

November 13, 2025

Mr. Victor Cardenas
City Manager
City of Novi
45175 Ten Mile Rd.
Novi, Michigan 48375

via email: vcardenas@cityofnovi.org

RE: City of Novi Public Safety Bond Project – Construction Management Firm Recommendation

Dear Mr. Cardenas,

I am writing to update you on Plante Moran Realpoint's (PMR) progress in our engagement to assist and advise the City of Novi (CoN) in selecting a Construction Management (CM) firm for the CoN Public Safety Project (Project). Together, the CoN Selection Advisory Group, consisting of CoN city staff ("Advisory Group"), the CoN Finance and Administration Committee ("FAC"), consisting of the Mayor and two City Council members, PMR and CoN legal counsel have presented a framework in order to identify, evaluate, and recommend a construction management firm for this Project.

SELECTION PROCESS

This letter summarizes the results of the evaluation process for CM proposals and interviews conducted by the Advisory Group and FAC in accordance with our engagement agreement.

On July 16, 2025, RFP documents were formally issued to six (6) capable and well-established CM firms. These firms were discussed and approved by city staff in advance. PMR conducted a pre-proposal meeting on August 20 to provide project information and answer questions.

Four (4) of the six firms submitted sealed RFP responses, which were received by CoN on August 26. Evaluation criteria included police and fire station experience, proposed team qualifications, fee structure, and firm differentiators. Three firms — The Christman Company (Christman), Oliver Hatcher Construction, and Clark Construction - were shortlisted by the Advisory Group for interviews moderated by PMR on September 24.

Based on team chemistry, relevant experience, and interview responses, Christman and Oliver Hatcher Construction were selected for further consideration by the FAC.

The FAC interviewed Christman and Oliver Hatcher Construction on October 21. Following its evaluation, the FAC recommended that PMR negotiate final contract terms and conditions with Christman.

RECOMMENDATION

Based on the firm's formal presentations, responses to Advisory Group and FAC inquiries, due diligence, competitive pricing, and demonstrated experience with similar projects—both at the firm level and among proposed project staff—the CoN Selection Advisory Group recommends awarding the Public Safety Building and Fire Station projects to Christman, pending final review and approval by the City Attorney and City Manager.

The total contract award recommendation is \$218,111, as outlined in the RFP and the AIA A133-2017 / A201-2017 contract and defined as follows:

Not-to-Exceed Preconstruction Services: \$218,111

These costs align with the initial budget prepared by PMR for the Public Safety Project.

Construction Services Personnel Costs and Reimbursable Expenses will be determined and submitted for approval upon completion of the Guaranteed Maximum Price (GMP) for each forthcoming contractor bid package. The reimbursables are a not-to-exceed amount and will be billed as incurred. The Construction Manager's overhead and profit (CM Fee) will be 1.95% of the Cost of the Work.

Should you have any questions regarding this recommendation, please do not hesitate to contact me at (248) 675-9812.

Sincerely,

PLANTE MORAN REALPOINT



Brian Weber, Sr. Vice President

CC: Greg VanKirk, Plante Moran Realpoint
Todd Fenton, Plante Moran Realpoint
Robert Stempien, Plante Moran Realpoint

ENCLOSURES: CM Bid Summary dated September 19, 2025
Draft AIA-A133 / AIA-A201 Contract

**CITY OF NOVI - PUBLIC SAFETY PROGRAM
CM SERVICES
REQUEST FOR PROPOSALS SUMMARY**

September 19, 2025

Category	Clark Construction	Christman Construction	DeMaria/Rewold JV	Oliver Hatcher	AVERAGES
General Information					
Contact	Chad Thelen 248.880.0027 cthelen@clarkcc.com	Jason Ide 312.405.9544 jason.ide@christmanco.com	Darren Murray 248.982.2169 darren@demariabuild.com	Jack Oliver 248.331.5557 joliver@oliverhatcher.com	
Acknowledge Addenda #01, #02, #03	No	Yes	Yes	Yes	
Agree to Contract Terms	Exceptions noted	Exceptions noted	Accepted	Exceptions notes	
Familial Disclosure, Iran Sanctions, Non-Collusive, Equal Opportunity and Criminal Background Affidavits	Yes	Yes	Yes	Yes	
Estimated Amounts					
Preconstruction NTE	\$ 73,998	\$ 218,111	\$ 202,900	\$ 123,470	\$ 154,620
Construction Personnel NTE	\$ 2,116,404	\$ 1,996,928	\$ 2,587,315	\$ 1,630,624	\$ 2,082,818
CM Reimbursables	\$ 1,108,140	\$ 1,319,040	\$ 1,459,360	\$ 1,666,049	\$ 1,388,147
CM Fee (%)	1.75%	1.95%	1.90%	2.00%	1.90%
CM Fee (\$)	\$ 1,155,000	\$ 1,287,000	\$ 1,254,000	\$ 1,320,000	\$ 1,254,000
Total Expected Cost	\$ 4,453,542	\$ 4,821,079	\$ 5,503,575	\$ 4,740,143	\$ 4,879,585
Fee Percentage					
% of Expected Cost of Work	6.75%	7.30%	8.34%	7.18%	7.39%
Hours					
Preconstruction Hours	588	2,126	1,390	1,332	1,359
Construction Hours	19,601	19,352	21,491	15,896	19,085
EMR					
EMR Rating	0.58%	0.86%	0.65%	0.85%	0.74%
Bonding Capacity					
Single	\$250M	\$600M	\$170M	\$75M	NA
Aggregate	\$900M	\$3.5B	\$325M	\$250M	NA
Notes					
Provided Relevant Project Experience	•City of Marshall – Law enforcement and fire station •Branch County – Jail and sheriff's facility, •Isabella County – Jail and Sheriff's Office •City of Ann Arbor – Municipal Center •Michigan State Police HQ •City of Grand Rapids – Service Center Relocation •City of Grand Rapids – Fire Department and training facility	•Lansing Public Safety Complex – courts, police station, fire department •Delta Twp. Eaton County Sheriff Sub Station – public safety building •Grand Haven Fire/Rescue •Levin Courthouse Renovation •Fairfax County Mason Police Station •State Emergency Operations Center •Listed 50 other relevant projects	•City of Novi DPS Facility Addition & Renovation •Oakland County Parks Improvements •Green Oak Twp New Police and Fire Station •City of Madison Hgts Community Civic Ctr & Fire Station Improvements •City of Oak Park Municipal Complex Addition & Renovation •Grand Blanc Twp New Fire Station & DPW Building	•Schaumburg Fire Station 54 & 51 •Shelby Twp Police Station •Fire Stations 2,3,4 Sterling Heights •Berkshire Esupply HQ •Audi Dealership Novi •Porsche Dealership Novi •Powervac Novi •Nissan Technical Center •Taylor Schools •Oak Park Flint •Meadowbrook Corporate Center Novi	

DRAFT AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the «Eighteenth» day of «November» in the year «Two Thousand Twenty Five»

(In words, indicate day, month, and year).

BETWEEN the Owner:

(Name, legal status, address, and other information)

«City of Novi »« »
45175 Ten Mile Road
Novi, Michigan 48375

and the Construction Manager:

(Name, legal status, address, and other information)

«The Christman Company »« »
208 N. Capitol Avenue
Lansing, Michigan 48933
(517) 482-1488

for the following Project:

(Name, location, and detailed description)

The City of Novi
New Public Safety Facilities, including a New Centralized Public Safety Headquarters that will co-locate the Novi Police Station and Fire Station #1, two (2) New Fire Department Facilities, and Renovations and Improvements to Fire Station #4.

The Architect:

(Name, legal status, address, and other information)

Harley Ellis Devereaux Corporation
123 West 5th Street
Royal Oak, Michigan 48067
(248) 262-1500

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Fire Stations #1, 2 and 3 were built in the late 1970s/early 1980s, are modest in size (3,880, 5,117, and 9,980 s.f.) and lack the program needs for modern fire stations serving the population size of the City today and in the future. Some of the building and site program deficiencies include inadequate separation of clean areas (or "cold zones") from first responders' dirty and potentially contaminated (or "hot/warm zone") areas. It is important to separate these areas to avoid contaminants from a fire event entering the living environment of the fire station staff. It was also noted that sleeping quarters and associated support spaces for first responders were undersized, lacked privacy, and often had limited or nonexistent separation for male/female accommodations.

To right-size the buildings for the City community, a three-apparatus bay fire station would be the standard for operations. Currently, only one station (Fire Station No. 1) contains three bays. The remaining two stations have two bays and are unable to expand to accommodate an additional bay due to site size restrictions. The included space programming report provides a recommendation for the City of Novi to have their fire station buildings accommodate a minimum of three bays and 14,500 s.f. of programmed area on a minimum 2 acres. This recommendation cannot be

supported by either Fire Station No. 2 on the north end of the City or Fire Station No. 3 on the south end of the City. For these reasons, both Fire Station No. 2 & 3 will be relocated to different sites and new +/-14,500 s.f. facilities will be built.

The existing City of Novi Police Station was built in 1980. Although well maintained, the building lacks adequate program space needs to serve the City of Novi's existing and future population. The age of the building will dictate the need for consistent investment into capital improvements related to the mechanical, electrical, plumbing, IT, and security systems, all of which have exceeded their useful life. The existing building contains approximately 38,000 s.f., but the space programming report recommends a programmed building of 54,000 s.f. to meet current and future public safety needs. The dispatch area and support spaces are undersized, the locker facilities need upgrading, and the evidence and storage rooms are undersized to meet current operations. Based on the growing City of Novi community needs as well as the programed spaces that are deficient in the current building, a new, more efficient facility is desired. In addition to the public safety portion of the building is a +/- 19,000 s.f. 4 bay Fire Station No. 1 which is currently operates on Grand River just southwest of the proposed public safety site and a +/-6,400 square foot fleet maintenance garage. The total square footage of the proposed facility is +/-79,400 square feet.

Fire Station No. 4 is located at 49375 Ten Mile Road, at the intersection of Ten Mile and Wixom Roads and will require miscellaneous MEP and architectural renovation work, as further detailed in the Owner's Request for Proposals dated July 15, 2025, including any Addenda (collectively the "RFP"), which RFP is incorporated herein by this reference.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

- Public Safety Building: 42250 11 Mile Road, Novi, Michigan
- FS No. 2: Location TBD; lot size of 2-3 acres.
- FS No. 3: Location TBD; lot size of 2-3 acres.
- FS No. 4: 49375 W 10 Mile Rd, Novi, Michigan

§ 1.1.3 The Owner's anticipated budget for the Project, inclusive of all hard costs and soft costs (whether by the Construction Manager or the Owner's separate contractors), fees, financing costs, FF&E, and other related costs, is as follows:

(Provide total and, if known, a line- item breakdown.)

