract Document, no officer, director, trustee, partner, authorized representative, employee, student, volunteer, agent, or other representative of the Owner shall have any personal liability to the Contractor or any other person or entity other than the Owner for any acts or omissions arising out of or relating to these General Conditions or the Agreement, whether based on tort, contract, statute, administrative laws, or otherwise.

### **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. Any request made after the commencement of the Work shall not serve as a basis for the Contractor to stop the Work.

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

**§ 2.2.3** Except to the extent required for execution of the Work and requested by the Contractor in writing, the Owner shall not furnish surveys, studies, or reports regarding physical characteristics, legal limitations and utility locations for the site of the Project, but shall provide a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.2.4** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness after receiving the Contractor's written request for such information or services.



§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner or the Architect shall provide to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Additional copies may be purchased by the Contractor at the cost of reproduction and handling.

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

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

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

§ 2.4.2 If the Contractor's default or neglect results in a hazard to the safety of persons or property, the Owner may immediately commence or continue to carry out any Work necessary to mitigate the hazard without prior notice to the Contractor.

§ 2.4.3 The Owner's right to carry out the Work in this Section 2.4 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 2.5 The Owner may notify the Contractor that it needs to exclude or remove from the Project site any or all employees, agents, suppliers, or representatives of the Contractor or its Subcontractors who threaten the safety of others or are disruptive to the Project or the Owner's operations and activities. The Contractor will supply replacement personnel promptly after receiving notice of the exclusion or removal. Each replacement must have qualifications and experience comparable to or better than the individual or entity being replaced and be reasonably acceptable to the Owner. Nothing in this Section requires the Contractor to take any particular employment or contract action with regard to an employee or Subcontractor.

### § 2.6 RIGHTS and REMEDIES

Consistent with Section 13.4, the rights described in Sections 2.3 through 2.5 shall be in addition to, and not in restriction of, the Owner's other rights or remedies.

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.1.1 The Contractor and each of its Subcontractors must be licensed with the Oregon Construction Contractors Board at the time of solicitation of any work and throughout the entire course of the Work. The Contractor shall maintain all required bonding and insurance required by the State of Oregon and the Contract Documents throughout the entire course of the Work.

§ 3.1.1.2 The Contract is applicable to contractors who are owned or controlled by, or act as agents of, the Contractor for purposes of the Project.



**§ 3.1.2** The Contractor shall supervise, coordinate, and perform the Work in accordance with the Contract Documents in a professional, safe, and workmanlike manner and in accordance with all laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and professional standards applicable to the industries and trades involved, including without limitation strict compliance with all applicable federal, state, and local laws and building codes and certification requirements applicable to the Work.

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

**§ 3.1.4** Unless otherwise directed by the Architect, the Contractor shall perform all Work in accordance with product manufacturers' recommendations or directions for best results. No preparatory step or installation procedure may be omitted unless specifically authorized by the Contract Documents or at the direction of the Architect. Conflicts among manufacturers' directions or the Contract Documents shall be resolved by the Architect.

## **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

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

- .1** The Contractor and each Subcontractor, as a condition precedent to commencement of the Work, shall:
  - (a) become familiar with the location, condition, layout, and nature of the Project Site and surrounding areas and generally prevailing climate conditions;
  - (b) review all analyses, studies, and test data available to the Contractor concerning the conditions of the Project site;
  - (c) inspect the location of the Project site and satisfy themselves as to its condition, including all observable structural, surface, and subsurface conditions;
  - (d) evaluate the availability and cost of labor and trade Subcontractors and the availability and cost of materials, tools, and equipment; and
  - (e) determine (i) that the Contract Sum and GMP are just and reasonable compensation for all the Work, including all foreseen and foreseeable construction risks, hazards, and difficulties for which the Contractor is responsible under the Contract Documents, (ii) that the Contract Time is adequate for the performance of the Work, and (iii) that the means and methods of performing the Work will not result in any lateral or vertical movement of any adjacent structure.

The Contractor or Subcontractor must notify the Owner in writing before commencing the Work if it determines that it cannot satisfy one or more of these conditions.

- .2** The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

**§ 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 and, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner or 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:

- .1 promptly report to the Owner and the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require;
- .2 include within the Guaranteed Maximum Price all Costs of the Work that are necessary for the Project to comply with all applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 through 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.1 through 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 and could not have recognized the applicable error, inconsistency, omission, or difference in the exercise of normal diligence, 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, recognized in the exercise of normal diligence.

**§ 3.2.5** Unless otherwise specified in the Contract Documents, the Contractor shall confirm the location of each utility and shall excavate and dispose of each on-site utility. The Owner has made available to the Contractor, and the Contractor has studied, the results of such test borings and information that the Owner has concerning subsurface conditions and site geology. At the Owner's request, the Contractor will make available to the Owner the results of any other site investigation, analyses, studies, or other tests conducted by or that are in possession of the Contractor or any of its agents. The Contractor shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements, and easements.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

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

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 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 must notify the Owner at least ten (10) days prior to the interruption of any utility or operating system, regardless of the area it services. The specific schedule for all interruptions in services must be coordinated through the Owner's Representative.

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§ 3.3.5 The Contractor and its Subcontractors may not use the Owner's tools, equipment, or materials unless authorized in advance by the Owner's Representative.

§ 3.3.6 If the Contractor reasonably believes that suspension of the Work is warranted by reason of unforeseen circumstances that could adversely affect the quality of the Work if the Work were continued, the Contractor shall immediately notify the Owner and the Architect and describe with particularity the reasons therefor. Except as stated elsewhere in the Contract Documents or in an emergency, the Contractor shall not suspend the Work until it receives approval from the Owner.

§ 3.3.7 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor under ORS 670.600. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to (a) make Contractor the agent, servant, or employee of the Owner; or (b) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect to the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status.

### § 3.4 LABOR AND MATERIALS

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the prior 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. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall hire all personnel for the proper and diligent prosecution of the Work, and maintain labor peace for the duration of the Project. In the event of a labor dispute, the Contractor shall not be entitled to any increase in the Contract Sum.

§ 3.4.4 Including, but not limited to the specific requirements of Section 10.1.1, Contractor, its Subcontractors, and vendors shall bear responsibility for compliance with all federal and state laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct Contractor's work so as to protect the Contractor from the consequences of Contractor's own conduct.

### § 3.5 WARRANTY

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

§ 3.5.2 **CORRECTION OF WORK** If, after 10 days' notice, the Contractor fails to proceed to cure any breach of this warranty, the Owner may have the defects corrected and the Contractor and its surety, if any, shall be liable for all expense incurred. In case of an emergency where, in the opinion of the Owner or the Architect, delay would cause serious loss or damage, if any, corrective work may be undertaken without advance notice to the Contractor, but the Contractor and its surety shall remain liable for all expenses incurred. The remedies stated in this Section 3.5 are not exclusive, but are cumulative of any other Owner remedies.

### § 3.5.3 THIRD-PARTY WARRANTIES

- .1 The Contractor shall obtain from Subcontractors, manufacturers, and suppliers written guarantees and warranties consistent with any requirements of the Contract Documents. If the Contract Documents do not contain requirements for written guarantees or warranties, then the Contractor will obtain the optimum terms and longest periods reasonably obtainable. The documentation must also include all maintenance and operational documentation required to sustain the warranties.
- .2 All guarantees or warranties of third parties furnished to the Contractor or Subcontractor, including without limitation from any manufacturer or supplier, shall be deemed to run for the benefit of the Owner.
- .3 The Contractor shall deliver to the Owner via the Architect electronic or hard-copy versions of all as-built documents and guarantees and warranties on materials, systems, and equipment furnished by all manufacturers and suppliers to the Contractor and all its Subcontractors, with duly executed instruments properly assigning the guarantees and warranties to the Owner. These warranties in each bound volume shall be grouped together by trade and properly indexed. The Contractor shall assign and deliver to the Owner all manufacturers' warranties not later than the date of Substantial Completion.
- .4 **Until Substantial Completion, the Contractor shall perform and document all required maintenance of equipment and systems and maintain in force all warranties.**

### § 3.5.4 ASSIGNMENT OF WARRANTIES

The Contractor hereby assigns to the Owner all warranties and guarantees of all Subcontractors and Sub-subcontractors, but the assignment shall not relieve the Contractor of its warranty obligations to the Owner under these General Conditions and other Contract Documents.

### § 3.5.5 REMEDIES

Consistent with Section 13.4, the remedies stated in this Section 3.5 are not exclusive, but are cumulative of any other Owner remedies.

### § 3.6 TAXES

The Contractor shall pay all necessary local, county, and state taxes, income tax, compensation tax, social security, and withholding payments as required by law. Contractor hereby RELEASES, INDEMNIFIES, AND HOLDS HARMLESS Owner from any and all claims and demands made as a result of the failure of Contractor or any Subcontractor to comply with the provisions of any or all such laws and regulations.

### § 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

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

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly



investigate such conditions and, if the Architect determines, after considering Section 3.2, that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. For the purposes of these Contract Documents, the term "wetland" includes wetlands and water bodies subject to the federal Clean Water Act and parallel state and local rules, statutes, and regulations. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 ALLOWANCES**

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

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2. Savings realized on an allowance shall be returned to the Owner as a reduction in the Contract Sum.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work

### **§ 3.9 SUPERINTENDENT**

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

**§ 3.9.2** The project manager and the superintendent shall be those persons named in the Contractor's proposal.

**§ 3.9.3** So long as the project manager and the superintendent remain employed by the Contractor, the Contractor may not otherwise remove or replace the project manager, superintendent, or assistants, or cause them to leave the Project for any reason, including without limitation to work on other projects or take extended vacations, without 45 days' advance written notice to and the prior consent of the Owner. The Owner shall be consulted by the Contractor with respect to replacement personnel pursuant to the requirements of the Contract.

**§ 3.9.4** New or replacement project managers, superintendents, and assistants must be qualified and must have adequate experience with similar projects. The Contractor shall deliver to the Owner résumés of proposed new or replacement project managers, superintendents, and assistants.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work within the Contract Time.

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

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

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one record as-built copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These as-built documents shall incorporate all changes and substitutions to the Work, including without limitation changes or substitutions arising from change orders, construction change directives, and details clarified by requests for information, supplemental instructions or approved shop drawings. The Contractor's as-built documentation shall be available to the Architect and the Owner during the course of the Project.

§ 3.11.2 The Contractor shall maintain all approved permit drawings in a manner that will make them accessible at the Project site to governmental inspectors and other authorized agencies. All approved drawings shall be wrapped, marked, and delivered to the Owner within 60 days of Substantial Completion.

§ 3.11.3 The Contractor must continuously maintain at the Project site all material safety data sheets, safety records, daily logs, and other Contract documentation necessary to immediately ascertain the safety of the Work and to establish compliance with life safety policies, hazardous materials requirements, and the Contract Documents.

§ 3.11.4 The Contractor, with its Subcontractors, will prepare draft record Contract Documents, showing all as-built conditions as required under Section 3.11.1, and submit them to Architect for review. Based on Architect's review and comments, if any, Contractor will prepare and deliver to Owner within 60 days of Substantial Completion, final, accurate, and complete record Contract Documents, including without limitation record Drawings and Specifications, showing the exact "as-built" conditions of the Work.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals



upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence in order 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 requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

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

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

### **§ 3.13 USE OF SITE**

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.13.2** Prior to commencement of the Work, the Contractor shall review the Project site with the Owner in detail and identify the area of the Work, staging areas, connections or interfaces with existing structures and operations, and restrictions on the Project site area. The Contractor will ensure that all forces on the Project site are instructed about the acceptable working and staging areas and restrictions on use of the site. The Contractor, with advance consent of the Owner, will erect such barriers, signage, and devices as are necessary to restrict access to the Project site to approved personnel and to prevent unauthorized access by construction personnel to non-Work areas.

**§ 3.13.3** The Contractor and its Subcontractors shall receive prior approval from the Owner before delivering or storing any materials or tools on the Owner's premises. Upon approval, materials and tools will be stored so that they do not hamper the operation of equipment or persons and do not present a fire or safety hazard.

**§ 3.13.4** Contractor and its Subcontractors shall not erect on the Project site any signage intended to advertise or promote their business without the prior written consent of the Owner.

**§ 3.13.5** If the Contractor removes the Owner's property, fixtures, materials, or other equipment to perform the Work, the Contractor shall be responsible for the safekeeping of all such property, fixtures, materials, or other equipment including without limitation assuring that such items are not lost, damaged, destroyed, and are upon the Owner's directive are either returned to their original location, reinstalled, replaced, or repaired as necessary.

**§ 3.13.6** When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from damage by any cause.

#### **§ 3.14 CUTTING AND PATCHING**

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

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

#### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall, each work day, keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract.

**§ 3.15.2** At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

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

#### **§ 3.16 ACCESS TO WORK**

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

**§ 3.16.2 Keys.** The Contractor will be responsible for all keys issued to it or its Subcontractors for mechanical or other locked rooms. Keys will be obtained from the Owner and may not be copied, transferred, or used for any purpose other than prosecution of the Work. All keys will be returned to the Owner at the conclusion of the Work and as a condition precedent to final payment of the Contractor. If all keys are not returned and the Owner determines, in its reasonable discretion, to rekey affected locks, the Contractor will pay the cost of rekeying all affected locks. This remedy is not exclusive of any other remedy of the Owner. The term "key" includes any device used to secure a room or areas in the Owner's premises, whether by mechanical, electronic, or other means.

**§ 3.16.3 Identification.** The Architect and its Consultants, the Contractor and its Subcontractors, and the employees and agents of any of them shall comply with the Owner's policies and requirements, if any, to obtain, display, and return identification badges at any time while they are present on the Owner's property.

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

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

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify, defend, and hold harmless the Owner, Architect, Architect's consultants, and agents, volunteers, representatives, students, and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' and experts' fees, arising out of or resulting from performance of the Work by the Contractor, a Subcontractor (of any tier), or anyone for whose acts they may be liable:

- .1** For death, personal injury (including without limitation sickness, disease, or bodily injury), or property damage to the extent caused by (a) the material breach of these General Conditions or the Contract Documents; (b) violation of laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities; or (c) any negligent or tortious acts or omissions of the Contractor, a Subcontractor (of any tier), or anyone for whose acts they may be liable; and
- .2** For claims for any violation of federal, state, or local laws or regulations relating to labor or employment, including without limitation wage-and-hour or benefit claims, asserted by or on behalf of an employee or employees of the Contractor, a Subcontractor (of any tier), or anyone for whose acts they may be liable.

Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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

**§ 3.18.3** Notwithstanding anything to the contrary in this Section 3.18, the Contractor is not required to indemnify the Owner or its agents and their respective volunteers, representatives, students, and employees for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by the negligence or willful misconduct of the Owner or its agents or their respective employees, but the Contractor is required to indemnify the Owner and its agents and their respective employees for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the Contractor, or the fault of the Contractor's agents, representatives, or Subcontractors.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

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

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

§ 4.1.3 If the employment of the Architect is terminated, the Owner may employ a successor architect as whom the Contractor has no reasonable objection. The Owner shall consider any reasonable objections of the Contractor, but the choice of the successor architect will solely that of the Owner.

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, (1) to become familiar with the progress and quality of the portion of the Work completed, (2) to guard the Owner against defects and deficiencies in the Work, and (3) to determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

## § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. All communications involving a change in the cost of the Work must be copied to the Owner. Notwithstanding the above, the Owner may communicate directly with the Contractor.

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

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

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved



submittal schedule, in a manner not to cause delay in the Work while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10 and Section 3.5; and issue a final Certificate for Payment pursuant to Section 9.10.

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

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

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

**§ 4.2.13 [Deleted]** The Owner shall discuss matters related to the aesthetic intent and effect with the Architect and Contractor. The Architect may propose a solution, but the final decision shall be that of the Owner.

**§ 4.2.14** The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise in a manner not to cause delay in the Work. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 DEFINITIONS**

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

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

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

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for

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each principal portion of the Work. The Owner or the Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect or the Owner requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection. Failure of the Owner to object to a Subcontractor does not imply approval of specific products or materials.

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

**§ 5.2.3** Subcontractors shall be selected as provided in the Contract and the Guaranteed Maximum Price Amendment.

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

### **§ 5.3 SUBCONTRACTUAL RELATIONS**

By appropriate written agreement, the Contractor shall require each subcontractor (a) to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by the scope of Work and requirements of the Contract Documents; (b) to assume toward the Contractor all duties, obligations, and conditions imposed by the terms and conditions of the Contract Documents that the Contractor assumes toward the Owner; and (c) to affirm the same representations to the Contractor that the Contractor makes to the Owner. The Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors of every tier. 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.

### **§ 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 or stoppage of the Work by the Owner pursuant to Section 2.3.1; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

### **§ 5.5 DESIGN-BUILD SUBCONTRACTORS**

The Contractor may retain various Subcontractors to perform design-build portions of the Project ("Design-Build Subcontractors"), which the Contractor shall identify in advance to the Owner before design-build work commences. The Contractor assumes the obligation, as a contractual duty to the Owner, to deliver a completed and functioning Project in accordance with the Contract Documents, including without limitation all designs provided by the Design-Build Subcontractors. The Contractor is not itself a designer and does not independently approve the details of the designs of Design-Build Subcontractors. The Contractor shall place in its subcontracts with each of its Design-Build Subcontractors the following terms and conditions:

- .1 The Owner is an intended third-party beneficiary of the design-build subcontract and the Design-Build Subcontractor's services and Work. The Design-Build Subcontractor is not a third-party beneficiary



of the Contract or any other agreement between the Contractor and the Owner, or between the Owner and the Architect or the Architect's consultants.

- .2 The Design-Build Subcontractor shall maintain through the Project, and for six (6) years after Substantial Completion of the Project, standard professional liability/errors-and-omissions insurance that is (a) in a form and with an insurance company satisfactory to the Contractor and the Owner, and (b) in compliance with the minimum insurance coverage requirements in Article 11 of these General Conditions.
- .3 The Design-Build Subcontractor's professional errors and omissions insurance will have the terms and limits as required in Section 11.1 of these General Conditions or as agreed in advance by the Owner and the Contractor.
- .4 The Design-Build Subcontractor shall notify the Contractor and the Owner no less than thirty (30) days before any cancellation, nonrenewal, or material modification of the professional errors and omissions insurance.
- .5 The Design-Build Subcontractor shall submit to the Owner and the Contractor proof of all such insurance before commencing Work on the Project.

The Contractor shall also ensure that the design-build subcontracts contain no limitation-of-liability clauses.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract.

### **§ 6.2 MUTUAL RESPONSIBILITY**

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

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

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**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for unavoidable costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction. All construction costs resulting from Contractor's negligence, lack of oversight, inattention to detail, failure to investigate or failure to follow the Construction Documents or Contract Documents will be borne by the Contractor, subject to the terms and conditions of the Contract Documents and the Guaranteed Maximum Price Amendment.

**§ 6.2.4** The Contractor shall promptly remedy damage the Contractor causes to completed or partially completed construction or to property of the Owner, separate contractors as provided in Section 10.2.5. If a separate contractor initiates legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings and indemnify the Owner against any judgment or award, including without limitation costs and attorney fees. This Section 6.2.4 does not require the Contractor to indemnify the Owner against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the liability was caused by the negligence or intentional misconduct of the Owner.

**§ 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 about the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 GENERAL**

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

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor.

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

### **§ 7.2 CHANGE ORDERS**

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

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

**§ 7.2.2** Before approval of a Change Order and upon request of the Architect or the Owner, the Contractor will produce copies of all bids or other proposals, including those from Subcontractors and Sub-subcontractors, related to the Work proposed to be performed pursuant to the Change Order.

**§ 7.2.3** Agreement on any Change Order shall constitute a final settlement of all matters relating to the changes in the Work that is the subject of the Change Order, including without limitation all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order normally 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 may be used in the absence of total agreement on the terms of a Change Order.

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

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

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in Section 7.5 of these General Conditions. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner and the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, reasonable expenditures for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 permit fees, taxes, and increased costs of bonds and insurance (if such increases are necessitated by the Construction Change Directive related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 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 Owner and the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor will submit to Owner for approval a not-to-exceed price for performance of the Work required by the Construction

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Change Directive. The Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment, but the Owner is not obligated to make payments for Work completed under the Construction Change Directive until the parties agree on a not-to-exceed price. If the parties do not agree on a not-to-exceed price within 30 days after the Owner's issuance of the Construction Change Directive to the Contractor, then the Owner will make an interim determination on the amount owed to the Contractor for Work completed under the Construction Change Directive. The Owner's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

#### **§ 7.4 MINOR CHANGES IN THE WORK**

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. After the Architect communicates to the Owner that a minor change has been made, the change will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

#### **§ 7.5 AGREED OVERHEAD AND PROFIT RATES**

**§ 7.5.1** For any adjustments to the Guaranteed Maximum Price that are based on other than the unit prices method, the Contractor will charge, and accept, as payment for overhead and profit, the following percentages of costs attributable to the change in the Work. The following overhead and profit rates shall also apply to adjustments to subcontracts that do not adjust the Guaranteed Maximum Price.

- .1 For Work performed by the Contractor's own forces or Affiliated Entities, the Contractor may claim no more than the percentage applied to calculate the Contractor's Fee or five percent (5.0%) of the actual Cost of the Work, whichever is less. There shall be no separate, additional markup by an Affiliated Entity.
- .2 For Work performed by a Subcontractor, the Contractor may claim no more than the percentage applied to calculate the Contractor's Fee or five percent (5.0%) of the actual amount due to the Subcontractor for the Cost of the Work, whichever is less.
- .3 For Work performed by a Subcontractor or Sub-subcontractor, the Subcontractor or Sub-subcontractor may claim no more than ten percent (10.0%) of its actual Cost of the additional Work.
- .4 For Work performed by a Sub-subcontractor, its Subcontractor may claim a markup of no more than the percentage applied to calculate the Subcontractor's Fee or ten percent (10.0%) of the amount actually payable to the Sub-subcontractor for the Cost of the Work, whichever is less.
- .5 The Costs of the Work to which overhead and profit are to be applied at any tier are determined by Article 6 of the Agreement.
- .6 All cost proposals, except those so minor that their propriety can be readily determined, must be accompanied by a complete itemization of costs, including without limitation the costs of labor, materials, subcontracts, and sub-subcontracts. Subcontractor costs exceeding \$1,500 must be similarly itemized.
- .7 All general conditions or general requirements costs of the Contractor, Affiliated Entities, and all Subcontractors of any tier are to be included in the overhead and profit allowance stated in this section and may not be separately stated or recovered as Costs of the Work.
- .8 The Contractor bears the burden of establishing the reasonableness of any proposed increase in the Contract Sum or Contract Time.



§ 7.5.2 Overhead and profit adjustments for net decreases in the cost of any portion of the Work shall include a deduction of the overhead and profit, fee, and general conditions or general requirements costs that would be allowed for that Work by the terms of Section 7.5.1.

§ 7.5.3 Overtime, when specifically authorized by the Owner and not as an extraordinary measure, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. The Owner will not pay overhead and profit for overtime.

## ARTICLE 8 TIME

### § 8.1 DEFINITIONS

§ 8.1.1 The Contract Time is the period of time from the date of commencement to Substantial Completion of the Work.

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

§ 8.1.3 Substantial Completion is defined in Section 9.8.

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

### § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time is of the essence of this Contract. 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 Consistent with Section 11.1.10, the date of commencement cannot occur before placement of insurance. The Contractor will not commence Work or enter the Project Site before placement of insurance.

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

### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in progress of the Work by an act of negligence of the Owner or the Architect, or of an employee of either involved in the Project, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by occurrences beyond the control and without the fault or negligence of the Contractor or its Subcontractors and that by the exercise of reasonable diligence the Contractor is unable to prevent or provide against, including industry-wide labor disputes, fire, unusual and extended delays in deliveries, unavoidable casualties, adverse weather conditions not reasonably anticipated, or other occurrences that the Owner determines may justify delay, then the Contractor may obtain an extension of the Contract Time only upon satisfying the prerequisite conditions of (a) compliance with Subparagraph 15.1.3 of the General Conditions and (b) presentation to the Owner and the Architect of written notice of the request for an extension of the Contract Time as provided in Subparagraph 15.1.5.1. The Contract Time may under these circumstances be adjusted by Change Order for the additional time actually and directly caused by the unforeseen occurrence. The extension will be net of any delays caused by or due to the fault or negligence of the Contractor and will also be net of any contingency or "float" time allowance included in the Project Schedule. In the event delays in the Work are encountered for any reason, the Owner and Contractor shall undertake reasonable steps to mitigate the effect of such delay.

§ 8.3.2 The Contract Time is set with reference to and knowledge of weather conditions usual to the area of the Project. To justify an excused delay in the Contract Time, adverse weather conditions not reasonably anticipated for purposes of Subparagraph 8.3.1 require the presence of abnormally severe or unsafe working conditions on the site that have a material, adverse effect on the scheduled Critical Path Work activities. As a minimum condition for a claim for additional time for abnormally severe weather, the Contractor must provide documentation from National Oceanic and Atmospheric Administration, or other comparable weather agency, that the conditions as the basis for the claim are more severe than for any comparable time period in the vicinity of the site within the past ten years.

§ 8.3.3 If the delay was caused by any public entity other than the Owner and not caused by the Owner, the Contractor, a Subcontractor of any tier, the Architect, or anyone acting on behalf of one or more of them, the

Contractor is entitled only to an increase in the Contract Time (but not a change in the Contract Sum). If the delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of one or more of them, the Contractor is not entitled to an increase in the Contract Time or Contract Sum.

**§ 8.3.4** The Contractor shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant under-run; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar damages.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Owner will make progress payments to the Contractor no more than once each month based on a verified Application for Payment submitted by the Contractor and signed by the Owner.

### **§ 9.2 SCHEDULE OF VALUES**

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

### **§ 9.3 APPLICATIONS FOR PAYMENT**

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

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

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

**§ 9.3.1.4** The Contractor shall submit its monthly Application for Payment to the Owner and the Architect (if required by the Owner), on AIA Document G702, supported by AIA Document G703, or an equivalent form approved by the Owner. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

- .1 Description of the Work.
- .2 Detailed cost report and updated schedule of values.
- .3 Separate documentation and accounting for Work performed pursuant to Change Orders, Construction Change Directives, or minor changes in the Work; allowances; application of contingency; and payment for materials stored other than at the Project Site.
- .4 The Contractor's executed lien, bond, and claim releases ("Lien Releases") on forms acceptable to the Owner. Lien Releases shall provide a conditional release of liens, bonds, and claims for the Work that is subject to the current Application for Payment and an unconditional release for all Work performed through the date of all prior payment periods.



**.5 All other information and materials required to comply with the requirements of the Contract Documents.**

The Owner may, at its option, request documentation from the Contractor evidencing that Subcontractors, Sub-subcontractors, and suppliers of every tier have provided the requisite conditional and unconditional releases and waivers of lien and bond rights to the Contractor for each Application of Payment.

**§ 9.3.2** Unless otherwise expressly provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Project 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 payments have previously been received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**§ 9.3.4** Retainage will be withheld at a rate of five percent (5%) in accordance with ORS 279C.570.

**§ 9.4 CERTIFICATES FOR PAYMENT**

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

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

**§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

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

- .1** defective Work not remedied;
- .2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

- .3 failure of the Contractor or Subcontractor to make payments to Subcontractors or Sub-subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 unsatisfactory Work progress;
- .9 disputed Work, materials, or products, not to exceed one hundred fifty percent (150%) of the amount in dispute;
- .10 failure to comply with other material provisions of the Contract Documents;
- .11 failure to maintain current safety and as-built documents as required by Section 3.11; or
- .12 failure to train personnel on the Project site in required safety procedures as required in the Contract Documents.

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect. The Owner will notify the Contractor of a joint payment, and the Owner will receive credit against the Contract Sum for the joint payment.

§ 9.5.4 If the Contractor disputes any determination by the Architect with regard to any Certificate of Payment, the Contractor nevertheless shall expeditiously continue the Work.

## § 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require

money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

## **§ 9.7 FAILURE OF PAYMENT**

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

**§ 9.7.2** Failure of payment does not exist under Section 9.7.1 if the Owner exercises authority granted by the Contract documents to withhold payment notwithstanding certification by the Architect.