«Overall Project Budget is One Hundred Million (\$100,000,000); the Cost of the Work is Sixty Six Million Dollars (\$66,000,000), which is broken down as follows:

Public Safety Building & Fleet Garage: \$47,000,000
Fire Station No. 1: \$8,500,000
Fire Station No. 2: \$8,500,000
Fire Station No. 4: \$2,000,000

The above approximate budget amounts are the Cost-of-Work inclusive of hard construction, sitework, permits, and Construction Manager's costs.

§ 1.1.4 Subject to amendment by the Owner, the Project's design milestone and anticipated construction milestone dates shall be as set forth in the Preliminary Major Milestone Schedule attached hereto as **Exhibit D**.

§ 1.1.5 The Owner's anticipated requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:

(Identify any requirements for fast-track scheduling or phased construction.)

«Not applicable. »

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

«Not applicable. »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E234–2019 is incorporated into this Agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

As set forth in the Owner’s RFP.

§ 1.1.8 The Owner identifies the following representatives:

- .1 **Owner’s Designated Representative:** The Owner identified the following individual as its Owner’s Designated Representative in accordance with Section 4.2:
(List name, address, and other contact information.)

«Victor Cardenas, City Manager »
«City of Novi »« »
45175 Ten Mile Road
Novi, MI 48375

- .2 **Owner’s Representative Consultant.**

The Owner has engaged Plante Moran Realpoint, LLC as an Owner’s Representative Consultant on the Project. The Construction Manager shall keep the Owner and the Owner’s Representative Consultant informed about matters regarding the Project. Unless otherwise provided in this Agreement or specifically authorized by the Owner, the Owner’s Representative Consultant is not authorized to commit the Owner in matters regarding changes in the Work, Construction Schedule, or grant approval on behalf of the Owner. The Owner and/or the Owner’s Designated Representative have the sole right to make decisions in matters regarding the Project. The following individual, subject to change upon written notification to the Construction Manager, shall be primary contact for the Owner’s Representative Consultant:

«Brian Weber »
«Plante Moran Realpoint, LLC
3000 Town Center; Suite 100
Southfield, MI 48075 »
«Brian.weber@plantemoran.com; (248) 603-5071 »»

§ 1.1.9 The persons or entities, in addition to the Owner’s representatives identified in Section 1.1.7 and the Architect, who are required to review the Construction Manager’s submittals to the Owner are as follows:

(List name, address and other contact information.)

Novi City Council approval.

§ 1.1.10 The Owner anticipates retaining the following consultants and contractors:

(List name, legal status, address, and other contact information.)

- .1 Geotechnical/Materials Testing Engineer:

«to be determined. »« »

- .2 Civil Engineer:

Architect’s Basic Services

- .3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

«Commissioning Agent
to be determined. »

«Move Management Consultant
to be determined. »

«Furniture Consultant
to be determined. »

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

«Chris Vogelheim, Principal/Client Manager »
Harley Ellis Devereaux Corporation
123 West 5th Street
Royal Oak, Michigan 48067
(248) 262-1500

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3. The Construction Manager's representative identified below is authorized to act, and fully bind the Construction Manager and commit the Construction Manager's resources, on behalf of the Construction Manager with respect to the Project:
(List name, address, and other contact information.)

«Joe Luther, Senior Vice President
The Christman Company »« »
208 N. Capitol Avenue
Lansing, MI 48933
joe.luther@christmanco.com; (248) 431-8154 »

§ 1.1.13 The Construction Manager's key team members are:
(List of key staff members assigned to the Project and their respective roles)

Team Member Name	Assignment
Jason Ide,	Project Executive
Chad Thalen,	Preconstruction
Heidi Hitz-Kindel,	Construction
Sean Jagels,	Senior Vice President Project Planning
James Holden,	Lead Estimator
Jeremy Borten,	Electrical Estimator
Nick Perakes,	Mechanical Estimator
Adam Charles,	Architectural Estimator
Patrick Schrauben,	Senior Project Manager
Eric Hicks,	Project Manager
Grant Alshab,	Project Engineer
Wayne Compton,	Superintendent - Public Safety Headquarters
Chad Miller,	Superintendent - Fire Stations 2, 3, and 4

§ 1.1.13.1 The services of the Construction Manager's key team members are deemed to be personal in nature as to these key team members, and the continuity in the Project's team is valuable to the Owner. Therefore, the Construction Manager shall not substitute a key team member for convenience without the Owner's prior written approval which shall be at the Owner's sole ~~reasonable~~ discretion.

§ 1.1.13.1.1 intentionally deleted

§ 1.1.13.2 If a key team member is substituted for any reason, the Owner shall have the right to interview and select alternate Team member(s) employed by the Construction Manager to replace the unavailable Team member. Construction Manager shall agree to provide the services of the alternate team member(s) selected by Owner.

§ 1.1.13.3 Substitution of any key team member for any reason shall not entitle the Construction Managers to an increase of the Contract Time, the Contract Sum, or the Guaranteed Maximum Price, however, where cost of the replacement key team members is less than that key team member being replaced the Owner shall be entitled to a Change Order for a commensurate reduction in the Contract Sum or Guaranteed Maximum Price.

§ 1.1.14 Reserved.

§ 1.1.15 Other Initial Information on which this Agreement is based:

As set forth in the Owner's RFP.

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, when appropriate, the Owner and the Construction Manager may agree in writing to adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner may adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information. Notwithstanding the foregoing, the Construction Manager acknowledges that the Initial Information regarding the Project provided by the Owner is preliminary, and that the Construction Manager's services necessarily include assisting the Owner and Architect in refining the parameters of the Project.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. The terms "Agreement" and "Contract" may be used interchangeably to mean the entire understanding and agreement between the parties.

§ 2.1.1 Defined Terms

Terms which are defined in the AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified, shall have the same meaning when used in this Agreement or other Contract Documents.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's best skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

The general conditions of the Contract shall be as set forth in AIA Document A201-2017, as modified, which document is attached hereto and incorporated herein by reference. Reference in this Agreement to the AIA Document A201-2017 or the General Conditions of the contract shall mean the AIA Document A201-2017 as modified and attached hereto. The term "Contractor" as used in AIA Document A201-2017 shall mean the Construction Manager and may be used

interchangeably herein; the term "Contract Sum," wherever used in AIA Document A201-2017 in reference to a limit of cost, shall mean the Guaranteed Maximum Price.

§ 2.4 Initial Engagement

Initial engagement of the Construction Manager is for Preconstruction Services only. In addition to any other rights of termination, the Owner reserves the unconditional right to, in its sole discretion, terminate this Agreement at the conclusion of Preconstruction Services and/or solicit proposals from other Construction Managers or contractors for construction of the Project. In the event of such termination by Owner, Owner's sole liability, pursuant to this Agreement or otherwise at law or in equity, shall be payment for Preconstruction Services actually performed.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 3.1.1 The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.2 and 3.3, **Exhibit C**, and in the applicable provisions of A201-2017. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.4. The Owner and Construction Manager may agree, in consultation with the Architect, to commence prior to the completion of the Preconstruction Phase, in which case, both phases will proceed concurrently.

§ 3.1.2 In addition to the provisions stated within this Agreement, the Construction Manager shall provide design consultation on the Project; to monitor Project costs and to keep costs within established limitations; to schedule the Project efficiently for both design development and construction phases so that the Project will be ready for occupancy at the earliest possible date; and to review the design of the Project with the intent that the most efficient use of materials and methods will be employed to provide quality construction at the least cost.

§ 3.1.3 The Construction Manager shall perform its Services and the Work with competence and care, using skill and diligence consistent with honesty, integrity, candor, and in the interests of the Owner. Unless specifically provided otherwise, the Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager.

§ 3.1.4 The Construction Manager shall comply with Applicable laws relevant to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.5 The Construction Manager shall immediately notify the Owner in writing in the event of a potential or actual: (a) material change in ownership or structure of the Construction Manager; (b) intent to dissolve; (c) intent to otherwise cease active participation in the Project's local marketplace; or (d) any other change in the Construction Manager's circumstances that could reasonably give rise to concern on behalf of the Owner regarding the Construction Manager's ability or willingness to fulfill any of its obligations under this Agreement (collectively a "Material Change in Circumstances"). In the event of a Material Change in Circumstances, the Construction Manager shall provide any reasonable assurance or guarantee requested by Owner. Owner shall have the right to terminate this Agreement for cause in the event of a Material Change in Circumstances.

§ 3.1.6 Construction Manager shall attend two (2) community meetings to review overall Project impact on the community and neighboring properties for the Fire Station #2 and #3 Projects.

§ 3.2 Preconstruction Phase

§ 3.2.1 Extent of Responsibility

The Construction Manager shall exercise the utmost care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. With the exception of Work for which the Contract Documents require the Construction Manager to design, the Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall use its expertise to carefully review the Drawings and Specifications and shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. Except to the extent of delegated design explicitly stated in the Contract Documents, no provision of this Agreement shall be interpreted to create.

§ 3.2.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. By signing this Agreement, the Construction Manager certifies to the Owner that the Construction Manager has completed such a preliminary review of the Owner's Program, schedule, and Project budget requirements, and that the Owner's Program, schedule, and Project Budget requirements are reasonably achievable, each in terms of the other.

§ 3.2.3 Consultation

§ 3.2.3.1 As the Architect progresses through the Schematic Design, Design Development, and Construction Documents phases of the Project, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager, and Architect, an evaluation of the Owner's program, schedule, and construction budget requirements, each in terms of the other. The Construction Manager shall also schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.2.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on site investigations, constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.2.3.3 The Construction Manager shall collaborate with the Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.2.3.4 As the Architect progresses with the preparation of the Schematic Design, Design Development, and Construction Documents, the Construction Manager shall review all Drawings and Specifications, consult with the Owner and Architect and make recommendations:

- .1 regarding the cost, constructability, and schedule;
- .2 regarding equipment, materials, and services;
- .3 to ensure that they contain provisions for all temporary facilities necessary to enable the Construction team to perform their Work, and provisions for all the job site facilities necessary to manage, inspect, and supervise construction; and
- .4 to the Owner and Architect regarding site condition investigation and reporting to identify conditions that may impact the design and performance of the Work. The Construction Manager shall manage the site condition investigation if directed to do so by the Owner.

§ 3.2.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and update a Project schedule for the Architect's review and the Owner's acceptance in accordance with **Exhibit D**.