## **§ 9.8 SUBSTANTIAL COMPLETION**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when (1) the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and (2) the Contractor, its Subcontractors of any tier, and its suppliers of any tier have completed or satisfied all conditions required of the Contractor for the issuance of a temporary or permanent certificate of occupancy.

- .1** As part of the final Application for Payment, the Contractor shall assemble for the Architect's approval within thirty (30) days of Substantial Completion three (3) complete bound copies of all operation, maintenance, and warranty data from all manufacturers whose equipment is installed in the Work. The final Certificate for Payment will not be issued by the Architect until all warranties and guaranties have been received and accepted by the Owner.

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

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list prepared under this Section 9.8. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

## **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Owner and the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor.

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

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

**§ 9.9.4** The Contractor shall deliver to the Owner certificates of inspection, use, and occupancy upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment, and delivery shall be included within the Contract Sum.

## **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

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

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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



certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.4** In the event that final completion is not accomplished within 30 days after the date of Substantial Completion due to any fault of the Contractor, the Owner may withhold from any subsequent progress payments and from the final payment 150 percent of the reasonable cost of the unfinished Work necessary to attain final completion. Such funds are to be paid pro rata following successful completion of the unfinished Work if the Work is done by the Contractor. In the event that the Contractor fails to complete the Work necessary to attain final completion, the Owner may, without waiving any other remedies it may have, complete the Work and deduct the actual cost thereof from the funds withheld. The Owner shall not withhold any amount under this section relating to Work arising from Change Orders or Construction Change Directives issued following the date of Substantial Completion.

**§ 9.10.5** 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 required by or included in the Contract Documents; or
- .4 the correction remedy allowed by Section 12.2.

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

**§ 9.10.7** Requests for payment will not be considered if submitted (1) more than ninety (90) days following completion of the Work performed or (2) on or after the date of acceptance of final payment, whichever is earlier.

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

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor acknowledges the unique safety risks associated with construction of school facilities in the presence of faculty, students, staff, and visitors.

**§ 10.1.2** This Contract incorporates by this reference any Owner's safety policies current as of the date of commencement of the Work, which have been or will be made available to the Contractor. The Contractor, as a condition precedent to commencement of the Work, will instruct all personnel of the Contractor and its Subcontractors, prior to their performing any of the Work, of the elements of these policies with which the personnel will be required to comply. Notwithstanding any other provision of the Contract Documents, the Contractor's (or any Subcontractor's) failure to perform adequate safety training is grounds for the Owner's immediate suspension of the Work at the Contractor's sole expense and may result in cancellation of the Contract.

**§ 10.1.3** In addition to the policies identified above, the Contractor shall review with all Subcontractors the methods, materials, tools, and equipment to be used to verify their compliance with all safety standards and laws and the Contractor shall be responsible for compliance with them, to ensure safe, hazard-free conditions for all persons visiting or working on the entire Project site and the Owner's adjoining facilities.

**§ 10.1.4** The Contractor will develop a fire response plan consistent with that of the Owner, which will be strictly enforced by the Contractor's project safety officer and the Owner. The Contractor will supply fire extinguishers in sufficient size and quantity, distributed throughout the Project site, to maintain a safe working environment.

**§ 10.1.5** The Contractor will ensure that all equipment furnished and installed as part of the Work is rated by Underwriters Laboratories or another method approved by the state testing laboratory or the Owner, as appropriate.

**§ 10.1.6** Tobacco use is not permitted on any of the Owner's property. The Contractor will publish this standard to all personnel for whom it or its Subcontractors are responsible and will enforce it appropriately.



## § 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 employees on the Work, the Owner's faculty, staff, students, and visitors and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;
- .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; and
- .4 adjoining operations of the Owner.

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

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing and posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, subject to the terms of the Contract, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 through 10.2.1.43 to the extent caused 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 through 10.2.1.4, but not to the extent of damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable. 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 or designated safety officer unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition. The Contractor will ensure that storage practices on the Project site will keep combustible load levels at a minimum and in approved containers that are clearly labeled. The Contractor will provide material safety data sheets to the Owner's Representative for all chemicals used on the Project site.

## § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

The Contractor will immediately report to the Owner by telephone or messenger whenever any person at the Project Site suffers injury or if there is property damage to the Owner's existing facilities or adjoining property. The notice shall provide sufficient detail to enable the other party to investigate the matter. The Contractor will promptly follow up the notice with a written report to the Owner.

§ 10.2.9 Without limiting any other requirement of this Section 10.2, the Contractor shall protect adjoining property and shall provide barricades, temporary fences, and covered walkways to protect the safety of passersby, as required by prudent construction practices, laws, statutes, ordinances, codes, rules and regulations, and lawful orders of

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public authorities, or the Contract Documents. The Contractor shall be responsible for all measures necessary to protect any property adjacent to the Project and improvements thereon.

§ 10.2.10 Without limiting any other requirement of this Section 10.2, the Contractor shall, at its sole cost and expense, promptly repair any damage or disturbance to walls, utilities, sidewalks, curbs, adjoining property, and the property of third parties (including utility companies and governments) resulting from the performance of the Work, whether caused by the Contractor or by its Subcontractors of any tier. The Contractor shall maintain streets in good repair and traversable condition.

§ 10.2.11 The Contractor will ensure that storage practices on the Project site will keep combustible load levels to a minimum and in approved containers that are clearly labeled. The Contractor will provide material safety data sheets to the Owner for all chemicals used on the Project Site.

§ 10.2.12 Without limiting any other requirement of this Section 10.2, the Contractor shall maintain Work, materials, and apparatus free from damage from rain, wind, storms, frost, and heat. If adverse weather makes it impossible to continue operations safely in spite of weather precautions, the Contractor shall cease Work and notify the Owner and the Architect of the cessation.

§ 10.2.13 The Contractor shall not permit open fires on the Project Site.

### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 Hazardous Materials as that term is defined under Section 10.3.6. With respect to Hazardous Materials to be used during the course of the Work, the Contractor will implement and enforce a program to inventory and properly store and secure all Hazardous Materials that may be used or present on the Project site, maintain available for inspection at the Project site all material safety data sheets, and comply with all regulations required by law for the storage, use, and disposal of Hazardous Materials. The program must provide for notification of all personnel of potential chemical hazards. Review of these hazards must be included in the Contractor's safety training program. The Contractor shall submit to the Owner a list of all Hazardous Materials to be brought by the Contractor or its Subcontractors onto the Owner's property, including the purpose for their use on the Project.

§ 10.3.2 In the event of a release or discovery of a preexisting release of Hazardous Materials, or if it is foreseeable that injury or death to persons may occur because of any material or substance (including without limitation Hazardous Materials) encountered on the Project site, the Contractor shall **immediately** (1) stop the Work or the portion of the Work affected, (2) notify the Owner and the Architect orally and in writing, and (3) protect against exposure of persons to the Hazardous Materials. The Contractor shall provide all written warnings, notices, reports, or postings required at law or by contract for the existence, use, release, or discovery of Hazardous Materials.

§ 10.3.3 With respect to any Hazardous Materials or other material or substance reported to the Owner under Section 10.3.2 that was not introduced to the Project site by the Contractor or its Subcontractors of any tier, the Owner shall obtain the services of a qualified environmental consultant 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 verify it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time may, subject to agreement by the Owner and the Contractor, be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

§ 10.3.3.1 With respect to any Hazardous Materials or other material or substance reported to the Owner under Section 10.3.2 that was introduced to the Project site by the Contractor or its Subcontractors of any tier, the Contractor shall be responsible to carry out the duties of (1) proposing to the Owner and the Architect a qualified environmental consultant, (2) obtaining and paying for the services of the environmental consultant, and (3)

verifying that the material is rendered harmless, as otherwise set forth in Section 10.3.3. The Contractor will not be entitled to an increase in the Contract Sum as stated in the last sentence of Section 10.3.3 if the Contractor or its Subcontractors of any tier are responsible for the condition requiring the testing of the material and the stoppage of the Work. Remediation work must be conducted by properly qualified contractors approved in advance by the Owner. Generally, the Owner may at its option contract directly with environmental consultants, and remediation contractors, regardless of whether the work will be performed at the Contractor's expense.

**§ 10.3.4** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including without limitation attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was not introduced to the Project site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless.

No indemnification provided by the Owner under this Section 10.3.4 will be required to indemnify the Contractor, Subcontractors, or their employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Contractor's own negligence, but will require indemnity to the extent of the fault of the Owner or its agents or representatives.

**§ 10.3.5** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Owner's Representatives, and employees of any of them from and against claims, damages, losses, and expenses, including without limitation to attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was introduced to the Project site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death, and has not been rendered harmless. No indemnification provided by the Contractor under this Section 10.3.5 will be required to indemnify the Owner or its agents or representatives to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Owner's own negligence, but will require indemnity to the extent of the fault of the Owner or its agents or representatives.

**§ 10.3.6** "Hazardous Materials" are any substance defined or designated as being radioactive, infectious, hazardous, dangerous, or toxic by any federal, state, or local statute, regulation, or ordinance presently in effect or subsequently enacted. For purposes of Section 10.3, the term "introduce" means the physical placement or transportation of Hazardous Materials in or on the Project site regardless of whether the Hazardous Material was specified, required, or otherwise addressed in the Contract Documents.

#### **§ 10.4 EMERGENCIES**

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

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

#### **§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage and commercial general liability coverage (or its equivalent as approved in advance by the Owner);

- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations;
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18;
- .9 claims for third-party injury and property damage (including without limitation clean-up costs) as a result of pollution conditions arising from the Contractor's operations or completed operations; and
- .10 claims involving the Contractor's professional liability, solely to the extent that the Contractor accepts design or design/build responsibilities under this Contract.

#### § 11.1.2 CONTRACTOR PROVIDING INSURANCE

Without waiver of any other requirement of Section 11.1, the Contractor will pay for and maintain the following insurance at all times during the performance of the Work, without interruption until final acceptance of the Work or for such further duration as required below. All of the Contractor's insurance carriers shall be rated A VII or better by A.M. Best's rating service, unless otherwise approved by the Owner.

- .1 **Workers' Compensation.** The Contractor shall purchase and maintain workers' compensation coverage sufficient to meet statutory liability limits.
- .2 **Employer's Liability.** The Contractor shall purchase and maintain employer's liability insurance in addition to its workers' compensation coverage with at least the minimum limits listed in Section 11.1.3 of these General Conditions.
- .3 **Commercial General Liability.** The Contractor shall purchase and maintain commercial general liability ("CGL") insurance on an occurrence basis, written on ISO Form CG 00 01 (12 04 or later) or an equivalent form approved in advance by the Owner. CGL coverage shall include all major coverage categories, including bodily injury, property damage, and products/completed operations coverage maintained for at least six (6) years following Final Payment. The CGL insurance must also include the following: (1) separation of insureds and (2) per-project aggregate.
- .4 **Professional Liability.** To the extent that the Contract Documents require the Contractor to provide professional design services or certifications related to systems, materials, or equipment, the Contractor shall (1) purchase and maintain professional liability/errors-and-omissions insurance and (2) cause those Subcontractors providing professional design services or certifications related to systems, materials, or equipment to do so under the requirements of Sections 5.5 and 11.1.3.
- .5 **Automobile Liability.** The Contractor shall purchase and maintain automobile liability insurance with coverage for owned, hired, and nonowned vehicles on ISO Form CA 00 01 or an equivalent form approved in advance by the Owner. The automobile liability insurance shall include pollution liability coverage with vehicle overturn and collision.
- .6 **Pollution Liability.** If the Owner designates the Project as having a known pollution exposure, the Contractor shall purchase Contractors Pollution Liability ("CPL") insurance. If the CPL insurance is written on a claims-made basis rather than an occurrence basis, then coverage must be maintained for at least six (6) years following final payment. Coverage is to include third-party claims for bodily injury, property damage, and environmental damage resulting from pollution conditions caused during the performance of covered operations both on site and migrating from the jobsite. Coverage is also to include pollution conditions arising from covered operations, including work performed by the Contractor's Subcontractors and third-party claims against the Contractor alleging improper supervision of the Subcontractors. The Contractor shall arrange for, and be responsible for, the selection of Subcontractors used to transport all Hazardous Materials that leave the Project site.
- .7 **Commercial Umbrella/Excess Coverage.** The Contractor shall purchase or maintain commercial umbrella or excess liability insurance to meet the minimum limits as described below in Section 11.1.3. Commercial umbrella/excess liability coverage includes: (1) "Pay on behalf of" wording; (2)



concurrency of effective dates with primary coverage; (3) punitive damages coverage (if not prohibited by law); (4) application of aggregate (when applicable) in primary coverage; and (5) drop-down feature. The third-party liability insurance shall be scheduled to the umbrella/excess coverage.

**§ 11.1.3 Limits.** The insurance required by Section 11.1 shall be written for at least the limits of liability specified in this Section or required by law, whichever is greatest.

**.1 Workers' Compensation.** Statutory Limits

**.2 Employer's Liability.**

Each Accident: \$ [TBD]  
Each Bodily Injury Disease: \$ [TBD]  
Aggregate Bodily Injury Disease: \$ [TBD]

**.3 Commercial General Liability.**

Each Occurrence: \$ [TBD]  
General Aggregate: \$ [TBD]  
Product/Completed Operations: \$ [TBD]  
Personal & Advertising Injury: \$ [TBD]

**.4 Professional Liability/E&O.**

Each Claim/Aggregate: \$ [TBD]

**.5 Automobile Liability.**

Combined Single Limit: \$ [TBD]

**.6 Pollution Liability.**

Single Limit: \$ [TBD]  
Aggregate: \$ [TBD]

**.7 Commercial Umbrella/Excess Coverage.**

Each Occurrence: \$ [TBD]

**§ 11.1.4 Additional Insureds.** The Contractor's third-party liability insurance policies shall include the Owner and its officers, employees, agents, volunteers, partners, successors, and assigns as additional insureds. The policy endorsement must extend premise operations and products/completed operations to the additional insureds. The additional insured endorsement for the Commercial General Liability must be written on ISO Form CG 2010 (11/85), a CG 2037 (07/04) together with CG 2033 (07/04), or the equivalent; but shall not use the following forms: CG 2010 (10/93) or CG 2010 (03/94).

**§ 11.1.5 Joint Venture.** If the Contractor is a joint venture, the joint venture shall be a *named* insured for the liability insurance policies.

**§ 11.1.6 Primary Coverage.** The Contractor's insurance identified in Section 11.1 shall be primary insurance coverage and may not seek contribution from any insurance or self-insurance carried by the Owner or the Architect including any property damage coverage carried by the Owner. Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought. The Contractor's insurance shall not include any cross-suit exclusion or preclude an additional insured party from asserting a claim as a third party. The Contractor waives all rights of subrogation against the Owner and coverage that the Owner maintains.

**§ 11.1.7 Contractor's Failure to Maintain Insurance.** If the Contractor for any reason fails to maintain required insurance coverage, such failure shall be deemed a material breach of the Contract and the Owner, at its sole discretion, may suspend or terminate the Contract pursuant to Section 14.2. The Owner may, but has no obligation to, purchase such required insurance and without further notice to the Contractor, the Owner may deduct from the Contract Sum any premium costs advanced by the Owner for such insurance. Failure to maintain the insurance coverage required by this Section 11.1 shall not waive the Contractor's obligations to the Owner.



- .1 The Contractor shall notify the Owner in writing at least thirty (30) days before any cancellation, lapse, or expiration of any insurance required by this Article 11.
- .2 The Contractor shall notify the Owner in writing of any reduction in available insurance coverage, including without limitation revised coverage limits or claims paid under the general aggregate, or both, that would cause the insurance available to the Owner to fall below or outside the requirements set forth in this Article 11 or by law.

**§ 11.1.8 Certificates of Insurance.** Before commencing the Work, the Contractor shall supply to the Owner certificates of insurance for the insurance policies described in this Section 11.1 prior to the commencement of the Work and before bringing any equipment or construction personnel onto the Project site.

- .1 **Additional Certificates.** To the extent that the Contractor's insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.
- .2 **Prohibition Until Certificates Received.** The Owner may, but is not obligated to, prohibit the Contractor and its Subcontractors from entering the Project site until the required insurance certificates and all required attachments have been received and approved by the Owner. The Contractor may not enter the Project site or commence the Work until the Contractor places for the Work all coverages required under Section 11.1.2.

**§ 11.1.9 Subcontractor Insurance.** The Contractor shall cause each Subcontractor to purchase and maintain in full force and effect policies of insurance as specified in this Section 11.1, except for coverage limits, which will be agreed upon between the Owner and the Contractor. The Contractor will be responsible for the Subcontractors' coverage if the Subcontractors fail to purchase and maintain the required insurance. When requested by the Owner, the Contractor will furnish copies of certificates of insurance establishing coverage for each Subcontractor.

**§ 11.1.10 Limitations on Coverage.**

- .1 No insurance provided by the Contractor under this Section 11.1 will be required to indemnify the Owner, the Architect, or their employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but will require indemnity to the extent of the fault of the Contractor or its agents, representatives, or Subcontractors.
- .2 The obligations of the Contractor under this Section 11.1 shall not extend to the liability of the Architect or its consultants for (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications, or (2) the giving or failure to give directions or instructions, to the extent that the directions, or failure to provide directions, are the cause of the injury or damage.
- .3 **By requiring insurance, the Owner does not represent that coverage and limits will necessarily be adequate to protect the Contractor. Insurance in effect or procured by the Contractor will not reduce or limit the Contractor's contractual obligations to indemnify and defend the Owner for claims or suits that result from or are connected with the performance of the Contract.**

**§ 11.1.11 DEDUCTIBLES/SELF-INSURED RETENTIONS** Payment of deductibles or self-insured retentions is not a Cost of the Work within the Contract Sum or the Guaranteed Maximum Price and does not justify a Change Order.

**Satisfaction of all self-insured retentions or deductibles is the sole responsibility of the Contractor.**

## § 11.2 OWNER'S LIABILITY INSURANCE

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

## § 11.3 PROPERTY INSURANCE

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

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earth movement, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's, Owner's, and Contractor's services and expenses required as a result of such insured loss.

### § 11.3.1.2

§ 11.3.1.3 If the property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

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

## § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall maintain boiler and machinery insurance.

§ 11.3.3 [Deleted]

*(Paragraph Deleted)*

§ 11.3.4 [Deleted]

§ 11.3.5 [Deleted]

§ 11.3.6 [Deleted]

§ 11.3.7 [Deleted]

*(Paragraph Deleted)*

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

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§ 11.3.9 If required in writing by a party in interest, the Owner shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Guaranteed Maximum Price Amendment or Early Work Amendment, if any, as required by the Contract.

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

### 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 the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner or the Architect, be uncovered for examination by the Owner, the Architect, or any governmental authority and be replaced at the Contractor's expense without change in the Contract Time.

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

#### § 12.2 CORRECTION OF WORK

##### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Owner, the Architect, or any governmental authority or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's and the Architect's 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, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly for no additional compensation after notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly

after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

**§ 12.2.2.3** The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

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

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

### **§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

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

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located.

### **§ 13.2 SUCCESSORS AND ASSIGNS**

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

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

### **§ 13.3 WRITTEN NOTICE**

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

### **§ 13.4 RIGHTS AND REMEDIES**

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



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

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals by public agencies or by independent testing laboratories, as may be required by the Owner or the permitting jurisdiction. The Owner shall retain and pay for any private inspectors or testing laboratories that are required. The costs of such private inspections and tests shall not be included in the Contract Sum. The Contractor shall forward to the Architect and the Owner copies of all inspections, results, test results, orders, permits, and other directives or correspondence received by the Contractor from any inspector, testing laboratory, or agency with jurisdiction over the Work. The Contractor shall give the Owner and the Architect timely notice of when and where tests and inspections are to be made so that the Owner and the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Owner's and the Architect's services and expenses shall be at the Contractor's expense, including without limitation the cost of retesting for verification of compliance, if necessary, until the Architect certifies that the Work in question does comply with the requirements of the Contract Documents.

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

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

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

§ 13.5.7 No inspection performed or failed to be performed by the Owner shall waive any of the Contractor's obligations or be construed as an approval or acceptance of the Work or any part thereof.

### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest at an annual rate of one percent (1.0%) over the prime lending rate published by the *Wall Street Journal*.

### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether based on contract, tort, breach of warranty, statute, or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law.



## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, (1) repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less, and (2) none of the repeated suspensions, delays, or interruptions of the entire Work are caused by act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or any of their respective agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor.

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

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

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or
- .5 fails to observe the training, safety, and other precautions required in Article 10, including the Contractor's own safety policies for the Project.

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

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

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

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

**§ 14.2.5** If termination for cause is determined later to have been wrongful or without justification, then the termination will be considered to have been termination for convenience.

### **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

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

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

### **§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

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

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

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work executed. The Contractor hereby waives and forfeits all other claims for payment and damages, including without limitation anticipated profits.

**§ 14.4.4** The Owner may terminate a portion of the Work for the Owner's convenience and without cause, in which case the provisions of this Section 14.4 shall apply only to the portion of the Work terminated and the Contractor shall continue with performance of the remaining Work that is not terminated.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 CLAIMS**

#### **§ 15.1.1 DEFINITION**

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

#### **§ 15.1.2 NOTICE OF CLAIMS**

Claims by either the Owner or Contractor must be made by written notice to the other party and the Architect. Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, and must identify the known bases for each Claim and the nature and amount of the relief sought.

### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum or Guaranteed Maximum Price, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Failure to provide timely notice in accordance with Section 15.1.2 constitutes waiver of the Claim.

### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Claims for additional time are governed by Section 8.3. Failure to provide timely notice in accordance with Section 15.1.2 constitutes waiver of the Claim.

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

### § 15.1.6 [Deleted]

*(Paragraph Deleted)*

### § 15.2 INITIAL RESOLUTION

**§ 15.2.1** To facilitate the resolution of Claims between the Contractor and the Owner, the parties shall attempt in good faith first to resolve Claims that are made before Final Payment by the following dispute-resolution process. The parties agree not to proceed to arbitration until the following process has been attempted. Neither party's rights, defenses, Claims, and remedies shall be considered waived, released, or adversely affected by its participation in this process, but this process shall not toll any applicable statutory periods of limitation, duration, or ultimate repose except to the extent that the parties separately agree in writing to toll those periods.

*(Paragraph Deleted)*

**.1** All reasonable efforts will be made by the Owner's Representative and the Contractor's project manager to resolve any Claims that arise during the Work in a prompt and equitable manner. If they fail to reach an equitable agreement to resolve a Claim, either party may notify the other party in writing to identify the Claim with known specificity and request a meeting between the Owner's senior executive responsible for the Project and the Contractor's senior executive responsible for the Project.

**.2** The parties' senior executives shall meet at a mutually agreed time and place within ten (10) days of receipt of the written notice and attempt in good faith to negotiate a resolution of the Claim. If within ten (10) days after the meeting the parties have not succeeded in negotiating an agreed-upon resolution of the Claim, then either party may pursue any and all rights and remedies available to it in the Agreement.

**.3** The parties may at any time mutually agree to submit any dispute between them to voluntary mediation or to arbitration under Section 15.4.

### § 15.2.2 [Deleted].

### § 15.2.3 [Deleted].

### § 15.2.4 [Deleted].

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§ 15.2.5 [Deleted].

§ 15.2.6 [Deleted]

§ 15.2.6.1 [Deleted]

§ 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 materialman's lien or construction lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 MEDIATION

§ 15.3.1 [Deleted]

§ 15.3.2 The parties may agree to engage in mediation to resolve their Claims.

§ 15.3.3 [Deleted]

### § 15.4 ARBITRATION

§ 15.4.1 Every Claim shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the Arbitration Service of Portland, Inc., in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the Arbitration Service of Portland, Inc., unless the parties elect another person or entity to administer arbitration proceedings. Exclusive venue for arbitration shall be Clatsop County, Oregon.

§ 15.4.1.1 A demand for arbitration shall be delivered in writing to the other party within a reasonable time after the claim, dispute or other matters in question have arisen, 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 or repose 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 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitrations to be consolidated substantially involve common questions of law or fact, and (2) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration.

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

§ 15.4.4.4. Prior to allowing any subcontractor or other party retained by the Contractor to commence work on the Project, the Contractor shall require such third party to consent in writing to arbitration if requested by the Owner or the Contractor.

| END OF THE GENERAL CONDITIONS



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# **Additions and Deletions Report for**

## **AIA® Document A201™ – 2007**

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### **PAGE 1**

**for the following PROJECT:**

...

**A new Seaside School District campus, which will include the following components, which are further:**

**(1) Closing existing buildings that operate in the City of Seaside's tsunami zone;**

**(2) Constructing a new facility on land donated by Weyerhaeuser Company, which will operate as Seaside High School and Broadway Middle School; and**

**(3) Renovation and expansion of Seaside Heights Elementary School.**

...

*(Name, legal status (Name and address))*

...

SEASIDE SCHOOL DISTRICT 10  
1801 SOUTH FRANKLIN STREET  
SEASIDE, OREGON 97138

...

*(Name, legal status (Name and address))*

...

DULL OLSON WEEKES-IBI GROUP ARCHITECTS INC.  
907 SW STARK STREET  
PORTLAND, OREGON 97205

...

**THESE GENERAL CONDITIONS APPLY TO THE AGREEMENT BETWEEN**  
**THE OWNER AND CONTRACTOR, AIA DOCUMENT A133-2009, AS**  
**AMENDED, DATED \_\_\_\_\_, 2017.**

(Topics and numbers in bold are section headings.)(Numbers and Topics in Bold are

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Section Headings)

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

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties ~~hereto~~ and supersedes all 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 and the Contractor shall, however, be entitled to performance and enforcement of obligations of the other under the Contract intended to facilitate performance of ~~the Architect's~~ their respective duties.

...

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

...

~~Instruments~~ Instruments of Service are representations, Drawings, Specifications, and other documents, including those in electronic form, of the tangible creative work performed by the Architect and the Architect's consultants for the Project under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

...

**§ 1.1.8 THE INDEMNITEES** The "Indemnitees" are Owner and its officers, directors, volunteers, agents, representatives, and employees.

...

**§ 1.1.9 AFFILIATED ENTITY OR AFFILIATED ENTITIES**

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of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. The term "Affiliated Entity" shall mean the Contractor (if self-performing a portion of the Work), a parent, subsidiary, affiliate, or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor, or the Contractor itself, owns any interest in excess of ten percent (10%) in the aggregate; or any person or entity that has the right to control the business or affairs of the Contractor. The term "Affiliated Entity" includes any member of the immediate family of any person identified above.

...

#### § 1.1.8 INITIAL DECISION MAKER 1.1.10 CONSTRUCTION MANAGER/GENERAL CONTRACTOR

...

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2. All references to the term "Contractor" in these General Conditions shall mean the Construction Manager/General Contractor identified in the Agreement.

...

§ 1.2.2 Organization of the Specifications into divisions, sections The terms of any document that forms the Contract are subject to the following order of precedence:

...

.1 Modifications;

...

.2 The Agreement;

...

and articles, .3 These General Conditions and supplementary conditions;

...

and arrangement of Drawings shall not control the Contractor in dividing .4 Drawings, Specifications, and Addenda issued before execution of the Contract, subject to Section 1.2.4;

...

the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. .5 Other documents incorporated by the terms of the Contract Documents.

...

§ 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. Dimensions not expressly provided in the Contract Documents are to be computed, rather than determined by scale or rule.

...

§ 1.2.4 If there is an inconsistency within or between (1) any Drawings, Specifications, or Addenda issued before execution of the Contract, or (2) any Drawings, Specifications, or Addenda and applicable standards, codes, and ordinances, and the inconsistency is not clarified by a Modification or by the Architect, then the Contractor shall provide the better quality or greater quantity of Work without requiring a change to the Contract Sum. The terms and conditions of this Section 1.2.4, however, shall not relieve the Contractor of any of the obligations set forth in Section 3.2.

...

§ 1.2.5 The organization of the Specifications into divisions, sections and articles, and the 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.

...

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, Architects, or substitute for those documents that may be used on the Project, or (4) the titles of or terms defined in the Owner's policies incorporated in these General Conditions.

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

...

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

...

### § 2.1.2 The ~~[Deleted]~~

...

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. ~~§ 2.1.3~~ Notwithstanding anything to the contrary in any Contract Document, no officer, director, trustee, partner, authorized representative, employee, student, volunteer, agent, or other representative of the Owner shall have any personal liability to the Contractor or any other person or entity other than the Owner for any acts or omissions arising out of or relating to these General Conditions or the Agreement, whether based on tort, contract, statute, administrative laws, or otherwise.