§ 3.2.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.2.6 Cost Estimates

§ 3.2.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques as outlined in **Exhibit C**. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems. The Construction Manager shall use its best professional judgment in preparing estimates of the Cost of the Work. The Construction Manager's estimate will include a narrative of the factors that may cause its estimates to vary from the lowest bona fide bids for the Work. The Construction Manager shall notify the Owner and Architect in writing in the event an estimate exceeds the Owner's

current approved budget for any portion of the Cost of the Work and will assist the Owner and Architect in a value engineering processes to make recommendations for corrective action, including changes in Project scope and design.

§ 3.2.7 Subcontractors and Suppliers

§ 3.2.7.1 The Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.2.7.2 The Construction Manager shall develop bidders' interest in the Project both informally during the early design phases and formally during the bidding phase. The Construction Manager shall conduct pre-bid conferences to inform prospective bidders of requirements and answer questions concerning the Project and bidding requirements. Pre-bid conferences will be coordinated with the Owner and Architect. The Construction Manager shall regularly report on its bidders' interest activities to the Owner.

§ 3.2.7.3 The processes described in Article 9 shall apply if bid packages are issued during the Preconstruction Phase.

§ 3.2.8 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.2.8.1 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

§ 3.2.8.2 The Construction Manager shall develop a competitive field of bidders and solicit competitive bids from qualified subcontractors, vendors, and suppliers in accordance with Article 9, Applicable Law, and the Owner's applicable procurement policies for all portions of the Work. In event of a conflict between the requirements of Article 9, Applicable Law, or the Owner's applicable procurement policies, Applicable Law will govern.

§ 3.2.8.3 The Construction Manager shall, after reviewing the bidding documents with the Architect and Owner, assemble bid data including copies of Drawings, Specifications, and Contract Documents, formally advertise and issue invitations for bid in order to obtain competitive bids on appropriate segments of construction, including procurement of equipment, materials, and supplies purchased and incorporated in the Work.

§ 3.2.8.4 The Construction Manager or a related party, as defined in Section 7.8.1, may, with the Owner's prior approval, participate in the competitive bidding for any bid package "Self-performed Trade Work" provided that:

- .1** The Construction Manager notifies the Owner in writing prior to publishing bid documents so that appropriate adjustments, as deemed necessary by the Owner, to the instructions to bidders may be made;
- .2** Self-perform Trade Work shall be procured with the utmost care as not to alienate other trade subcontractors or in any way limit receipt adequate number of bids in the proposed bid category;
- .3** The bidding Subcontractor entity conforms to all requirements of the instructions to bidders, including but not limited to obtaining information and clarifications regarding the scope of Work through the formal RFI process; and
- .4** Where permitted by Applicable Law, the Owner will receive the Self-Performed Trade Work bids directly and 24 hours prior to the otherwise stated bid due date.
- .5** The Construction Manager's or a related party's participation in the competitive bidding process shall not relieve the Construction Manager of any obligation under the Contract Documents including, but not limited to, the Construction Manager's responsibility that the bidding process conform to Applicable Law and the Owner's applicable procurement policies.

§ 3.2.8.5 Awards of all contracts after evaluation and recommendation by the Construction Manager and concurrence of the Architect shall be made upon the Owner's consent. This shall include review and objective opinion of self-perform trade work bid categories by the Construction Manager. The Architect and/or Owner shall attend all scope review meetings for all proposing firms of the self-performed trade bid category. Consent by the Owner shall not relieve the

Construction Manager of any of its responsibilities under the Contract Documents. Upon the Owner's consent, the Construction Manager shall award subcontracts to provide all labor and materials for the construction of the Project.

§ 3.2.8.6 The Construction Manager will not utilize, or solicit the participation of any subcontractors, vendors, or suppliers, in any early, accelerated, or similar payment program for the payment of any subcontractors, vendors, or suppliers on the Project without the prior written authorization of the Owner.

§ 3.2.9 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

See **Exhibit C** - Scope of Preconstruction Services.

§ 3.3 Guaranteed Maximum Price (GMP) Proposal

§ 3.3.1 At a time to be mutually agreed upon by the Owner and the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance in a form substantially similar to the Guaranteed Maximum Price Amendment Form attached as **Exhibit A**. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.3.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.3.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs and/or Allowances attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.3.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of the basis for the proposed Guaranteed Maximum Price, which shall include the following:

- .1** A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3** A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems and consistent with the Draft Guaranteed Maximum Price form included as **Exhibit A**, including allowances; the Construction Manager's contingency set forth in Section 3.3.4; and the Construction Manager's Fee;
- .4** The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;
- .5** A critical path schedule; and
- .6** A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.3.4 Construction Manager's Contingency

In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager may include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. ~~This is to cover the Construction Manager for construction risks only, and is not to be used for Changes in the Project, for Changes as a result of deficiencies or omissions in the drawings and specifications, or to fund additional program or scope of work.~~ If the Guaranteed Maximum Price is established prior to any of the Work being bid on or bought out the Construction Manager's contingency may be up to five percent (5%) of the estimated Cost of the Work. When the Guarantee Maximum Price is established with ninety percent (90%) or more of the value of the Cost of the Work bid or bought out, the Construction Manager's contingency shall not exceed three percent (3%) ~~five percent (5%)~~ of the estimated cost of the Work.

§ 3.3.4.1 Construction Manager's contingency shall not be used to cover items resulting from the Construction Manager's negligence. It is further understood and agreed that such contingency shall be the maximum amount available, and may only be used for the following: (i) items of Work within the scope of this Agreement but due to

Construction Manager's error failed to be included in a Subcontract; (ii) additional costs incurred as a result of a failure of a bidder to whom a portion of the Work is awarded in accordance with the Contract Documents to enter into a subcontract with the Construction Manager; (iii) unanticipated market conditions and labor and material conditions; (iv) casualty losses and related expenses uncompensated by insurance or otherwise and sustained by the Construction Manager in connection with the Work, except to the extent such losses or expenses are attributable, in whole or in part, to the Construction Manager's error or omission; and (v) costs arising from default of un-bonded and uncollectible Subcontractor; ~~(vi) any Cost of the Work that is over the GMP and not compensable as a change order, etc.~~

§ 3.3.4.2 Use of the Construction Manager's contingency is conditioned on the Construction Manager first submitting to the Owner for approval a written request for a specific amount and justification for its use if time permitting. The Construction Manager shall report on the use of such contingency on the Applications for Payment. Construction Manager shall forfeit contingency amount committed or used if it failed to report and to submit for payment after two subsequent monthly Applications for Payment.

§ 3.3.4.3 Because Construction Manager's contingency covers the above-described unanticipated costs, the incidents of unanticipated costs should be reduced as the Project progresses towards completion. Therefore, Construction Manager shall return to the Owner portions of such contingency according to the following schedule unless contingency expenditure at the following Project milestone of construction exceeded the then scheduled amounts:

At Seventy Five Percent (75%) Completion	Fifty Percent (50%)
At Substantial Completion	Seventy Five Percent (75%)
At Final Completion	One Hundred Percent (100%)

§ 3.3.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.3.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.3.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs which shall be in the form of a Change Order or Construction Change Directive signed by the Architect.

§ 3.3.8 The Owner may authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner may promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.3.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3.10 Construction Manager shall be responsible for paying taxes on construction purchases unless there is a specific exemption available related to Owner's tax-exempt status.

§ 3.4 Construction Phase

§ 3.4.1 General

§ 3.4.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase. The Construction Manager shall fully execute the Work described in the

Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

§ 3.4.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.4.2 Administration

§ 3.4.2.1 The Construction Manager shall schedule and conduct meetings no less frequently than bi-weekly to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.4.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.4.2.3 Monthly Report

The Construction Manager shall report on the progress of the Project as required by the Contract Documents or reasonably requested by the Owner.

§ 3.4.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of operating and idle equipment on site, problems that might affect progress of the work, accidents, injuries, visitors, building official inspections, deliveries, and other information required by the Owner.

§ 3.4.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall submit this system and its proposed reporting format to the Owner for its review and approval. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.4.2.3 above.

§ 3.4.2.6 Project Documentation

The Construction Manager shall keep, and make available to the Owner and Architect, a full set of Project records, including, but not limited to, all versions of Drawings and Specifications, as-built drawings, bulletins, requests for information and responses to such requests, submittals and responses to such submittals, daily reports, meeting minutes, schedules, correspondence, and applications for payment. The records shall be well organized and maintained electronically in a format the Owner and Architect may readily access.

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provides reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, may thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. Provided the Construction Manager carefully review such information, Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner to the extent that is reasonable given the Construction Manager's careful review but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Construction Manager shall request, and the Owner shall furnish tests, inspections, and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Construction Manager shall request, and the Owner shall furnish surveys describing known physical characteristics, legal limitations and known utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. Construction Manager shall be responsible for independently confirming the location of utility lines and exercising due caution related thereto.

§ 4.1.4.3 The Owner, when such services are reasonably requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, 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 Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's designated representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's designated representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide the services, duties and responsibilities of an architect. Upon request of the Construction Manager, the Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

The Owner shall compensate the Construction Manager for the Preconstruction Phase services provided by the Construction Manager's Key Team Members identified in Section 1.1.13 on an hourly basis in accordance with the rates set forth in **Exhibit I**. The Construction Manager shall provide the necessary Preconstruction Phase Services a Not-to-Exceed amount of Two Hundred Eighteen Thousand One Hundred Eleven Dollars (\$ 218,111).

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

«As set forth in **Exhibit I** – Construction Manager's Hourly Rate Schedule. »

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by an applicable employment agreement, law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, bonuses and customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within «eighteen» («18») months of the date of this Agreement, through no fault of the Construction Manager or failure of the Project to meet the Owner's stated objectives of scope, schedule, or budget, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted by a Modification.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts «sixty» («60») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

Prime interest rate as published in the Wall Street Journal on first day of the month when owed payment becomes delinquent; however, shall not exceed six percent (6%) per annum.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

The Construction Manager's Fee shall be one and ninety five one hundredth percent (1.95%) of the Cost of the Work.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

If the Construction Manager's Fee is based on a percentage of the Cost of the Work, the basis of the Construction Manager's Fee shall not be adjusted based on changes in the Work, however, the Construction Manager's Fee shall be adjusted based on the percentage set forth in Section 6.1.2 for any changes to the Cost of the Work.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: A subcontractor's overhead and profit shall not exceed ten percent (10%) of the actual cost of the changed Work, labor, equipment and material of a primary tier subcontractor; and/or five percent (5%) of the actual cost of changed Work, labor, equipment and material of a lower tier subcontractor.