...

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

...

**§ 2.2.3** ~~The Owner shall furnish surveys describing~~ Except to the extent required for execution of the Work and requested by the Contractor in writing, the Owner shall not furnish surveys, studies, or reports regarding physical characteristics, legal limitations and utility locations for the site of the Project, ~~and but shall provide a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.~~

...

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

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**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Owner ~~shall furnish or the Architect shall provide~~ to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Additional copies may be purchased by the Contractor at the cost of reproduction and handling.

...

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

...

**§ 2.4.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, ~~correct such~~ commence and continue to carry out the Work, including without limitation the correction of any deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses



and compensation for the Architect's additional services made necessary by such default, neglect or failure. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If~~ payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

...

§ 2.4.2 If the Contractor's default or neglect results in a hazard to the safety of persons or property, the Owner may immediately commence or continue to carry out any Work necessary to mitigate the hazard without prior notice to the Contractor.

...

§ 2.4.3 The Owner's right to carry out the Work in this Section 2.4 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

...

§ 2.5 The Owner may notify the Contractor that it needs to exclude or remove from the Project site any or all employees, agents, suppliers, or representatives of the Contractor or its Subcontractors who threaten the safety of others or are disruptive to the Project or the Owner's operations and activities. The Contractor will supply replacement personnel promptly after receiving notice of the exclusion or removal. Each replacement must have qualifications and experience comparable to or better than the individual or entity being replaced and be reasonably acceptable to the Owner. Nothing in this Section requires the Contractor to take any particular employment or contract action with regard to an employee or Subcontractor.

...

## § 2.6 RIGHTS and REMEDIES

...

Consistent with Section 13.4, the rights described in Sections 2.3 through 2.5 shall be in addition to, and not in restriction of, the Owner's other rights or remedies.

...

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

...

§ 3.1.1.1 The Contractor and each of its Subcontractors must be licensed with the Oregon Construction Contractors Board at the time of solicitation of any work and throughout the entire course of the Work. The Contractor shall maintain all required bonding and insurance required by the State of Oregon and the Contract Documents throughout the entire course of the Work.

...

§ 3.1.1.2 The Contract is applicable to contractors who are owned or controlled by, or act as agents of, the Contractor for purposes of the Project.

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§ 3.1.2 The Contractor shall supervise, coordinate, and perform the Work in accordance with the Contract Documents. Documents in a professional, safe, and workmanlike manner and in accordance with all laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and professional standards applicable to the industries and trades involved, including without limitation strict compliance with all applicable federal, state, and local laws and building codes and certification requirements applicable to the Work.

...

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

...

§ 3.1.4 Unless otherwise directed by the Architect, the Contractor shall perform all Work in accordance with product manufacturers' recommendations or directions for best results. No preparatory step or installation procedure may be omitted unless specifically authorized by the Contract Documents or at the direction of the Architect. Conflicts among manufacturers' directions or the Contract Documents shall be resolved by the Architect.

...

§ 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. In addition:

...

.1 The Contractor and each Subcontractor, as a condition precedent to commencement of the Work, shall:

...

(a) become familiar with the location, condition, layout, and nature of the Project Site and surrounding areas and generally prevailing climate conditions;

...

(b) review all analyses, studies, and test data available to the Contractor concerning the conditions of the Project site;

...

(c) inspect the location of the Project site and satisfy themselves as to its condition, including all observable structural, surface, and subsurface conditions;

...

(d) evaluate the availability and cost of labor and trade Subcontractors and the availability and cost of materials, tools, and equipment; and

...

(e) determine (i) that the Contract Sum and GMP are just and reasonable compensation for all the Work, including all foreseen and foreseeable construction risks, hazards, and difficulties for which the Contractor is responsible under the Contract Documents, (ii) that the Contract Time is adequate for the performance of the Work, and (iii) that the means and methods of performing the Work will not result in any lateral or vertical movement of any adjacent structure.

...

The Contractor or Subcontractor must notify the Owner in writing before commencing the Work if it determines that it cannot satisfy one or more of these conditions.

...

- .2 The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

...

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, and, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner or 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.

#### PAGE 16

**§ 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 ~~shall~~:

...

- .1 promptly report to the Owner and the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require-require;

...

- .2 include within the Guaranteed Maximum Price all Costs of the Work that are necessary for the Project to comply with all applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

...

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections ~~3.2.2 or~~ 3.2.1 through 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections ~~3.2.2 or~~ 3.2.1 through 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, obligations and could not have recognized the applicable error, inconsistency, omission, or difference in the exercise of normal diligence,~~ 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.~~ authorities, recognized in the exercise of normal diligence.

...

**§ 3.2.5** Unless otherwise specified in the Contract Documents, the Contractor shall confirm the location of each utility and shall excavate and dispose of each on-site utility. The Owner has made available to the Contractor, and the Contractor has studied, the results of such test borings and information that the Owner has concerning subsurface conditions and site geology. At the Owner's request, the Contractor will make available to the Owner the results of any other site investigation, analyses, studies, or other tests conducted by or that are in possession of the Contractor or any of its agents. The Contractor shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements, and easements.

...

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

...

**§ 3.3.4** The Contractor must notify the Owner at least ten (10) days prior to the interruption of any utility or operating system, regardless of the area it services. The specific schedule for all interruptions in services must be coordinated through the Owner's Representative.

## PAGE 17

**§ 3.3.5** The Contractor and its Subcontractors may not use the Owner's tools, equipment, or materials unless authorized in advance by the Owner's Representative.

...

§ 3.3.6 If the Contractor reasonably believes that suspension of the Work is warranted by reason of unforeseen circumstances that could adversely affect the quality of the Work if the Work were continued, the Contractor shall immediately notify the Owner and the Architect and describe with particularity the reasons therefor. Except as stated elsewhere in the Contract Documents or in an emergency, the Contractor shall not suspend the Work until it receives approval from the Owner.

...

§ 3.3.7 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor under ORS 670.600. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to (a) make Contractor the agent, servant, or employee of the Owner; or (b) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect to the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status.

...

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

...

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the prior 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. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall hire all personnel for the proper and diligent prosecution of the Work, and maintain labor peace for the duration of the Project. In the event of a labor dispute, the Contractor shall not be entitled to any increase in the Contract Sum.

...

§ 3.4.4 Including, but not limited to the specific requirements of Section 10.1.1, Contractor, its Subcontractors, and vendors shall bear responsibility for compliance with all federal and state laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct Contractor's work so as to protect the Contractor from the consequences of Contractor's own conduct.

...

## **§ 3.5 WARRANTY**

...

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit.



Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the ~~Architect~~, Architect or the Owner, the Contractor shall furnish satisfactory evidence as to ~~about~~ the kind and quality of materials and equipment.

...

**§ 3.6 TAXES**  
**§ 3.5.2 CORRECTION OF WORK** If, after 10 days' notice, the Contractor fails to proceed to cure any breach of this warranty, the Owner may have the defects corrected and the Contractor and its surety, if any, shall be liable for all expense incurred. In case of an emergency where, in the opinion of the Owner or the Architect, delay would cause serious loss or damage, if any, corrective work may be undertaken without advance notice to the Contractor, but the Contractor and its surety shall remain liable for all expenses incurred. The remedies stated in this Section 3.5 are not exclusive, but are cumulative of any other Owner remedies.

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**§ 3.5.3 THIRD-PARTY WARRANTIES**

...

~~The Contractor shall pay sales, consumer, use and similar taxes.~~  
**1** The Contractor shall obtain from Subcontractors, manufacturers, and suppliers written guarantees and warranties consistent with any requirements of the Contract Documents. If the Contract Documents do not contain requirements for written guarantees or warranties, then the Contractor will obtain the optimum terms and longest periods reasonably obtainable. The documentation must also include all maintenance and operational documentation required to sustain the warranties.

...

~~for the Work provided.~~  
**2** All guarantees or warranties of third parties furnished to the Contractor or Subcontractor, including without limitation from any manufacturer or supplier, shall be deemed to run for the benefit of the Owner.

...

**3** The Contractor shall deliver to the Owner via the Architect electronic or hard-copy versions of all as-built documents and guarantees and warranties on materials, systems, and equipment furnished by the Contractor ~~that all manufacturers and suppliers to the Contractor and all its Subcontractors, with duly executed instruments properly assigning the guarantees and warranties to the Owner.~~ These warranties in each bound volume shall be grouped together by trade and properly indexed. The Contractor shall assign and deliver to the Owner all manufacturers' warranties not later than the date of Substantial Completion.

...

**4** Until Substantial Completion, the Contractor shall perform and document all required maintenance of equipment and systems and maintain in force all warranties.

...

#### **§ 3.5.4 ASSIGNMENT OF WARRANTIES**

...

The Contractor hereby assigns to the Owner all warranties and guarantees of all Subcontractors and Sub-subcontractors, but the assignment shall not relieve the Contractor of its warranty obligations to the Owner under these General Conditions and other Contract Documents.

...

#### **§ 3.5.5 REMEDIES**

...

are legally enacted when bids are received Consistent with Section 13.4, the remedies stated in this Section 3.5 are not exclusive, but are cumulative of any other Owner remedies.

...

#### **§ 3.6 TAXES**

...

or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Contractor shall pay all necessary local, county, and state taxes, income tax, compensation tax, social security, and withholding payments as required by law. Contractor hereby RELEASES, INDEMNIFIES, AND HOLDS HARMLESS Owner from any and all claims and demands made as a result of the failure of Contractor or any Subcontractor to comply with the provisions of any or all such laws and regulations.

...

#### **§ 3.7 PERMITS, FEES, ~~NOTICES~~ NOTICES, AND COMPLIANCE WITH LAWS**

...

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the ~~Contractor~~ Owner shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

#### **PAGE 19**

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect ~~determines~~ determines, after considering Section 3.2, that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

...

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

...

1. ~~Allowances~~ allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

...

2. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum ~~but not~~ and in the allowances; and

...

3. ~~Whenever~~ whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2. Savings realized on an allowance shall be returned to the Owner as a reduction in the Contract Sum.

...

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner ~~with reasonable promptness in sufficient time to avoid delay in the Work~~

...

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

...

§ 3.9.2 The Contractor, ~~as soon as practicable after award of the Contract,~~ shall furnish in writing to the Owner through project manager and the superintendent shall be those persons named in the Contractor's proposal.

...

the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection. § 3.9.3 So long as the project manager and the superintendent remain employed by the Contractor, the Contractor may not otherwise remove or replace the project manager, superintendent, or assistants, or cause them to leave the Project for any reason, including without

limitation to work on other projects or take extended vacations, without 45 days' advance written notice to and the prior consent of the Owner. The Owner shall be consulted by the Contractor with respect to replacement personnel pursuant to the requirements of the Contract.

...

**§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. 3.9.4 New or replacement project managers, superintendents, and assistants must be qualified and must have adequate experience with similar projects. The Contractor shall deliver to the Owner résumés of proposed new or replacement project managers, superintendents, and assistants.**

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**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's ~~information approval~~ a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the ~~Work~~ Work within the Contract Time.

...

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

...

**§ 3.11.1** The Contractor shall maintain at the site for the Owner one record as-built copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These as-built documents shall incorporate all changes and substitutions to the Work, including without limitation changes or substitutions arising from change orders, construction change directives, and details clarified by requests for information, supplemental instructions or approved shop drawings. The Contractor's as-built documentation shall be available to the Architect and the Owner during the course of the Project.

...

**§ 3.11.2** The Contractor shall maintain all approved permit drawings in a manner that will make them accessible at the Project site to governmental inspectors and other authorized agencies. All approved drawings shall be delivered to the Architect for submittal wrapped, marked, and delivered to the Owner within 60 days of Substantial Completion.

...

~~to the Owner upon completion of the Work~~ **§ 3.11.3 The Contractor must continuously maintain at the Project site all material safety data sheets, safety records, daily logs, and other Contract documentation necessary to immediately ascertain the safety of the Work and to establish compliance with life safety policies, hazardous materials requirements, and the Contract Documents.**

...

~~as a record of the Work as constructed.~~ **§ 3.11.4 The Contractor, with its Subcontractors, will prepare draft record Contract Documents, showing all as-built conditions as required under Section 3.11.1, and submit them to Architect for review. Based on Architect's review and comments, if any, Contractor will prepare and deliver to Owner within 60 days of Substantial Completion, final, accurate, and complete record Contract Documents, including without limitation record Drawings and Specifications, showing the exact "as-built" conditions of the Work.**

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

...

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

...

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

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**§ 3.13.2 Prior to commencement of the Work, the Contractor shall review the Project site with the Owner in detail and identify the area of the Work, staging areas, connections or interfaces with existing structures and operations, and restrictions on the Project site area. The Contractor will ensure that all forces on the Project site are instructed about the acceptable working and staging areas and restrictions on use of the site. The Contractor, with advance consent of the Owner, will erect such barriers, signage, and devices as are necessary to restrict access to the Project site to approved personnel and to prevent unauthorized access by construction personnel to non-Work areas.**

...



**§ 3.13.3 The Contractor and its Subcontractors shall receive prior approval from the Owner before delivering or storing any materials or tools on the Owner's premises. Upon approval, materials and tools will be stored so that they do not hamper the operation of equipment or persons and do not present a fire or safety hazard.**

...

**§ 3.13.4 Contractor and its Subcontractors shall not erect on the Project site any signage intended to advertise or promote their business without the prior written consent of the Owner.**

...

**§ 3.13.5 If the Contractor removes the Owner's property, fixtures, materials, or other equipment to perform the Work, the Contractor shall be responsible for the safekeeping of all such property, fixtures, materials, or other equipment including without limitation assuring that such items are not lost, damaged, destroyed, and are upon the Owner's directive are either returned to their original location, reinstalled, replaced, or repaired as necessary.**

...

**§ 3.13.6 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from damage by any cause.**

...

**§ 3.15.1 The Contractor shall**~~shall~~**, each work day, keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the ~~Contract~~.Contract.**

...

**§ 3.15.2** At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, ~~machinery~~machinery, and surplus materials from and about the Project.

...

**§ 3.15.2-3.15.3** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

...

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

...

**§ 3.16.2 Keys.** The Contractor will be responsible for all keys issued to it or its Subcontractors for mechanical or other locked rooms. Keys will be obtained from the Owner and may not be copied, transferred, or used for any purpose other than prosecution of the Work. All keys will be returned to the Owner at the conclusion of the Work and as a condition precedent to final payment of the Contractor. If all keys are not returned and the Owner determines, in its reasonable discretion, to rekey affected locks, the Contractor will pay the cost of rekeying all affected locks. This remedy is not exclusive of any other remedy of the Owner. The term "key" includes any device used to secure a room or areas in the Owner's premises, whether by mechanical, electronic, or other means.

**§ 3.16.3 Identification.** The Architect and its Consultants, the Contractor and its Subcontractors, and the employees and agents of any of them shall comply with the Owner's policies and requirements, if any, to obtain, display, and return identification badges at any time while they are present on the Owner's property.

...

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

...

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify-indemnify, defend, and hold harmless the Owner, Architect, Architect's consultants, and agents-agents, volunteers, representatives, students, and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' and experts' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, Work by the Contractor, a Subcontractor (of any tier), or anyone for whose acts they may be liable:

...

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,<sup>1</sup> For death, personal injury (including without limitation sickness, disease, or bodily injury), or property damage to the extent caused by (a) the material breach of these General Conditions or the Contract Documents; (b) violation of laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities; or (c) any negligent or tortious acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them Subcontractor (of any tier), or anyone for whose acts they may be liable, regardless liable; and

...

of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.<sup>2</sup> For claims for any violation of federal, state, or local laws or regulations relating to labor or employment, including without limitation wage-and-hour or benefit claims, asserted by or on behalf of an employee or employees of the Contractor, a Subcontractor (of any tier), or anyone for whose acts they may be liable.

...

Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that~~ which would otherwise exist as to a party or person described in this Section 3.18.

...

**§ 3.18.3** Notwithstanding anything to the contrary in this Section 3.18, the Contractor is not required to indemnify the Owner or its agents and their respective volunteers, representatives, students, and employees for, from, and

against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by the negligence or willful misconduct of the Owner or its agents or their respective employees, but the Contractor is required to indemnify the Owner and its agents and their respective employees for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the Contractor, or the fault of the Contractor's agents, representatives, or Subcontractors.

...

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

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§ 4.1.3 If the employment of the Architect is terminated, the Owner ~~shall~~ may employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect. ~~objection.~~ The Owner shall consider any reasonable objections of the Contractor, but the choice of the successor architect will solely that of the Owner.

...

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

...

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, (1) to become ~~generally~~ familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed (2) to guard the Owner against defects and deficiencies in the Work, and (3) to determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

...

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

...

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

Contractor. Communications by and with separate contractors shall be through the Owner. All communications involving a change in the cost of the Work must be copied to the Owner. Notwithstanding the above, the Owner may communicate directly with the Contractor.

...

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

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

...

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section ~~9.10~~; 9.10 and Section 3.5; and issue a final Certificate for Payment pursuant to Section 9.10.

...

**§ 4.2.13** ~~The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~ **[Deleted]** The Owner shall discuss matters related to the aesthetic intent and effect with the Architect and Contractor. The Architect may propose a solution, but the final decision shall be that of the Owner.

...

**§ 4.2.14** The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise ~~with reasonable promptness in a manner not to cause delay in the Work.~~ If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

...

**§ 5.1.1** A Subcontractor is a person or entity who has a ~~direct~~ contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in

number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

PAGE 26

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through and~~ the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner or the Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect ~~or the Owner~~ requires additional time for review. Failure of the Owner or Architect to reply within the ~~14-day~~ 14 day period shall constitute notice of no reasonable objection. Failure of the Owner to object to a Subcontractor does not imply approval of specific products or materials.

...

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and 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. Subcontractors shall be selected as provided in the Contract and the

...

Guaranteed Maximum Price Amendment.

...

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

...

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 ~~and only for those subcontract agreements that the Owner accepts by notifying the~~



~~Subcontractor and Contractor in writing; or stoppage of the Work by the Owner pursuant to Section 2.3.1; and~~

...

## § 5.5 DESIGN-BUILD SUBCONTRACTORS

...

The Contractor may retain various Subcontractors to perform design-build portions of the Project ("Design-Build Subcontractors"), which the Contractor shall identify in advance to the Owner before design-build work commences. The Contractor assumes the obligation, as a contractual duty to the Owner, to deliver a completed and functioning Project in accordance with the Contract Documents, including without limitation all designs provided by the Design-Build Subcontractors. The Contractor is not itself a designer and does not independently approve the details of the designs of Design-Build Subcontractors. The Contractor shall place in its subcontracts with each of its Design-Build Subcontractors the following terms and conditions:

PAGE 27

- .1 The Owner is an intended third-party beneficiary of the design-build subcontract and the Design-Build Subcontractor's services and Work. The Design-Build Subcontractor is not a third-party beneficiary of the Contract or any other agreement between the Contractor and the Owner, or between the Owner and the Architect or the Architect's consultants.
- ...
- .2 The Design-Build Subcontractor shall maintain through the Project, and for six (6) years after Substantial Completion of the Project, standard professional liability/errors-and-omissions insurance that is (a) in a form and with an insurance company satisfactory to the Contractor and the Owner, and (b) in compliance with the minimum insurance coverage requirements in Article 11 of these General Conditions.
- ...
- .3 The Design-Build Subcontractor's professional errors and omissions insurance will have the terms and limits as required in Section 11.1 of these General Conditions or as agreed in advance by the Owner and the Contractor.
- ...
- .4 The Design-Build Subcontractor shall notify the Contractor and the Owner no less than thirty (30) days before any cancellation, nonrenewal, or material modification of the professional errors and omissions insurance.
- ...
- .5 The Design-Build Subcontractor shall submit to the Owner and the Contractor proof of all such insurance before commencing Work on the Project.

...

The Contractor shall also ensure that the design-build subcontracts contain no limitation-of-liability

...

#### **ARTICLE ~~clauses.~~**

...

#### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

...

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site ~~under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation.~~ site. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

...

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

...

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

#### **PAGE 28**

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for unavoidable costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction. All construction costs resulting from Contractor's negligence, lack of oversight, inattention to detail, failure to investigate or failure to follow the Construction Documents or Contract Documents will be borne by the Contractor, subject to the terms and conditions of the Contract Documents and the Guaranteed Maximum Price Amendment.

...

**§ 6.2.4** The Contractor shall promptly remedy damage the Contractor ~~wrongfully~~ causes to completed or partially completed construction or to property of the ~~Owner or Owner~~, separate contractors as provided in Section 10.2.5. If a separate contractor initiates legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings and indemnify the Owner against any judgment or award, including without limitation costs and attorney fees. This Section 6.2.4 does not require the Contractor to indemnify the Owner against liability for damage arising out of

death or bodily injury to persons or damage to property to the extent that the liability was caused by the negligence or intentional misconduct of the Owner.

...

If a dispute arises among the Contractor, separate contractors and the Owner ~~as to~~ about 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.

...

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

...

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

...

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

...

**§ 7.2.2 Before approval of a Change Order and upon request of the Architect or the Owner, the Contractor will produce copies of all bids or other proposals, including those from Subcontractors and Sub-subcontractors, related to the Work proposed to be performed pursuant to the Change Order.**

...

**§ 7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the changes in the Work that is the subject of the Change Order, including without limitation all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.**

## PAGE 29

**§ 7.3.1** A Construction Change Directive is a written order normally 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~~ may be used in the absence of total agreement on the terms of a Change Order.

...

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

...

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in ~~the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount.~~ Section 7.5 of these General Conditions. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner and the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, ~~costs~~ reasonable expenditures for the purposes of this Section 7.3.7 shall be limited to the following:

...

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

...

- .4 ~~Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes~~ permit fees, taxes, and increased costs of bonds and insurance (if such increases are necessitated by the Construction Change Directive related to the Work; and

...

§ 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 Owner and the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

## PAGE 30

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor will submit to Owner for approval a not-to-exceed price for performance of the Work required by the Construction Change Directive. The Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. ~~The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's Payment, but the Owner is not obligated to make payments for Work completed under the Construction Change Directive until the parties agree on a not-to-exceed price. If the parties do not agree on a not-to-exceed price within 30 days after the Owner's issuance of the Construction Change Directive to the Contractor, then the Owner will make an interim determination on the amount owed to the Contractor for Work completed under the Construction Change Directive. The Owner'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 has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes After the Architect communicates to the Owner that a minor change has been made, the change will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

...

## § 7.5 AGREED OVERHEAD AND PROFIT RATES

...

§ 7.5.1 For any adjustments to the Guaranteed Maximum Price that are based on other than the unit prices method, the Contractor will charge, and accept, as payment for overhead and profit, the following percentages of costs attributable to the change in the Work. The following overhead and profit rates shall also apply to adjustments to subcontracts that do not adjust the Guaranteed Maximum Price.

...

.1 For Work performed by the Contractor's own forces or Affiliated Entities, the Contractor may claim no more than the percentage applied to calculate the Contractor's Fee or five percent (5.0%) of the actual Cost of the Work, whichever is less. There shall be no separate, additional markup by an Affiliated Entity.

...

.2 For Work performed by a Subcontractor, the Contractor may claim no more than the percentage applied to calculate the Contractor's Fee or five percent (5.0%) of the actual amount due to the Subcontractor for the Cost of the Work, whichever is less.

...

.3 For Work performed by a Subcontractor or Sub-subcontractor, the Subcontractor or Sub-subcontractor may claim no more than ten percent (10.0%) of its actual Cost of the additional Work.

...

.4 For Work performed by a Sub-subcontractor, its Subcontractor may claim a markup of no more than the percentage applied to calculate the Subcontractor's Fee or ten percent (10.0%) of the amount actually payable to the Sub-subcontractor for the Cost of the Work, whichever is less.

...

.5 The Costs of the Work to which overhead and profit are to be applied at any tier are determined by Article 6 of the Agreement.

...

.6 All cost proposals, except those so minor that their propriety can be readily determined, must be accompanied by a complete itemization of costs, including without limitation the costs of labor, materials, subcontracts, and sub-subcontracts. Subcontractor costs exceeding \$1,500 must be similarly itemized.

...



.7 All general conditions or general requirements costs of the Contractor, Affiliated Entities, and all Subcontractors of any tier are to be included in the overhead and profit allowance stated in this section and may not be separately stated or recovered as Costs of the Work.

...

.8 The Contractor bears the burden of establishing the reasonableness of any proposed increase in the Contract Sum or Contract Time.

## PAGE 31

§ 7.5.2 Overhead and profit adjustments for net decreases in the cost of any portion of the Work shall include a deduction of the overhead and profit, fee, and general conditions or general requirements costs that would be allowed for that Work by the terms of Section 7.5.1.

...

§ 7.5.3 Overtime, when specifically authorized by the Owner and not as an extraordinary measure, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. The Owner will not pay overhead and profit for overtime.

...

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

...

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

...

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

...

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such Consistent with Section 11.1.10, the date of commencement cannot occur before placement of insurance. The Contractor will not commence Work or enter the Project Site before placement of insurance.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of negligence of the Owner or the Architect, or of an employee of either, either involved in the Project, or of a separate contractor employed by the Owner, Owner, or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect

~~may determine~~ Work, or by occurrences beyond the control and without the fault or negligence of the Contractor or its Subcontractors and that by the exercise of reasonable diligence the Contractor is unable to prevent or provide against, including industry-wide labor disputes, fire, unusual and extended delays in deliveries, unavoidable casualties, adverse weather conditions not reasonably anticipated, or other occurrences that the Owner determines may justify delay, then the Contractor may obtain an extension of the Contract Time only upon satisfying the prerequisite conditions of (a) compliance with Subparagraph 15.1.3 of the General Conditions and (b) presentation to the Owner and the Architect of written notice of the request for an extension of the Contract Time as provided in Subparagraph 15.1.5.1. The Contract Time may under these circumstances be adjusted by Change Order for the additional time actually and directly caused by the unforeseen occurrence. The extension will be net of any delays caused by or due to the fault or negligence of the Contractor and will also be net of any contingency or "float" time allowance included in the Project Schedule. In the event delays in the Work are encountered for any reason, the Owner and Contractor shall undertake reasonable steps to mitigate the effect of such delay.

...

~~§ 8.3.2~~ Claims relating to time shall be made in accordance with applicable provisions of Article 15. The Contract Time is set with reference to and knowledge of weather conditions usual to the area of the Project. To justify an excused delay in the Contract Time, adverse weather conditions not reasonably anticipated for purposes of Subparagraph 8.3.1 require the presence of abnormally severe or unsafe working conditions on the site that have a material, adverse effect on the scheduled Critical Path Work activities. As a minimum condition for a claim for additional time for abnormally severe weather, the Contractor must provide documentation from National Oceanic and Atmospheric Administration, or other comparable weather agency, that the conditions as the basis for the claim are more severe than for any comparable time period in the vicinity of the site within the past ten years.

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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. If the delay was caused by any public entity other than the Owner and not caused by the Owner, the Contractor, a Subcontractor of any tier, the Architect, or anyone acting on behalf of one or more of them, the Contractor is entitled only to an increase in the Contract Time (but not a change in the Contract Sum). If the delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of one or more of them, the Contractor is not entitled to an increase in the Contract Time or Contract Sum.

...

~~§ 8.3.4~~ The Contractor shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant under-run; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar damages.

...

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. The Owner will make progress payments to the Contractor no more than once each month based on a verified Application for Payment submitted by the Contractor and signed by the Owner.

...

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

...

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

...

§ 9.3.1.4 The Contractor shall submit its monthly Application for Payment to the Owner and the Architect (if required by the Owner), on AIA Document G702, supported by AIA Document G703, or an equivalent form approved by the Owner. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

...

.1 Description of the Work.

...

.2 Detailed cost report and updated schedule of values.

...

.3 Separate documentation and accounting for Work performed pursuant to Change Orders, Construction Change Directives, or minor changes in the Work; allowances; application of contingency; and payment for materials stored other than at the Project Site.

...

.4 The Contractor's executed lien, bond, and claim releases ("Lien Releases") on forms acceptable to the Owner. Lien Releases shall provide a conditional release of liens, bonds, and claims for the Work that is subject to the current Application for Payment and an unconditional release for all Work performed through the date of all prior payment periods.