§ 6.1.5 Reimbursable rental rates for equipment must be provided in writing to the Owner in advance for approval and to the are subject to the following limitations:

- .1 Rental rates for leased or rented equipment will be at the actual, documented lease or rental cost.
- .2 Rental rates for Construction Manager-owned, related party-owned, or Subcontractor-owned equipment will not exceed the owned equipment rate set for each unit in the current edition of EquipmentWatch and no additional compensation shall be paid for operating costs.
- .3 Rental rates for Construction Manager-owned, related party-owned or Subcontractor-owned equipment that has been idled due to a compensable delay shall not exceed on-half the owned equipment rate set for each unit in the current edition of EquipmentWatch and no compensation shall be paid for operating costs. Further, all equipment must be on site during the delay, be necessary for a critical path activity, and be unable to be used on a different activity. The Construction Manager shall bear the costs for such equipment that has been idled due to a non-compensable delay.
- .4 The total rental rates paid for any small tool, those having total value less than \$2,500, shall not exceed the total amount of that tool.
- .5 The Construction Manager acknowledges its responsibility to actively mitigate Project costs including, but not limited to, rental costs and rental costs of idle equipment.

§ 6.1.6 Liquidated damages.
reserved.

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)
«Not applicable. »

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, which shall be in a form substantially similar to that attached hereto as **Exhibit A**, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price or a Guaranteed Line Item to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.2.1 The Guaranteed Maximum Price Amendment and the Construction Manager's Guaranteed Maximum Price proposal shall include the following Guaranteed Line Items within the Cost of the Work and shall only be adjusted by prior Owner's written approval via a signed Change Order:

- .1 **Construction Manager's Direct Costs.** The Construction Manager's Direct Costs include the costs to the Construction Manager for its insurance and bonds required under the Contract Documents as set forth in Section 7.6.1.
- .2 **Construction Manager's Personnel Costs.** The Construction Manager's Personnel Costs include the costs to the Construction Manager for its personnel as set forth in Section 7.2.
- .3 **Construction Manager's Hard Costs.** The Construction Manager's Hard Costs shall include any Cost of the Work authorized under Article 7 not included in the Construction Manager's Direct Costs or the Construction Manager's Personnel Costs.

§ 6.2.2 The Guaranteed Maximum Price Amendment shall include an itemized schedule of values. As each Subcontract is awarded, the excess of the Estimated Costs of the Work (as shown on the schedule of values included in the Guaranteed Maximum Price Amendment) over the actual amount of the awarded for the applicable Subcontract shall be credited to a Buy-Out Savings line item on the schedule of values. Any excess in the actual amount of any awarded Subcontract over the Estimated Costs of the Work allocated to such Subcontract in the schedule of values shall be

transferred from the Buy-Out Savings line of the schedule of values so long as sufficient funds remain in such line. This shall be an aggregate calculation, taking into consideration any Subcontracts that may have exceeded the budgeted amounts. Upon the completion of the awarding of all Subcontracts, any amount remaining in the Buy-Out Savings line of the schedule of values shall be returned to the Owner via Change Order.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean actual costs necessarily incurred by the Construction Manager, without markup, in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs, wages, salaries, and charges, as used in this Article 7, shall mean actual costs without markup, except that in no event shall such costs, wages, salaries, or charges be at rates higher than the standard rates paid at the place of the Project, except with prior written approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Not-to-Exceed wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

«To be established with the GMP Amendment. »

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval and at the agreed upon rates herein.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval and at the agreed upon rates herein.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees for laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, resulting from the Owner's acts or omissions but other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Subject to the Owner's prior written approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior written approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, Subcontractors, or suppliers, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance (except that the

Owner shall not be responsible for costs not covered due to any deductible self-insured retainage), sureties, Subcontractors, suppliers, or others.

§ 7.7.4 NOT USED

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes in writing the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9. The approval and notice obligation regarding related parties shall apply to any transaction with a related party of any tier of subcontract or supplier agreement.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior written approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Unless authorized in writing in advance by the Owner, any costs for subcontractor default insurance or subcontractor bonds;
- .11 Corporate accounting, data and check processing, and similar business transaction related costs related to the Work are part of Construction Manager's overhead business expenses and should have been included in Construction Manager's Fee;
- .12 All taxes (except for sales or use taxes – *Ref. Section 7.6.2*), including, but not limited to, Federal, State or Local Business Tax, Franchise Tax, Commercial Activities Tax, or similar taxes are the responsibility of the Construction Manager; and the Owner shall not pay or reimburse the Construction Manager for such tax obligations;
- .13 Consultants to the Construction Manager not previously approved in writing by the Owner;
- .14 Rental charges more than two weeks before and one week after the temporary facility, machine, or equipment is needed for the Work;
- .15 Premiums for performance and payment bonds obtained by Subcontractors without the Owner's express written approval;

- .16 Not Used; and
- .17 Any costs associated with an early or accelerated payment program.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, or refunds; equipment rental discounts, rebates, or refunds, ~~insurance and surety bonding discounts and credits~~, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from subcontractors and suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

§ 9.3 Subcontractor allowances shall be disclosed to the Owner and are subject to Section 3.8 of the AIA Document A201-2017.

§ 9.4 Any subcontract that includes work or supplies of a related party at any tier or level shall be subject to the provision of Sections 1.1.14.3 and 7.8.

ARTICLE 10 ACCOUNTING RECORDS

§ 10.1 The Construction Manager shall implement the cost control system required by Section 3.4.2.5 and 3.4.2.6 and shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to interview the Construction Manager's employees regarding the cost control system and audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders,

vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ 10.2 If an audit, inspection, or examination under Section 10.1 or Section 11.2.2 discloses an over-payment by the Owner, the Construction Manager shall refund the over-paid amount to the Owner. In the event the Construction Manager has overbilled the Owner in excess of one-half percent (0.5%) of the total Cost of the Work, the Construction Manager shall also reimburse the Owner the actual cost of the Owner's audit, inspection, or examination expenses.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon properly completed and supported Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 11.1.3 Provided an Application for Payment is received by the Architect not later than the «15th» day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than sixty (60) days after the Architect receives the Application for Payment.

§ 11.1.3.1 Notwithstanding payment provision in Section 11.1.3 above, if the Project financed is through a loan or grant or other financing arrangement, and the lender or financing entity is required to review and/or approve Application for Payment before Owner can make payment of the certified amount to the Construction Manager, payment of the certified amount to the Construction Manager shall not become due before five (5) business days after receiving approval and payment from lender or financing entity.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work, with General Conditions Costs stated as a separate line on the schedule of values; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner or Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 Except for items set forth in Section 6.2.1, the allocations of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Owner and Architect, which shall be memorialized by a no cost Change Order.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, withheld pursuant to Section 9.5 of the AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 To the extent permitted by law, for each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Ten percent (10%).

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

1. Construction Manager's General Conditions expenses, including bonds (if applicable) and insurance
2. Construction Manager's Fee

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

- .1 The Owner, in its sole discretion but after consulting with the Construction Manager and Architect, may release retainage for a trade or subcontractor at any time.

- .2 When the Owner agrees the Work is fifty percent complete, retainage withheld from payments to the Construction Manager shall be reduced to five percent (5%), except that if Owner determines in its sole discretion that performance of the Work has not progressed in a timely manner or otherwise has not been performed as required by the Contract Documents, the Owner may elect to continue to subject future payments for the Work on the Project, or as applicable, the Work of any particular Subcontractor, to retainage of ten percent (10%) and not release any portion of retained amounts as provided above.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

The Owner may withhold retainage as set forth in Section 9.8.5 of the AIA Document A201-2017.

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201-2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect or Owner have made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect or Owner have made exhaustive or continuous on-site inspections; or (3) that the Architect or Owner have made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. In accordance with Article 9 of the AIA Document A201-2017, the Owner may audit the Project's records and accounting after the Architect's final Certificate for Payment. The Architect is not

responsible for auditing the accuracy of the Construction Manager's final accounting, however the Architect shall exercise reasonable care in reviewing the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager any undisputed amount certified in the Architect's final Certificate for Payment, however, the Owner may withhold any disputed amounts.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, after resolution of any dispute over the Owner's audit, or after resolution of all Claims, whichever comes last.

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.2.5 Amounts withheld from the final payment to cover any incomplete work are not considered retainage and shall not be paid to the Construction Manager until the Work is actually completed and accepted by the Owner. Such withholdings shall not be less than one hundred fifty percent (150%) of the estimated cost to complete the Work.

§ 11.2.6 The Owner shall have the right to deduct from the Final Payment due the Construction Manager all costs, including additional fees paid to Owner's consultants, which the Owner incurred as result of and attributed to Construction Manager's failure to fully complete and/or closeout the Project within ninety (90) days following Substantial Completion.

§ 11.2.7 Unless otherwise agreed to by the Owner, in writing, the Owner shall not be responsible for any costs incurred by the Construction Manager beyond sixty (60) days following Substantial Completion.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Dispute Resolution

~~See A201–2017, §15.2, regarding Direct Discussions.~~ If a Party has a Claim, it shall provide written notice to the other Party. "Claim" means a demand or assertion by one of the Parties seeking a payment of money or other relief with respect to the terms of this Agreement. Claim also includes disputes and matters in question between Owner and Construction Manager arising out of this Agreement. A Party wishing to make a Claim shall be responsible for substantiating the Claim and providing notice of the Claim to the other Party. The signatories to this Agreement or their successors in office/position shall meet within ten (10) business days of receipt of the Claim. The signatories to this Agreement or their successors, shall attempt to resolve the Claim in good faith. If the Parties agree to a resolution of the

Claim, they shall embody the resolution in writing. If the Parties are unable to resolve a Claim, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[☐] Arbitration pursuant to Article 15 of AIA Document A201–2017

[☒] Litigation in the 52-1 District Court or the 6th Circuit Court located in Oakland County, Michigan, or the U.S. District Court for the Eastern District of Michigan-Southern Division. The Construction Manager agrees these courts have personal jurisdiction over it and is a convenient venue. The Construction Manager shall be bound by this jurisdiction and venue. The Construction Manager shall continue to perform its obligations under the Agreement during the pendency of any dispute resolution proceedings. ~~The Parties waive their right to a trial by jury and acknowledges that they have had the opportunity to seek the advice of legal counsel before waiving this right.~~

[☐] If the Owner and Construction Manager do not agree in writing to use alternative dispute resolution, Claims will be resolved by litigation in a court of jurisdiction provided above.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon written notice to the Construction Manager for the Owner's convenience and without cause.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders, or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order, or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order, or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order, or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in this Agreement.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Not Used.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, 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 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract and the attempted assignment shall be void.

§ 14.2.2 The Owner may, without consent of the Construction Manager, 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 Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the insurance detailed in **Attachment A** for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 – 14.3.1.6 See Attachment A

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner, its elected and appointed officials, employees, agents and volunteers, Plante Moran Realpoint, LLC, the Architect and Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations. Construction Manager shall have no right of subrogation against Owner and no right to indemnification from Owner unless otherwise provided by law.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

Prior to the Construction Manager's commencement of the Work or mobilization on site, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in Section 14.3.1 above and elsewhere in the Contract Documents.

§ 14.3.2.1 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	100% of the Contract Sum
Performance Bond	100% of the Contract Sum

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

The Construction Manager shall subcontract with Subcontractors that are trustworthy, financially able, and have a track record in successfully completing trade works of similar size and complexity. Therefore, the Construction Manager may in its discretion, determine if any Subcontractors will need to supply performance and payment bonds. If bonds are required of any Subcontractors, all such bonds shall be (i) purchased solely at the expense of the Construction Manager (or the Subcontractor supplying them), without reimbursement under the Contract Sum or Guaranteed Maximum Price or otherwise, and (ii) dual obligee bonds, naming the Owner as one of the obligees. The Owner may in its discretion determine, with the recommendation of the Construction Manager to require a Subcontractor to supply performance and payment bonds in addition to the Construction Manager's bond when (i) the Subcontractor's bid including the added cost of the bond is significantly below the next bona fide bid, and (ii) the Construction Manager has no previous experience or work experience with the Subcontractor, and (iii) it is necessary to accept the Subcontractor's bid in order to meet the established Guaranteed Maximum Price. In such event, the Owner shall reimburse the Construction Manager for purchasing the bond for the Subcontractor under the Contract Sum. Owner will not accept sub-guard insurance in lieu of performance and payment bond.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017.

<< >>

§ 14.5 Other provisions:

§ 14.5.1 GOVERNMENT AGENCY'S IMMUNITY FROM TORT LIABILITY. Notwithstanding any provisions within the Contract Documents, no provisions shall be deemed a waiver of any immunity granted the Owner, being a governmental entity under Michigan Law.

§ 14.5.2 PROTECTED HEALTH INFORMATION.
Not Used.

§ 14.6 USE OF GRANT FUNDS. Portions of the Project, including the professional services to be provided under this Agreement may be funded by state, federal or other sources. If Owner receives grant funds, Owner shall provide Construction Manager with all grant requirements applicable to the Project that pertain to Construction Manager. If a grant requires specific language to be included in the Agreement that is not currently included, the Parties shall amend the Agreement to include the required grant language. Construction Manager shall cause the requirements of the grants received by Owner for this Project to be incorporated into the provisions of each Subcontractor Agreement.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment
- .3 Not Used.
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

«Not Used. »

- .6 Other Exhibits:

(Check all boxes that apply.)

[☐] AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:

(Insert the date of the E234-2019 incorporated into this Agreement.)

« »

[☐] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

[☒] Other:

Exhibit C – Scope of Preconstruction Services
Exhibit D – Phasing and Project Milestone Schedule
Exhibit E – Construction Manager's Certificate(s) of Insurance and Bonds
Exhibit F – Not Used
Exhibit G – Not Used
Exhibit H – Not Used
Exhibit I – Unit and Hourly Rate Schedule

- .7 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or

proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year as first written above.

CITY OF NOVI,

OWNER *(Signature)*

«Victor Cardenas, City Manager »

(Printed name and title)

(date)

THE CHRISTMAN COMPANY,

CONSTRUCTION MANAGER *(Signature)*

«Steven F. Roznowski, President and CEO »« »

(Printed name and title)

(date)

DRAFT AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

The City of Novi
New Public Safety Facilities, including a New Centralized Public Safety Headquarters
that will co-locate the Novi Police Station and Fire Station #1, two (2) New Fire
Department Facilities, and Renovations and Improvements to Fire Station #4.

THE OWNER:

(Name, legal status, and address)

«City of Novi» « »
45175 Ten Mile Road
Novi, Michigan 48375

THE ARCHITECT:

(Name, legal status, and address)

Harley Ellis Devereaux Corporation
123 West 5th Street
Royal Oak, Michigan 48067
(248) 262-1500

THE CONSTRUCTION MANAGER (also referred to as the "CONTRACTOR" herein):

(Name, legal status, and address)

«The Christman Company» « »
208 N. Capitol Avenue
Lansing, Michigan 48933
(517) 482-1488

ADDITIONS AND DELETIONS:

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

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect.

§ 1.1.1.1 Contract documents include Contractor's proposal/bid and all related documents to the extent not inconsistent with the Agreement and other contract Documents.

§ 1.1.2 The Contract (also referred to the "Agreement" herein)

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Owner's consultants, or (5) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

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

§ 1.1.9 Construction Team

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

independent contractors.

§ 1.1.10 Project Team

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

§ 1.1.11 Applicable Law

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

§1.1.12 OWNER'S REPRESENTATIVE CONSULTANT

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

§1.1.13 Knowledge

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

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

Work. The Contractor shall reconcile any such conflict presented by such organization without delay or cost to the Owner.

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

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

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

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

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

§ 1.2.8 Delegated Design

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

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 The Drawings, Specifications, and other documents and all data used in compiling, and the results of, any tests, surveys or inspections at the Project Site, as well as all photographs, drawings, specifications, schedules, data processing output, computer-aided design/drafting (CADD) system disks/tapes, computations, studies, audits, reports, models and other items of like kind, and all intellectual property, prepared or created for or in connection with the Project and required to be left at the Project Site, regardless of whether they were prepared by the Owner, the Contractor, or a third party, belong to the Owner. The Contractor may retain one record set. All copies of them, except Contractor's record set, shall be returned or suitably accounted for upon completion of the Work. They are for use solely with respect to the Project. The Contractor shall not, without the prior written consent of the Owner, use or permit any Drawings, Specifications, or other documents prepared for or in connection with the Project, or any concepts or ideas developed in connection with the Project for any purpose other than the Project. The Owner shall at all times have access to and control over the disposition of any Drawings, Specifications, and other documents pertaining to the Project. The Contractor, Subcontractors, Sub-subcontractors, and Suppliers shall not own or claim a copy right in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Owner's or Architect's consultants' reserved rights. .

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and Suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to Section 1.5.1, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and Suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner. .

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

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

The Architect and Contractor shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form by the Construction Team. The Architect and Contractor may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. No such protocols agreed upon by the Architect and Contractor shall in anyway relieve the Architect or any member of the Construction Team of any obligations or duty to the Owner, impact the Owner's rights in any Instruments of Service or document, impose any obligation upon the Owner, nor give rise to any Additional Services of the Architect, charges to the Architect or Contractor, nor any change to the Contract Sum or Contract Time.

§ 1.8 Building Information Models Use and Reliance

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

§ 1.9 Confidentiality

§ 1.9.1 "Confidential Information" means information that is exempt from disclosure under the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231. et. seq. The Contractor shall not communicate or disclose at any time to any person any information concerning the Work or the Project that is "Confidential Information", except: (i) with prior written consent of the Owner, (ii) information which has become part of the public domain prior to the date of the Agreement, (iii) information which becomes part of the public domain by means other than an unauthorized act or omission of the Contractor, (iv) as may be required to perform the Work or by any Applicable Law, or (v) to its professional advisors or lender (all of whom shall be required to maintain such information in confidence). The obligations of Section 1.9 are in addition to any separate confidentiality agreement with the Owner and shall not supersede or otherwise modify any such agreement.

§ 1.9.2 Where the Owner has designated information furnished as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose information concerning the Work or the Project, after providing seven days' advanced notice to Owner, when disclosure is required by law, including a subpoena or other form of compulsory legal process. In the event of a disclosure required by law, the Contractor shall notify the Owner as far in advance as possible prior to any such disclosure and will reasonably cooperate with the Owner, at the Owner's expense, in any attempt it may make to obtain a protective order or other appropriate assurance that confidential treatment will be afforded the information. The Contractor may also disclose "confidential" information concerning the Work or the Project to its employees, consultants, sureties, and members of the Construction Team who need to know the content of such information solely and exclusively for the Project and who agree to maintain its confidentiality.

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

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

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

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The Architect and Owner's Representative Consultant do not have authority to modify the Contract Sum or the Contract

Time, and they may only act on the Owner's behalf with respect to other matters to the extent set forth in the Contract Documents. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may designate more than one authorized representative to act on its behalf but shall describe the authority of the authorized representative(s) in writing to the Contractor and Architect.

§ 2.1.2 Construction lien law does not extend to liens against a municipality's property, therefore Contractor may not file a lien against the Owner's Property for unpaid sums

§ 2.1.3 The Owner may provide information necessary for members of the Construction Team to perfect assert claims on the Contractor's payment bond as required by MCL 129.201.

§ 2.2 Evidence of the Owner's Financial Arrangements

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

§ 2.2.2 Following commencement of the Work and only upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as required in the Contract Documents; or (2) a change in the Work materially increases the Contract Sum. If the Owner fails to provide such evidence, as required, within thirty (30) days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner in writing Work has been stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (2) above, the Contractor may immediately stop only that portion of the work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the contract Time shall be extended appropriately.

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

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

§ 2.3 Information and Services Required of the Owner

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

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

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

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

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor shall immediately notify the Owner of any errors, inaccuracies, or problems which Contractor becomes aware of in the course of its use of the survey.

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

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

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

§ 2.6 Limitation on the Owner's Responsibility

§ 2.6.1 The Owner will not, under any circumstances, have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents, except that the Architect shall provide services, at no additional cost, made necessary by major defect or deficiencies in the Work of the Contractor which, through reasonable care, should have been discovered by the Architect and promptly reported to the Owner and the Contractor, but which the Architect failed to so discover and/or report. Additionally, any design or specification error furnished by the Architect shall be promptly corrected by the Architect at no cost to the Owner. The Owner will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractor, Sub-subcontractors, or suppliers.

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

§ 2.6.3 The Owner may, in addition to delivering them to the Architect, from time to time review and approve or take other appropriate action upon the Contractor's submittals, such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with the Owner's objectives and goals. Review of such submittals will not be conducted for the purpose of determining their accuracy and completeness of detail, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor. The Owner's review and approval of or taking other appropriate action on the Contractor's submittals shall not relieve the Contractor or the Architect of any of their obligations. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Owner's receipt of any informational submittals, of any submittals relating to equipment or system designed by the Contractor, or of any submittals relating to alternatives proposed by the Contractor, Subcontractor(s), Sub-subcontractor(s), or Suppliers shall not constitute approval of or action by the Owner or on such submittals. All such submittals will be received by the Owner for record purposes only.

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

§ 3.1.2 The Contractor shall perform the Work in strict accordance with the Contract Documents and current Applicable Law.