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.5 All other information and materials required to comply with the requirements of the Contract Documents.

...

The Owner may, at its option, request documentation from the Contractor evidencing that Subcontractors, Sub-subcontractors, and suppliers of every tier have provided the requisite conditional and unconditional releases and waivers of lien and bond rights to the Contractor for each Application of Payment.

...

**§ 9.3.2** Unless otherwise expressly provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Project 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, payments have previously been received from the Owner shall~~ be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

...

**§ 9.3.4** Retainage will be withheld at a rate of five percent (5%) in accordance with ORS 279C.570.

...

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

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- .3 failure of the Contractor or Subcontractor to make payments ~~properly~~ to Subcontractors or Sub-subcontractors or for labor, materials or equipment;

...

- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;~~or~~

...

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

...

.8 unsatisfactory Work progress;

...

.9 disputed Work, materials, or products, not to exceed one hundred fifty percent (150%) of the amount in dispute;

...

.10 failure to comply with other material provisions of the Contract Documents;

...

.11 failure to maintain current safety and as-built documents as required by Section 3.11; or

...

the Contract Documents. .12 failure to train personnel on the Project site in required safety procedures as required in the Contract Documents.

...

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

...

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

...

**§ 9.5.4** If the Contractor disputes any determination by the Architect with regard to any Certificate of Payment, the Contractor nevertheless shall expeditiously continue the Work.

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## § 9.7 FAILURE OF PAYMENT

...

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

...



§ 9.7.2 Failure of payment does not exist under Section 9.7.1 if the Owner exercises authority granted by the Contract documents to withhold payment notwithstanding certification by the Architect.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when (1) the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and (2) the Contractor, its Subcontractors of any tier, and its suppliers of any tier have completed or satisfied all conditions required of the Contractor for the issuance of a temporary or permanent certificate of occupancy.

...

.1 As part of the final Application for Payment, the Contractor shall assemble for the Architect's approval within thirty (30) days of Substantial Completion three (3) complete bound copies of all operation, maintenance, and warranty data from all manufacturers whose equipment is installed in the Work. The final Certificate for Payment will not be issued by the Architect until all warranties and guaranties have been received and accepted by the Owner.

...

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

...

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate prepared under this Section 9.8. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

...

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

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Owner and the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, ~~if no agreement is reached, by decision of the Architect-Contractor.~~

...

**§ 9.9.4** The Contractor shall deliver to the Owner certificates of inspection, use, and occupancy upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment, and delivery shall be included within the Contract Sum.

...

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and the Architect will promptly make such inspection and, ~~when the Architect finds the Owner and the Architect find~~ the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents ~~and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable.~~ Documents. 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.

**§ 9.10.4** In the event that final completion is not accomplished within 30 days after the date of Substantial Completion due to any fault of the Contractor, the Owner may withhold from any subsequent progress payments and from the final payment 150 percent of the reasonable cost of the unfinished Work necessary to attain final completion. Such funds are to be paid pro rata following successful completion of the unfinished Work if the Work is done by the Contractor. In the event that the Contractor fails to complete the Work necessary to attain final completion, the Owner may, without waiving any other remedies it may have, complete the Work and deduct the actual cost thereof from the funds withheld. The Owner shall not withhold any amount under this section relating to Work arising from Change Orders or Construction Change Directives issued following the date of Substantial Completion.

...

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

...

.2 failure of the Work to comply with the requirements of the Contract Documents; or

...

.3 terms of special warranties required by the Contract Documents or included in the Contract Documents; or

...

.4 the correction remedy allowed by Section 12.2.

...

~~§ 9.10.5~~ § 9.10.6 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

...

§ 9.10.7 Requests for payment will not be considered if submitted (1) more than ninety (90) days following completion of the Work performed or (2) on or after the date of acceptance of final payment, whichever is

...

ARTICLE earlier.

...

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

...

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor acknowledges the unique safety risks associated with construction of school facilities in the presence of faculty, students, staff, and visitors.

...

§ 10.1.2 This Contract incorporates by this reference any Owner's safety policies current as of the date of commencement of the Work, which have been or will be made available to the Contractor. The Contractor, as a condition precedent to commencement of the Work, will instruct all personnel of the Contractor and its Subcontractors, prior to their performing any of the Work, of the elements of these policies with which the personnel will be required to comply. Notwithstanding any other provision of the Contract Documents, the Contractor's (or any Subcontractor's) failure to perform adequate safety training is grounds for the Owner's immediate suspension of the Work at the Contractor's sole expense and may result in cancellation of the Contract.

...

§ 10.1.3 In addition to the policies identified above, the Contractor shall review with all Subcontractors the methods, materials, tools, and equipment to be used to verify their compliance with all safety standards and laws and the Contractor shall be responsible for compliance with them, to ensure safe, hazard-free conditions for all persons visiting or working on the entire Project site and the Owner's adjoining facilities.

...

§ 10.1.4 The Contractor will develop a fire response plan consistent with that of the Owner, which will be strictly enforced by the Contractor's project safety officer and the Owner. The Contractor will supply fire extinguishers in sufficient size and quantity, distributed throughout the Project site, to maintain a safe working environment.

...

§ 10.1.5 The Contractor will ensure that all equipment furnished and installed as part of the Work is rated by Underwriters Laboratories or another method approved by the state testing laboratory or the Owner, as appropriate.

...

§ 10.1.6 Tobacco use is not permitted on any of the Owner's property. The Contractor will publish this standard to all personnel for whom it or its Subcontractors are responsible and will enforce it appropriately.

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

...

.1 employees on the ~~Work-Work~~, the Owner's faculty, staff, students, and visitors and other persons who may be affected thereby;

...

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

...

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of ~~construction-construction~~; and

...

.4 adjoining operations of the Owner.

...

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing and posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, subject to the terms of the Contract, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

...

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

supervision of properly qualified personnel. The Contractor must obtain advance approval before proceeding with the storage or use of explosives or hazardous materials for performance of the Work.

...

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 ~~and 10.2.1.3~~ caused in whole or in part through 10.2.1.43 to the extent caused by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except through 10.2.1.4, but not to the extent of damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. liable. 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 or designated safety officer unless otherwise designated by the Contractor in writing to the Owner and Architect.

...

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition. The Contractor will ensure that storage practices on the Project site will keep combustible load levels at a minimum and in approved containers that are clearly labeled. The Contractor will provide material safety data sheets to the Owner's Representative for all chemicals used on the Project site.

...

#### **§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

...

~~If either party suffers injury or damage to person or~~ The Contractor will immediately report to the Owner by telephone or messenger whenever any person at the Project Site suffers injury or if there is property damage to the Owner's existing facilities or adjoining property. The notice shall provide sufficient detail to enable the other party to investigate the matter. The Contractor will promptly follow up the notice with a written report to the Owner.

#### **PAGE 39**

~~property because of an act or omission~~ **§ 10.2.9** Without limiting any other requirement of this Section 10.2, the Contractor shall protect adjoining property and shall provide barricades, temporary fences, and covered walkways to protect the safety of passersby, as required by prudent construction practices, laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, or the Contract Documents. The Contractor shall be responsible for all measures necessary to protect any property adjacent to the Project and improvements thereon.

...

~~of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given~~ **§ 10.2.10** Without limiting any other requirement of this Section 10.2, the Contractor shall, at its sole cost and expense, promptly repair any damage or disturbance to walls, utilities, sidewalks, curbs, adjoining property, and the property of third parties (including utility companies and governments) resulting from the performance of the Work, whether caused by the Contractor or by its Subcontractors of any tier. The Contractor shall maintain streets in good repair and traversable condition.



...

to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the § 10.2.11 The Contractor will ensure that storage practices on the Project site will keep combustible load levels to a minimum and in approved containers that are clearly labeled. The Contractor will provide material safety data sheets to the Owner for all chemicals used on the Project Site.

...

other party to investigate the matter. § 10.2.12 Without limiting any other requirement of this Section 10.2, the Contractor shall maintain Work, materials, and apparatus free from damage from rain, wind, storms, frost, and heat. If adverse weather makes it impossible to continue operations safely in spite of weather precautions, the Contractor shall cease Work and notify the Owner and the Architect of the cessation.

...

§ 10.2.13 The Contractor shall not permit open fires on the Project Site.

...

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters Hazardous Materials as that term is defined under Section 10.3.6. With respect to Hazardous Materials to be used during the course of the Work, the Contractor will implement and enforce a program to inventory and properly store and secure all Hazardous Materials that may be used or present on the Project site, maintain available for inspection at the Project site all material safety data sheets, and comply with all regulations required by law for the storage, use, and disposal of Hazardous Materials. The program must provide for notification of all personnel of potential chemical hazards. Review of these hazards must be included in the Contractor's safety training program. The Contractor shall submit to the Owner a list of all Hazardous Materials to be brought by the Contractor or its Subcontractors onto the Owner's property, including the purpose for their use on the Project.

...

a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, **immediately** stop Work in the affected area and report the condition to the Owner and Architect in writing. § 10.3.2 In the event of a release or discovery of a preexisting release of Hazardous Materials, or if it is foreseeable that injury or death to persons may occur because of any material or substance (including without limitation Hazardous Materials) encountered on the Project site, the Contractor shall **immediately** (1) stop the Work or the portion of the Work affected, (2) notify the Owner and the Architect orally and in writing, and (3) protect against exposure of persons to the Hazardous Materials. The Contractor shall provide all written warnings, notices, reports, or postings required at law or by contract for the existence, use, release, or discovery of Hazardous Materials.

...

§ 10.3.2 Upon receipt of the Contractor's written notice, **10.3.3** With respect to any Hazardous Materials or other material or substance reported to the Owner under Section 10.3.2 that was not introduced to the Project site by the Contractor or its Subcontractors of any tier, the Owner shall obtain the services of a licensed laboratory-qualified environmental consultant 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 verify~~ it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time ~~shall may~~, subject to agreement by the Owner and the Contractor, be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and ~~start-up~~ ~~start-up~~, which adjustments shall be accomplished as provided in Article 7.

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§ 10.3.3.1 With respect to any Hazardous Materials or other material or substance reported to the Owner under Section 10.3.2 that was introduced to the Project site by the Contractor or its Subcontractors of any tier, the Contractor shall be responsible to carry out the duties of (1) proposing to the Owner and the Architect a qualified environmental consultant, (2) obtaining and paying for the services of the environmental consultant, and (3) verifying that the material is rendered harmless, as otherwise set forth in Section 10.3.3. The Contractor will not be entitled to an increase in the Contract Sum as stated in the last sentence of Section 10.3.3 if the Contractor or its Subcontractors of any tier are responsible for the condition requiring the testing of the material and the stoppage of the Work. Remediation work must be conducted by properly qualified contractors approved in advance by the Owner. Generally, the Owner may at its option contract directly with environmental consultants, and remediation contractors, regardless of whether the work will be performed at the Contractor's expense.

...

§ 10.3.4 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' without limitation attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was not introduced to the Project site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, 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. No indemnification provided by the Owner under this Section 10.3.4 will be required to indemnify the Contractor, Subcontractors, or their employees or agents to the extent of

...

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. liability for death or bodily injury to persons or damage to property caused in whole or in part by the Contractor's own negligence, but will require indemnity to the extent of the fault of the Owner or its agents or representatives.

...

**§ 10.3.5** The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Owner's Representatives, and employees of any of them from and against claims, damages, losses, and expenses, including without limitation to attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was introduced to the Project site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death, and has not been rendered harmless. No indemnification provided by the Contractor under this Section 10.3.5 will be required to indemnify the Owner or its agents or representatives to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Owner's own negligence, but will require indemnity to the extent of the fault of the Owner or its agents or representatives.

...

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred. "Hazardous Materials" are any substance defined or designated as being radioactive, infectious, hazardous, dangerous, or toxic by any federal, state, or local statute, regulation, or ordinance presently in effect or subsequently enacted. For purposes of Section 10.3, the term "introduce" means the physical placement or transportation of Hazardous Materials in or on the Project site regardless of whether the Hazardous Material was specified, required, or otherwise addressed in the Contract Documents.

...

In an emergency affecting safety of persons or property, the Contractor shall act, ~~at the Contractor's discretion, act~~ to prevent threatened damage, injury or loss. ~~loss and immediately notify the Owner.~~ 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.

...

- .4** Claims for damages insured by usual personal injury liability ~~coverage; coverage and commercial~~ general liability coverage (or its equivalent as approved in advance by the Owner);

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

...

- .8** Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3-18-~~3.18~~; 3.18;

...

- .9** claims for third-party injury and property damage (including without limitation clean-up costs) as a result of pollution conditions arising from the Contractor's operations or completed operations; and

...

- .10** claims involving the Contractor's professional liability, solely to the extent that the Contractor accepts design or design/build responsibilities under this Contract.

...

## § 11.1.2 The CONTRACTOR PROVIDING INSURANCE

...

Without waiver of any other requirement of Section 11.1, the Contractor will pay for and maintain the following insurance at all times during the performance of the Work, without interruption until final acceptance of the Work or for such further duration as required below. All of the Contractor's insurance carriers shall be rated A VII or better by A.M. Best's rating service, unless otherwise approved by the Owner.

...

.1 **Workers' Compensation.** The Contractor shall purchase and maintain workers' compensation coverage sufficient to meet statutory liability limits.

...

Section 11.1.1.2 **Employer's Liability.** The Contractor shall purchase and maintain employer's liability insurance in addition to its workers' compensation coverage with at least the minimum limits listed in Section 11.1.3 of these General Conditions.

...

shall be written for not less than limits of liability specified in .3 **Commercial General Liability.** The Contractor shall purchase and maintain commercial general liability ("CGL") insurance on an occurrence basis, written on ISO Form CG 00 01 (12 04 or later) or an equivalent form approved in advance by the Owner. CGL coverage shall include all major coverage categories, including bodily injury, property damage, and products/completed operations coverage maintained for at least six (6) years following Final Payment. The CGL insurance must also include the following: (1) separation of insureds and (2) per-project aggregate.

...

.4 **Professional Liability.** To the extent that the Contract Documents ~~or required~~ require the Contractor to provide professional design services or certifications related to systems, materials, or equipment, the Contractor shall (1) purchase and maintain professional liability/errors-and-omissions insurance and (2) cause those Subcontractors providing professional design services or certifications related to systems, materials, or equipment to do so under the requirements of Sections 5.5 and 11.1.3.