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, is familiar with the conditions under which the Work is to be performed, and has correlated personal observations with requirements of the Contract Documents. Prior to establishing the Contract Sum, Guaranteed Maximum Price, or Contract Time, the Contractor and the Construction Team have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, history, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools and equipment, and (v) other similar issues. The Owner has no responsibility or liability under this Agreement for the physical condition or safety of the Project site or any improvement on the Project site. Except as provided under Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. Except as

permitted by Sections 3.2.4 and 3.7.4, the Contract Sum and Contract Time shall not be adjusted because of existing conditions affecting the Work.

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

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

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

§ 3.2.3 With the exception of Contractor-designed Work, the Contractor is not required to ascertain that the Contract Documents are in accordance with Applicable Law, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. Failure by the Contractor to report to, or request clarification from, the Architect of any known errors, omissions or inconsistencies shall result in interpreting and resolving such errors, omissions, or inconsistencies in favor of the Owner and with no additional compensation to the Contractor.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall request a Change Order under Section 7.5 or submit Claims as provided in Article 15, as applicable. If the Contractor fails to perform the obligations of Sections 3.2, the Contractor releases its right to any claim of increase in the Contract Sum and Contract Time and shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor permits any construction activity to be performed that involves an error, inconsistency, or omission in the Contract Documents or a physical condition at the Project Site it recognized or should have reasonably recognized without providing notice to the Owner and receiving authorization to proceed, the Contractor shall assume responsibility for such performance and bear all costs attributable to correction without recovery, whether under the Contract Sum or otherwise. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies, or omissions in the Contract Documents or for differences between field measurements or conditions and the Construction Documents unless the Contractor recognized such errors, inconsistency, omission, or difference and knowingly failed to report such to the Architect.

§ 3.2.5 If the Contractor encounters concealed or unknown conditions that differ from those anticipated or expected in the Contract Documents, whether or not it is entitled to assert a Claim under Section 3.7.4, the Contractor shall promptly notify the Owner and Architect, as required in Section 3.7.4, in writing of such conditions so that the Architect and Owner can determine if such conditions revision to the Contract Documents or some other remedial

action. The Contractor's failure to provide the required notification under this Section shall constitute a waiver of any Claim for additional time or compensation for any materially different conditions as set forth in Section 3.7.4.

§ 3.3 Supervision and Construction Procedures

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

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

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

§ 3.4 Labor, Materials, Utilities, and Facilities

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

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

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

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

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

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

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

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

§ 3.4.4.1 To the extent practical, the Contractor may tie into the Owner's existing water, power, natural gas, and steam utilities without charge as to any usage in connection with the Work. In the event the Work occurs in an occupied building or facility, the Contractor shall give the Owner timely notice of its need for such services and the Owner shall make arrangements for the connection or activation.

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

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

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

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

§ 3.5 Warranty

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

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

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

§ 3.5.4 Contractor and Subcontractors' Warranty Acknowledgment.

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

Warranty Acknowledgment:

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

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

§ 3.5.5 Post-Occupancy Assessment.

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

§ 3.6 Taxes

The Contractor shall pay sales, consumer, commercial activities, local business, use, and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded whether or not yet effective or merely scheduled to go into effect, unless the Owner is tax-exempt for those.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

§ 3.7.2.1 The Contractor will not discriminate against any person qualified to perform the work required in the execution of the services under the contract and will ensure all members of the Construction Team are treated during

the Project without regard to their religion, race, color, national origin, age, sex, height, weight, handicap, ancestry, place of birth, sexual preference or marital status. Such actions shall include, but not be limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause. This Section 3.7.2.1 supplements, but does not replace, obligations the Contractor may have under Applicable Law to prevent discrimination.

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

Except and only to the extent otherwise provided in Section 2.3.2, by signing the contract, the Contractor agrees: (1) to bear the risk of concealed or unknown conditions, if any, that may be encountered in performing the Work; and (2) that the established Contract Sum includes this responsibility with full knowledge of this risk. In agreeing to bear the risk of concealed or unknown conditions to the extent herein provided, the Contractor understands that, except and only to the extent provided otherwise in Section 2.2.3, concealed and/or unknown conditions shall not excuse the Contractor from its obligation to achieve full completion of the Work within the Contract Time, and shall not entitle the Contractor to an adjustment of the contract Sum. Except as provided in Section 2.3.4: (1) Owner has not determined the accuracy or completeness of any information it may provide concerning physical conditions at the Project site, and all such information is made available to the Contractor, and shall by the Contractor be made available to bidders without any representation or warranty by the Owner whatsoever as to its accuracy, completeness, or relevancy; (2) the Contractor and the bidders shall independently evaluate such information for their use and shall be solely responsible for use or interpretation of such information; and (3) any such use or interpretation shall not be the basis of any claim whatsoever against the Owner; except the Contractor will have released its right to an increase in the Contract Sum and Construction Time if it fails to follow the notice requirements of this Section 3.7.4.

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

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

§3.7.6 If the Contractor encounters concealed or unknown conditions that differ materially from those anticipated or expected, the Contractor shall promptly notify the Owner, in writing of such conditions so that the Owner can determine if such conditions require design details, which differ from those design details shown in the Design or some other remedial action.

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
- .3 whenever costs are more than or less than allowances, the Contract Sum may be adjusted accordingly by Change Order in the difference between actual costs and the allowance; and
- .4 Once the scope of the Work for which an allowance was established is complete, the Contractor shall sign a Change Order returning any and all remaining allowance funds to the Owner.

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

§ 3.9 Superintendent

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

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

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract or at other times requested by Owner or set forth in the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall reflect the Contractor's intended approach to the execution of and completion of the Work. The schedule shall provide for the orderly progression of the Work to completion, and shall not exceed milestone and Substantial Completion time current limits current under the Contract Documents.

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

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

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

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

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

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

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

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

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect: Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in accordance with the Construction Schedule with reasonable promptness such as to cause no delay in the Work or in the activities of the Owner or of separate contractor.

§ 3.12.6 The Contractor is responsible for the content of all submittals. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents, and (4) confirmed constructability of the Work described in them. The Contractor's submittals shall clearly identify both the person who undertook the review required by this Section 3.12 and the date of the submittal's transmittal to the Architect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.13 Use of Site

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

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

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

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

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

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

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

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

§ 3.14 Cutting and Patching

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

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

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

The Contractor shall provide the Owner, the Owner's consultants and separate contractors, and the Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 Contractor shall indemnify, defend, and hold harmless the Owner, its Council and its Council Members in their official and individual capacities, its employees and agents, and the Architect, the Architect's consultants and agents, from and against all claims, counter-claims, suits, debts, demands, actions, judgments, liens, liabilities, costs, expenses, damages, and actual attorney fees and actual expert witness fees arising out of or in connection with Contractor's performance of the Work pursuant to the Contract Documents and/or Contractor's violation of any of the terms of the Contract, including, but not limited to: (1) the negligent acts or willful misconduct of the Contractor, its officers, directors, employees, agents and Subcontractors; (2) any breach of the terms of the Contract by the Contractor, its officers, directors, employees, agents and Subcontractors; (3) any violation of applicable state and/or federal law, rule, ordinance, policy or regulations and/or licensing and permitting requirement applicable to

providing the Work by its officers, directors, employees, agents, and Subcontractors; or (4) any breach of any representation or warranty by the Contractor under the Contract by its officers, directors, employees, agents, and Subcontractors. The Contractor shall notify the Owner by certified mail, return receipt requested, immediately upon knowledge of any claim, suit, action, or proceeding for which it may be entitled to indemnification under the Contract.

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

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

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

§ 3.19 Record Documents

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

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

§ 3.19.3 The Record Drawings depict the Work as it is actually built. The Contractor shall prepare and update them continuously during the prosecution of the Work. The Contractor shall maintain the Record Drawings showing: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (v) such other information as the Owner and Architect may reasonably request. The Contractor shall also be responsible for providing record sitework drawings that are required by the authority having jurisdiction in order to close out the Project.

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

§ 3.20 Warranties and Manuals

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

§ 3.21 Project Information System

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

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

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

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

§ 4.2.4 Communications

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents or that the Architect believes will not conform when completed. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed, or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Architect's failure to reject non-conforming Work does not constitute acceptance of it.

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

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

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

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

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

§ 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. The Contractor shall, and shall cause all Subcontractors, to comply with the interpretation(s) and decision(s) of the Architect.

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

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

§ 4.2.15 The Architect and Contractor recognize that the timely responses to requests for information from Architect is important to the success of the Work. Accordingly, Contractor shall promptly meet after the execution of the Contract to establish with the Architect in writing protocols and mutually acceptable time limits for the Architect's responses regarding requests for information from the Architect. Such agreed upon time limits shall not give rise to a change in the Contract Time. The Architect shall be responsible for the cost of delays, if any, attributable to its failure to provide responses in the time established by the Architect and Contractor. Failure by the Contractor to document the agreed up on timeframe for response, or the timing of the request and response, shall constitute a waiver of any claim for change in the Contract Time or Contract Sum resulting from the Architect's delayed response to the request for information.

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

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

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

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

§ 5.3 Subcontractual Relations

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

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

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

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

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

Sub-subcontracts and supply contracts shall be subject to identical conditions, except: (1) Suppliers that are not performing any Work on the Project site are not subject to the insurance requirements described in Article 11; and (2) Subcontractors and Sub-subcontractors may satisfy the insurance requirements described in Article 11 by being named as an additional insured under the Contractor's insurance policies or, in the case of a Sub-subcontractor, by being named as an additional insured under a Subcontractor's insurance policies.

§5.3.1.2 Upon request, the Contractor shall deliver a copy of any Subcontract, , or Supply contract to the Owner.

§5.3.2 Coordination of Subcontractors

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

§5.3.2.2 The Contractor shall schedule and conduct with the Subcontractors and Sub-subcontractors construction progress and any other meetings deemed necessary to discuss such matters as procedures, progress, problems, safety, inspections, sequencing, and scheduling, and shall prepare and promptly distribute minutes. Construction progress meetings will be conducted by the Contractor weekly unless otherwise directed by the Owner and attended by all Subcontractors whose Work has not been completed. All progress meeting minutes shall be provided to the Owner by the Contractor within five (5) days after the meeting and distributed to all attendees promptly after they have been approved by the Owner. The Owner will act with reasonable promptness in providing its approval.

§5.3.2.3 Schedule of Subcontractor's Work. The Contractor shall require each Subcontractor to agree to be contractually bound to the requirements of the Contract Schedule. The Contractor shall require each Subcontractor to agree to cooperate with the Contractor in developing a detailed schedule applicable to its portion of the Work within forty-five (45) days after award of contract unless otherwise specified. The Contractor shall assist in the development of all Subcontractor schedules and shall prepare such schedules if any Subcontractor fails to do so. The Contractor shall require all Subcontractors to meet as often as necessary with the Contractor to complete their detailed schedules. However, the Construction Schedule takes precedence over any schedules prepared by Subcontractors with respect to time of completion for each bid package. If any such schedule indicates that additional time or effort will be required to maintain these schedules, the Contractor, Subcontractor shall agree to work additional time, including weekends if necessary, or to add manpower, all at no additional cost to Owner. The Contractor will require their Subcontractors to include the requirements in Sections 5.3.2.3 and 5.3.2.4 in their Sub-subcontractor contracts.

§5.3.2.4 Subcontractor's Performance. The Contractor shall ensure satisfactory and timely performance from each of the Subcontractors. The Contractor shall take appropriate measures when any Subcontractor is not performing its obligations satisfactorily.

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

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

Work. The Contractor shall conduct regular safety meetings with Subcontractors' superintendents to ensure the Subcontractors' compliance with federal, state or local statutes, rules, and regulations relating to the Workers' safety or any other aspect of the Work.

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

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

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right, but shall have no obligation, to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors. Owner does not waive its right to subrogation.

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

§ 6.1.3 The Contractor shall coordinate the Work being performed by the Construction Team with the Owner's forces and each Separate Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall account for the work of the Owner's forces and Separate Contractors on its construction schedule and shall make any revisions deemed necessary after a joint review. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised. Whenever the Contractor's Work is dependent upon the work of the Owner or the Owner's Separate Contractors, the Contractor shall notify the Owner of such condition with sufficient time to prevent any delays to the progress of the Work. The Contractor shall promptly notify the Owner in writing, and in accordance with the Contract's requirements, upon becoming aware that Separate Contractor actions will in any way compromise the Contractor's ability to meet its responsibility under the Contract Documents.

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

§ 6.2 Mutual Responsibility

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

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

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs for its own forces or that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities, or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction provided the Contractor has taken every reasonable step to mitigate any Contractor costs and delays and gives the Owner notice in accordance with the applicable provision of the Contract Documents.

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive may be issued by the Owner or Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Owner or Architect. The Contractor may request a Change Order in accordance with Section 7.5.

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

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

§ 7.1.4.1 In order to facilitate the timely submission and processing of proposed changes described in Article 7.1.4, the Contractor and Architect shall establish an efficient process for their review and shall reserve for the Owner an appropriate amount of time for the review and approval of proposed Modifications. The Contractor shall utilize a collaborative Project Information System to manage the Modification process. Changes in the Work may be made without notice to the Contractor's sureties, and absence of such notice shall not relieve such sureties of any of their obligations to the Owner. If notice of any extra Work or change in the Work affecting the general scope of the Work or the provisions of the Contract Documents is required by the provisions of any bond, to be given to any surety issuing such bonds, the giving of any such notice shall be the Contractor's sole responsibility.

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

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

§ 7.2 Change Orders

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

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

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

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order signed by the Owner and Architect, directing a change in the Work or the Contractor's pace of performing the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, or order changes in the Contractor's pace of performing the Work, the Contract Sum being adjusted in accordance with the actual cost of implementing the direction and the Contract Time being adjusted in accordance with the actual extension or reduction in the construction schedule's critical path. Owner, Architect and Contractor shall endeavor to resolve outstanding cost issues in a timely manner. ~~However, if cost issues are not resolved within thirty (30) days, Contractor shall be entitled to stop work on Construction Change Directives.~~

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

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

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

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

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

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Owner of the Contractor's agreement or disagreement with the

method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect, in consultation with the Owner and Contractor, will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15. The Owner may audit the Contractor's books and records to verify the cost of Work performed under a Construction Change Directive.

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

§ 7.4 Minor Changes in the Work

The Owner, or the Architect after consulting with the Owner, may order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time. Such changes shall be effected by written order and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly. Architect shall not, without written approval of the Owner, order changes in the Work under this Section 7.4.1 that (1) are inconsistent with the intent of the Contract Documents; (2) render the Drawings and Specifications not in material conformity with the Work; or (3) materially affect the quality, utility or general aesthetics of the Work or any component, or result in the use of materials or equipment which are not equivalent to or better than the materials and equipment set forth in the Drawings and Specifications prior to such change..

§ 7.5 Contractor Change Order Requests

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

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

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 Except as provided in this Section 8.3, the Contractor is fully responsible for the timely completion of the Work within the Contract Time. The Contractor agrees to use its best efforts to avoid the occurrence of any cause for delay, to avoid any extension of performance dates, and to mitigate the effect of any delay that does occur. The Contract Time will be extended only under the circumstances described in this Section 8.3, and only if the Contract strictly complies with the requirements of this Section 8.3.

§ 8.3.2 Notices in connection with delays shall be made by the Contractor to the Owner in accordance with this Section 8.3.2. The Contractor shall use its best efforts to provide verbal notice to the Owner within ~~seventy two (72)~~ ~~hours~~ ~~seven (7) days~~ after the commencement of a delay. It must in any event do so as soon as possible and not later than three (3) days after commencement of the delay. Any verbal notice given shall be confirmed in writing within four (4) days. If the Contractor fails to deliver verbal notice within three (3) days after the commencement of the delay, it shall not be entitled to any relief pertaining to the period of time before it gave verbal notice. If the Contractor fails to confirm any verbal notice within four (4) days after the verbal notice was given, it shall not be entitled to any relief for the period of time beginning after the passage of such four (4) days and ending when the confirmation is actually received by the Owner. And, if the Contractor fails to provide verbal notice within ten (10) days after the commencement of a delay or to confirm any verbal notice in writing within ten (10) days after the verbal notice was given, the Contractor shall be barred from seeking any relief whatsoever relating to the delay. The Contractor shall submit such information as may be required by the Owner to evaluate the change Order Request.

The Owner shall decide whether to grant, grant in part, or deny the Change Order Request. Any extension of time or adjustment granted shall be memorialized in the form of a Change Order.

§ 8.3.3 Except in the case of changes to the Work covered by Article 7, the Contractor shall not be entitled to an extension of time unless set forth in a Change Order. The Contractor acknowledges that by agreeing to the times or dates of completion required by the Contract Documents it will make a reasonable allowance for commercially anticipated delays. Adjustments in the Contract Time will be permitted only to the extent such delay (1) is not caused or contributed to, and could not have been anticipated, by the Contractor using the degree of diligence required by the Contract Documents and (2) could not be limited or avoided by the Contractor's timely notice to Owner of the delay.

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

- .1 to the extent float in the schedule may accommodate the delay, regardless of the party responsible for the delay;
- .2 when the delaying event affects the schedule's critical path concurrently with an event the Contractor is responsible for;
- .3 when the Owner or Architect exercise a right granted them by the Contract Documents to manage deficiencies in the Contractor's performance;
- .4 when the Contractor has failed to identify and avoid a reasonably foreseeable delay;
- .5 to the extent the Contractor has failed to mitigate the effect of the delay; or
- .6 when the Contractor has failed to give the Owner and Architect written notice of, and opportunity to resolve, a critical path delay within seventy two (72) hours, or sooner if the risk of delay requires it, of its occurrence.

§ 8.3.4 After providing reasonable notice to the Contractor, the Owner may implement any remedy granted by the Contract Documents to address Contractor-caused delay(s), including remedies permitted by Section 2.5, Section 6.1, Section 7.3, and Section 9.5. The Owner's exercise of any of its rights under the Contract Documents or the Owner's good faith exercise of any of its remedies, including requirement of correction or re-execution of any defective Work, regardless of the extent, number, or frequency of the Owner's good faith exercise of such rights or remedies, shall not under any circumstances be construed as unreasonable interference with the Contractor's performance of the Work or an event of default.

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

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

§ 8.4 No Damage for Delay

§ 8.4.1 Except only as provided in Section 8.4.2 below, an extension in the Contract Time or adjustment of the Construction Schedule, to the extent permitted under Section 8.3, and the Contractor's rights in connection with a suspension of the Work, as provided in the Contract, shall be the sole and exclusive remedies (in lieu of all other remedies whatsoever) of the Contractor for any delay, interference, hindrance in the performance of the Work, loss of productivity, manpower inefficiencies, impact damages, and similar claims and damages, whether or not contemplated by the parties. Except only as provided in Section 8.4.2, in no event shall the Contractor be entitled to any compensation or recovery of any damages in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Contractor hereby expressly waives and covenants and agrees not to assert any claims against the Owner for any damages, costs, losses, or expenses of any nature whatsoever which any Subcontractor, Sub-subcontractor, or Supplier, including all respective officers, employees, agents, and independent contractors, may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequences, congestion, disruptions, or the like arising from, out of or in connection with any act or omission of the Owner and its representatives or agents, it being understood and agreed that their sole and exclusive remedy in such event shall be an extension of the Contract Time, but only in accordance with the provision of this Article 8.

§ 8.4.2 In the event of Owner Delay, the Contractor shall be entitled to an equitable adjustment in the Contract Sum. This adjustment shall be based solely upon and limited to additional direct out-of-pocket expenses to the extent they are incurred directly as a result of the Owner Delay. Without limiting the generality of the foregoing, such out-of-pocket expenses shall be calculated on an "actual cost" basis, and shall exclude home office expenses and other

overhead, profit and the value of lost opportunities. However, the Contractor shall use its best efforts to avoid or reduce delay damages to any Subcontractor, Sub-subcontractor, or Supplier, including all respective officers, employees, agents, and independent contractors, caused by Owner delay.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

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

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

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

§ 9.3.1.3 The Contractor shall provide copies of its insurance certificates, bonds, and the same for all Subcontractors prior to submitting the first Application for Payment, unless required to be submitted sooner by the Owner or the Agreement.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, as required by Section 3.4.7, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for

Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 Upon Owner's prior written approval, Contractor shall be allowed to bill for unassembled materials, such as mill steel, extrusions for windows, and incomplete assemblies.

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

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

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

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

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

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

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

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

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

§ 9.5.5 The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment, or that the Owner believes there is a reasonable risk the Contractor may fail to make payment, for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents and shall so notify the Architect. Notwithstanding the Architect's Certification, the Owner may withhold payment, in whole or in part, if the Application for Payment is incomplete in any way or the Owner makes a reasonable determination that the Application for Payment is inaccurate pending the resolution of a Claim in accordance with Article 15.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate

agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

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

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

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

§ 9.6.7 Unless otherwise provided in the Contract or Contract Documents, the Owner may retain out of each progress payment a "Retainage" equal to ten percent (10%) of that payment, in accordance with Public Act 524 of 1980, until the Work is 50% in place, and thereafter only in accordance with such Act. Retainage will be paid upon Final Completion and acceptance of the Work in accordance with Section 9.10. Upon mutual agreement of the Owner, the Architect and the Contractor, payment in full may be made to subcontractors whose Work is fully completed during early stages of the Project. The Contractor acknowledges and agrees that payments by the Owner shall only be made in respect of Applications for Payments, or portions thereof, reasonably approved by the Owner. If the Contractor disputes any good faith determination by the Owner with regard to any Certificate of Payment, or amount paid by the Owner in respect thereof, the Contractor shall nevertheless expeditiously continue to prosecute the Work while such dispute is being resolved.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend, indemnify, and hold harmless the Owner from all loss, liability, damage, or expense, including actual attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor, Sub-subcontractor, or Supplier of any tier. Owner shall notify Contractor in writing within fifteen (15) days of receipt of notice of a lien claim or other claim for payment.