...

by law, whichever coverage .5 **Automobile Liability.** The Contractor shall purchase and maintain automobile liability insurance with coverage for owned, hired, and nonowned vehicles on ISO Form CA 00 01 or an equivalent form approved in advance by the Owner. The automobile liability insurance shall include pollution liability coverage with vehicle overturn and collision.

...

is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination. .6 **Pollution Liability.** If the Owner designates the Project as having a known pollution exposure, the Contractor shall purchase Contractors Pollution Liability ("CPL") insurance. If the CPL

insurance is written on a claims-made basis rather than an occurrence basis, then coverage must be maintained for at least six (6) years following final payment. Coverage is to include third-party claims for bodily injury, property damage, and environmental damage resulting from pollution conditions caused during the performance of covered operations both on site and migrating from the jobsite. Coverage is also to include pollution conditions arising from covered operations, including work performed by the Contractor's Subcontractors and third-party claims against the Contractor alleging improper supervision of the Subcontractors. The Contractor shall arrange for, and be responsible for, the selection of Subcontractors used to transport all Hazardous Materials that leave the Project site.

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of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until, **7 Commercial Umbrella/Excess Coverage.** The Contractor shall purchase or maintain commercial umbrella or excess liability insurance to meet the minimum limits as described below in Section 11.1.3. Commercial umbrella/excess liability coverage includes: (1) "Pay on behalf of" wording; (2) concurrency of effective dates with primary coverage; (3) punitive damages coverage (if not prohibited by law); (4) application of aggregate (when applicable) in primary coverage; and (5) drop-down feature. The third-party liability insurance shall be scheduled to the umbrella/excess coverage.

...

the expiration of **§ 11.1.3 Limits.** The insurance required by Section 11.1 shall be written for at least the limits of liability specified in this Section or required by law, whichever is greatest.

...

**.1 Workers' Compensation. Statutory Limits**

...

**.2 Employer's Liability.**

...

Each Accident: \$ [TBD]

...

Each Bodily Injury Disease: \$ [TBD]

...

Aggregate Bodily Injury Disease: \$ [TBD]

...

**.3 Commercial General Liability.**

...



Each Occurrence: \$ [TBD]

...

General Aggregate: \$ [TBD]

...

Product/Completed Operations: \$ [TBD]

...

Personal & Advertising Injury: \$ [TBD]

...

**.4 Professional Liability/E&O.**

...

Each Claim/Aggregate: \$ [TBD]

...

**.5 Automobile Liability.**

...

Combined Single Limit: \$ [TBD]

...

**.6 Pollution Liability.**

...

Single Limit: \$ [TBD]

...

Aggregate: \$ [TBD]

...

**.7 Commercial Umbrella/Excess Coverage.**

...

Each Occurrence: \$ [TBD]

...

the period for correction of Work or **§ 11.1.4 Additional Insureds.** The Contractor's third-party liability insurance policies shall include the Owner and its officers, employees, agents, volunteers, partners, successors, and assigns as additional insureds. The policy endorsement must extend premise operations and products/completed operations to the additional insureds. The additional insured endorsement for the Commercial General Liability must be written on ISO Form CG 2010 (11/85), a CG 2037 (07/04) together with CG 2033 (07/04), or the equivalent; but shall not use the following forms: CG 2010 (10/93) or CG 2010 (03/94).

...

for such other period for maintenance of completed operations coverage as specified in the Contract Documents. **§ 11.1.5 Joint Venture.** If the Contractor is a joint venture, the joint venture shall be a *named* insured for the liability insurance policies.

...

**§ 11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior **11.1.6 Primary Coverage.** The Contractor's insurance identified in Section 11.1 shall be primary insurance coverage and may not seek contribution from any insurance or self-insurance carried by the Owner or the Architect including any property damage coverage carried by the Owner. Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought. The Contractor's insurance shall not include any cross-suit exclusion or preclude an additional insured party from asserting a claim as a third party. The Contractor waives all rights of subrogation against the Owner and coverage that the Owner maintains.

...

to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies **§ 11.1.7 Contractor's Failure to Maintain Insurance.** If the Contractor for any reason fails to maintain required insurance coverage, such failure shall be deemed a material breach of the Contract and the Owner, at its sole discretion, may suspend or terminate the Contract pursuant to Section 14.2. The Owner may, but has no obligation to, purchase such required insurance and without further notice to the Contractor, the Owner may deduct from the Contract Sum any premium costs advanced by the Owner for such insurance. Failure to maintain the insurance coverage required by this Section 11.1 shall ~~contain a provision not waive the Contractor's obligations to the Owner.~~

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**.1** The Contractor shall notify the Owner in writing at least thirty (30) days before any cancellation, lapse, or expiration of any insurance required by this Article 11.

...

~~that coverages afforded under the policies will not be canceled or allowed.~~ **.2** The Contractor shall notify the Owner in writing of any reduction in available insurance coverage, including without limitation revised coverage limits or claims paid under the general aggregate, or both, that would cause the insurance available to the Owner to fall below or outside the requirements set forth in this Article 11 or by law.

...

to expire until at least 30 days' prior written notice has been given to the Owner. An **§ 11.1.8 Certificates of Insurance.** Before commencing the Work, the Contractor shall supply to the Owner certificates of insurance for the insurance policies described in this Section 11.1 prior to the commencement of the Work and before bringing any equipment or construction personnel onto the Project site.

...  
additional certificate evidencing continuation of liability coverage, including coverage for completed operations. **.1 Additional Certificates.** To the extent that the Contractor's insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, general aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

...  
**.2 Prohibition Until Certificates Received.** The Owner may, but is not obligated to, prohibit the Contractor and its Subcontractors from entering the Project site until the required insurance certificates and all required attachments have been received and approved by the Owner. The Contractor may not enter the Project site or commence the Work until the Contractor places for the Work all coverages required under Section 11.1.2.

...  
**§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents 11.1.9 Subcontractor Insurance. The Contractor shall cause each Subcontractor to purchase and maintain in full force and effect policies of insurance as specified in this Section 11.1, except for coverage limits, which will be agreed upon between the Owner and the Contractor. The Contractor will be responsible for the Subcontractors' coverage if the Subcontractors fail to purchase and maintain the required insurance. When requested by the Owner, the Contractor will furnish copies of certificates of insurance establishing coverage for each Subcontractor.**

...  
**§ 11.1.10 Limitations on Coverage.**

...  
to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims  
**.1** No insurance provided by the Contractor under this Section 11.1 will be required to indemnify the Owner, the Architect, or their employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Contractor's negligent acts their own negligence, but will require indemnity to the extent of the fault of the Contractor or its agents, representatives, or Subcontractors.

...  
**.2** The obligations of the Contractor under this Section 11.1 shall not extend to the liability of the Architect or its consultants for (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications, or (2) the giving or failure to give directions or instructions, to the extent that the directions, or failure to provide directions, are the cause of the injury or damage.

...  
or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole. **3 By requiring insurance, the Owner does not represent that coverage and limits will necessarily be adequate to protect the Contractor. Insurance in effect or procured by the Contractor will not reduce or limit the Contractor's contractual obligations to indemnify and defend the Owner for claims or suits that result from or are connected with the performance of the Contract.**

...  
or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. **§ 11.1.11 DEDUCTIBLES/SELF-INSURED RETENTIONS** Payment of deductibles or self-insured retentions is not a Cost of the Work within the Contract Sum or the Guaranteed Maximum Price and does not justify a Change Order. **Satisfaction of all self-insured retentions or deductibles is the sole responsibility of the Contractor.**

#### PAGE 44

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

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

...  
**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, earth movement, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's Architect's, Owner's, and Contractor's services and expenses required as a result of such insured loss.

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

...

§ 11.3.1.3 If the property insurance requires deductibles, the ~~Owner~~ Contractor shall pay costs not covered because of such deductibles.

...

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

...

§ 11.3.3 LOSS OF USE INSURANCE~~[Deleted]~~

...

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

...

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

...

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~[Deleted]~~

...

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

...

§ 11.3.7 WAIVERS OF SUBROGATION~~[Deleted]~~

...

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate



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

...

**§ 11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner 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 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

#### PAGE 45

**§ 11.3.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary received. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

...

**§ 11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

...

**§ 11.4.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Guaranteed Maximum Price Amendment or Early Work Amendment, if any, as required by the Contract.

...

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

...

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

...

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

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§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly ~~after receipt of written for no additional compensation after notice from the Owner to do so~~ unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.~~

...

§ 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-Contractor~~, at its expense, 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.

...

The Contract shall be governed by the law of the place where the Project is located ~~except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ located.

...

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

...

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

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**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals ~~with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give by public agencies or by independent testing laboratories, as may be required by the Owner or the permitting jurisdiction. The Owner shall retain and pay for any private inspectors or testing laboratories that are required. The costs of such private inspections and tests shall not be included in the Contract Sum. The Contractor shall forward to the Architect and the Owner copies of all inspections, results, test results, orders, permits, and other directives or correspondence received by the Contractor from any inspector, testing laboratory, or agency with jurisdiction over the Work. The Contractor shall give the Owner and the Architect timely notice of when and where tests and inspections are to be made so that the Owner and the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.~~

...

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

...

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for ~~the Owner's and the Architect's~~ services and expenses shall be at the Contractor's ~~expense~~ expense, ~~including without limitation the cost of retesting for verification of compliance, if necessary, until the Architect certifies that the Work in question does comply with the requirements of the Contract Documents.~~

...

**§ 13.5.7** No inspection performed or failed to be performed by the Owner shall waive any of the Contractor's obligations or be construed as an approval or acceptance of the Work or any part thereof.

...

Payments due and unpaid under the Contract Documents shall bear interest ~~from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located at an annual rate of one percent (1.0%) over the prime lending rate published by the Wall Street Journal.~~

...

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

#### PAGE 48

**§ 14.1.2** The Contractor may terminate the Contract if, ~~through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays (1) repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less-less, and (2) none of the repeated suspensions, delays, or interruptions of the entire Work are caused by act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or any of their respective agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor.~~

...

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

...

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

...

**.4** otherwise is guilty of substantial breach of a provision of the Contract ~~Documents. Documents;~~ or

...

**.5** fails to observe the training, safety, and other precautions required in Article 10, including the Contractor's own safety policies for the Project.

...

**§ 14.2.2** When any of the above reasons exist, the Owner, ~~upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, Owner~~ may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate ~~employment of the Contractor the Contract~~ and may, subject to any prior rights of the surety:

#### PAGE 49

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

...

§ 14.2.5 If termination for cause is determined later to have been wrongful or without justification, then the termination will be considered to have been termination for convenience.

...

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

...

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

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work executed. The Contractor hereby waives and forfeits all other claims for payment and damages, including without limitation anticipated profits.

...

~~not executed.~~ § 14.4.4 The Owner may terminate a portion of the Work for the Owner's convenience and without cause, in which case the provisions of this Section 14.4 shall apply only to the portion of the Work terminated and the Contractor shall continue with performance of the remaining Work that is not terminated.

...

~~Claims by either the Owner or Contractor must be initiated made by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. the Architect. Claims by either party must be initiated made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. later, and must identify the known bases for each Claim and the nature and amount of the relief sought.~~

## PAGE 50

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

...

If the Contractor wishes to make a Claim for an increase in the Contract Sum, ~~Sum~~ or Guaranteed Maximum Price, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Failure to provide timely notice in accordance with Section 15.1.2 constitutes waiver of the Claim.

...



**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Claims for additional time are governed by Section 8.3. Failure to provide timely notice in accordance with Section 15.1.2 constitutes waiver of the Claim.

...

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES~~[Deleted]~~**

...

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

...

#### **§ 15.2 INITIAL RESOLUTION**

...

~~.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;~~ **§ 15.2.1** To facilitate the resolution of Claims between the Contractor 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 the Owner, the parties shall attempt in good faith first to resolve Claims that are made before Final Payment by the~~

...

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents following dispute-resolution process. The parties agree not to proceed to arbitration until the following process has been attempted. Neither party's rights, defenses, Claims, and remedies shall be considered waived, released, or adversely affected by its participation in this process, but this process shall not toll any applicable statutory periods of limitation, duration, or ultimate repose except to the extent that the parties separately agree in writing to toll those periods.~~

...

#### **§ 15.2 INITIAL DECISION**

...

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30

days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.1 All reasonable efforts will be made by the Owner's Representative and the Contractor's project manager to resolve any Claims that arise during the Work in a prompt and equitable manner. If they fail to reach an equitable agreement to resolve a Claim, either party may notify the other party in writing to identify the Claim with known specificity and request a meeting between the Owner's senior executive responsible for the Project and the Contractor's senior executive responsible for the Project.

...

~~§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the .2 The parties' senior executives shall meet at a mutually agreed time and place within ten (10) days of receipt of the written notice and attempt in good faith to negotiate a resolution of the Claim. If within ten (10) days after the meeting the parties have not succeeded in negotiating an agreed-upon resolution of the Claim, then either party may pursue any and all rights and remedies available to it in the Agreement.~~

...

~~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.3 The parties may at any time mutually agree to submit any dispute between them to voluntary mediation or to arbitration under Section 15.4.~~

...

~~§ 15.2.2 [Deleted].~~

...

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

...

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

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~~§ 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.[Deleted].~~

...

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

...

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

...

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

...

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

...

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

...

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

...

§ 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 Every Claim shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the ~~American Arbitration Association~~ Arbitration Service of Portland, Inc., in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. Arbitration Service of Portland, Inc., unless the parties elect another person or entity to administer arbitration proceedings. Exclusive venue for arbitration shall be

...

Clatsop County, Oregon.

...

**§ 15.4.1.1** A demand for arbitration shall be ~~made no earlier than concurrently with the filing of a request for mediation, delivered in writing to the other party within a reasonable time after the claim, dispute or other matters in question have arisen,~~ 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 or repose 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.

...

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

...

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

...

**§ 15.4.4.4.** Prior to allowing any subcontractor or other party retained by the Contractor to commence work on the Project, the Contractor shall require such third party to consent in writing to arbitration if requested by the Owner or the Contractor.

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**END OF THE GENERAL CONDITIONS**

## ***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 15:59:48 on 04/07/2017 under Order No. 8672347963 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™ - 2007, 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)*