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

§ 9.7 Failure of Payment

If the Owner is in default of making payment to the Contractor in accordance with the Contract Documents for more than thirty (30) consecutive days, the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay, and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, or any other certifications necessary for the beneficial occupancy or intended use of the Project.

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

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

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete and the Contractor's schedule for completing the remainder of it is acceptable to the Owner and Architect, the Architect will prepare a Certificate of Substantial Completion utilizing an AIA G704 form that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of final acceptance of the Work by the Owner following final completion and final payment under Section 9.10.

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

§ 9.8.6 The Owner's use of the Work, payment of retainage, final payment, or a Certificate of Substantial Completion do not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, and (7) any outstanding Record Documents have been delivered to the Owner and Architect. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

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

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

§ 9.10.6 Contractor will provide attic stock materials as required by the Contract Documents. Materials shall be boxed, labeled, and stored as directed by the Owner. The amount of the final Payment shall be the Contract Sum less the amount paid to date. If the aggregate of previous payments made by the Owner exceeds the amount due to the Contractor, the Contractor shall immediately reimburse the difference to the Owner

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

§ 9.11 AUDITS BY THE OWNER

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

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

§ 9.11.3 The Contractor shall include in all its Subcontracts under the Agreement a provision to the effect that the Subcontractors agree that the Owner or any of its duly authorized representatives shall, until expiration of three (3) years after Final Payment under the Subcontracts and Supply Agreements, have access to and the right to examine where directly pertinent to verifying the cost of change orders.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 10.1.1 The Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and the Project site. Notwithstanding the foregoing, Subcontractors, Suppliers, and Owner's Separate Contractors are not relieved of their duty to provide a safe work environment for their employees and others affected by their work nor are they relieved of their responsibility to comply with any safety statute, rule, standard, and regulation by any government authority applicable to the Work.

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

§ 10.2 Safety of Persons and Property

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

- .1 all individuals at the Project site as well as other persons who may be affected by the Contractor's activities in connection with performing the Work;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor The Contractor is solely responsible to the Owner for the health and safety of the Project site and, shall be solely responsible for initiating, monitoring, and supervising all safety precautions and programs in connection with the performance of the Work. The foregoing does not relieve the Subcontractors, Sub-subcontractors, or Suppliers of their responsibility to the Contractor of the safe performance of their Work in accordance with all applicable laws; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

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

§ 10.2.4 No use or storage of explosives or other hazardous materials or unusual methods are allowed at the Project site without the Owner's express written consent. If use or storage of explosives or other hazardous materials or equipment or unusual methods are permitted by the Owner for the execution of the Work, the Contractor shall exercise the utmost care and carry on such activities under supervision of properly qualified personnel, and shall store in compliance with all applicable laws.

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property or the Work caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor shall remedy such damage and loss at its expense, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, or use of any contingency or otherwise. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18, but do not bar the Contractor from recovering sums of money paid by the available property insurer for the loss if the Contractor has fulfilled its duties under this Article 10 and satisfied the applicable deductible.

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

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition. When required by Applicable Law or for the safety of the Work, the Contractor shall shore up, brace, underpin, and protect foundations and other portions of existing structures that are in any way affected by the Work. Before commencement of any part of the Work, the Contractor shall serve any and all notices required to be given to adjoining land and/or property owners or other parties. The Contractor shall take reasonable steps to document conditions prior to commencing Work that may impact adjoining land and/or property and take reasonable steps to monitor and document disturbances such as subsidence or vibration to adjoining land and/or property.

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for the strict compliance with all requirements in the Contract Documents regarding hazardous materials or substances. If the Contractor, a Subcontractor, Sub-subcontractor, including any employee, agent, or independent contractor thereof, of any tier, encounters a hazardous material or substance not addressed in the Contract Documents on the Project Site, the Contractor shall (i) immediately stop Work in the affected area; (ii) report the condition to the Owner and Architect as expeditiously as possible, and (iii) clear all persons from the area of exposure. The Work in the affected area shall not be resumed until the Hazardous Material has been removed or rendered harmless as evidenced by written agreement between the Owner and the Contractor. The term "rendered harmless" shall be interpreted to mean that the level of contamination is less than any applicable

exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project Site by the Contractor, and any Subcontractor(s), Sub-subcontractor(s), and Supplier(s), including employees, agents, or independent contractors thereof, of any tier. Except for Permitted Materials, the Contractor, and all Subcontractors, Sub-subcontractors, and Suppliers, including employees, agents, or independent contractors thereof shall not use any fill or other materials to be incorporated into the Work which are Hazardous Materials, toxic or comprised of any items that are Hazardous Materials or toxic. (The term "Hazardous Materials" as used in the Contract Documents includes any toxic or hazardous materials or substances as defined in any U.S., State of Michigan, or local environmental law, regulation, or rule). (The term "Permitted Materials" as used in the Contract Documents means materials that are general supplies and equipment that have a hazardous or potentially hazardous nature and are or will be used for their intended purpose and which do not pose any significant threat of contamination to the Project Site or adjacent properties)..

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

§ 10.3.2 The Contractor shall cause the presence, use, storage and/or disposal of Permitted Materials by any Subcontractor, Sub-subcontractor, Supplier, including employees, agents, or independent contractors thereof to be in strict (not substantial) compliance in every aspect with all applicable laws. The Contractor shall not, nor shall it permit any Subcontractor, Sub-subcontractor, Supplier, including employees, agents, or independent contractors thereof to bring on, keep, store, use, release, or dispose of any Hazardous or potentially Hazardous Material on, in or about the Project Site except for Permitted Materials as provided in the Contract Documents. The Contractor shall at its expense, and without recovery from Owner, be solely responsible to the Owner and shall defend, indemnify and hold harmless the Owner and Project Site from and against all claims, damages, costs, fines, judgments, and liabilities, including actual attorneys fees and costs, arising out of or in connection with the generation, release, transportation, storage, use, disposal or presence of Permitted Materials or Hazardous Materials at the Project Site by or due to any Subcontractor, Sub-subcontractor, Supplier, including employees, agents, or independent contractors thereof.

§ 10.3.3 The Contractor's responsibility under the foregoing indemnification shall include any and all governmentally mandated removal and/or cleanup of any such Permitted Materials or Hazardous Materials..

§ 10.3.4 The Owner shall indemnify and hold harmless the Contractor, Subcontractors, and agents and employees or either of them from and against claims, damages, losses and expenses arising out of or resulting from performance of the Work in an area affected by Hazardous Materials (excluding Permitted Materials and other Hazardous Materials brought to the site by the Contractor or persons for whom it is responsible and excluding all claims, damages, losses and expenses arising out of or resulting from any exacerbation of pre-existing contamination after they recognized or should have recognized the presence or general location of such pre-existing contamination), if (i) in fact, the material presents the risk of bodily injury or death and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent that such damage, loss or expense is not due to the fault or negligence of the person seeking indemnity after the presence and general location of the contamination was known or should have been known by such person.

§ 10.3.5 If the Contractor receives any notice, whether oral or written, of any inquiry, test, investigation, enforcement proceeding, environmental audit or the like by or against the Contractor, including any Subcontractor, Sub-subcontractor, Supplier, including employees, agents, or independent contractors thereof, or the work with regard to any Hazardous Materials at or emanating from the Project Site, the Contractor shall immediately notify the Owner and the Architect. .

§ 10.3.6 reserved

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in **Attachment A** to the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, its elected and appointed officials, employees, agents and volunteers, Plante Moran Realpoint, LLC, the Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. The Contractor shall provide the Owner with documentation of the insurance coverage required by the Contract Documents, including certificates of insurances and endorsements for itself, Subcontractors, and Sub-subcontractors, and declarations sheets or certified copies of policies upon the Owner's request. Contractor shall have no right of subrogation against Owner.

§ 11.1.2 The Contractor shall furnish a surety bond in the full amount of the Agreement to guarantee performance of the Agreement and a surety bond in the full amount of the Agreement to secure payment of all labor and materials in connection with the project. Bonds shall be effective from the date of the contract. Such bonds shall be in a form acceptable to and approved by the City, and provided by a recognized surety company or companies lawfully authorized to do business under the laws of the State of Michigan. No surety company will be acceptable unless it has an underwriting limitation of not less than \$1,000,000.00.

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

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

§ 11.2 Owner's Insurance

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

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

§ 11.3 Waivers of Subrogation
NOT USED

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance
NOT USED

§11.5 Adjustment and Settlement of Insured Loss

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

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

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

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

- .2 Are not accepted by the Owner.

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

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

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

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

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

§12.4 DAMAGE

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

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

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the State of Michigan.

§ 13.2 Successors and Assigns

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a third-party. The Contractor shall execute all consents reasonably required to facilitate the assignment.

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

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

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary

by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense without increase in the Contract Sum and without use of any contingency.

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped through no act or fault of the Contractor or a member of the Construction Team for any of the following reasons:

- .1 for a period of 90 ~~30~~ consecutive days by an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 for a period of 90 ~~30~~ consecutive days by an act of government, such as a declaration of national emergency;
- .3 reserved
- .4 reserved
- .5 for a period of 90 ~~30~~ consecutive days for a suspension of the Work under Section 14.3 provided the circumstances described by Section 14.3.2.1 do not apply.

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

§ 14.1.3 Except as to termination pursuant to Section 14.1.1.5 above, which shall be subject to the terms of Section 14.3, upon termination by the Contractor, the Owner will pay to the Contractor for Work properly executed. This payment is the Contractor's sole and exclusive remedy for termination under Section 14.1.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and

- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

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

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

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, for any reason, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

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

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

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Termination by the Owner under this Section shall be by a notice of termination delivered to the Contractor specifying the extent of termination and the effective date.

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; Termination pursuant to this Section after 120-days suspension shall be subject to the procedures set forth in Section 14.3.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

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

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

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

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

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

§ 15.2 Initial Decision

§ 15.2.1 Claims 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. An initial decision shall be required as a condition precedent to litigation or any other mutually agreed upon dispute resolution forum of any claim of any claim arising prior to the date the final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

§ 15.2.6 NOT USED

§ 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.

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

