



AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

THE OWNER:

Thomas Jefferson University
1020 Walnut Street
6th Floor Scott Building
Philadelphia, Pennsylvania 19107-5587

THE ARCHITECT:

(Paragraph deleted)

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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/Engineer. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect/Engineer and the Architect/Engineer'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 There shall be no Initial Decision Maker in This Agreement

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

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

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2., and an electronic copy of the documents subject to limits of use.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

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 accordance with the Contract Documents.

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

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

promptly report to the Owner and, if requested by the Owner, to the Architect/Engineer any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner or Architect/Engineer may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner and, if requested by the Owner, to the Architect/Engineer any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner or Architect/Engineer may require.

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

§ 3.2.5 LABOR RELATIONS

Contractor shall furnish labor that will work in "Harmony" with all other elements of labor employed on the Project and at the worksite, whether pursuant to this Agreement or some other arrangement. "Harmony," as used in this Agreement, means the provision of labor that will not, either directly or indirectly, cause or give rise to any work disruptions, slow downs, picketing, stoppages, or any violence or harm to or directed at any person or property while performing any work, or activities incidental thereto at the Project or to or at the worksite.

Contractor will require every subcontractor to provide labor that will work in Harmony with all other elements of labor employed on the Project and at the worksite. Whether pursuant to this Agreement or some other arrangement will include the Commitments set forth in the Section 3.2.5 in every subcontract, and will require its Subcontractors to include such commitments in its subcontracts, for any portion of the Work under this Agreement.

The commitments stated in this Section 3.2.5 are material element of this Agreement. Failure by Contractor or any of its Subcontractors or sub-subcontractors to comply with these commitment shall be a material breach of this Agreement and may subject contractor to liability for all costs and expenses suffered by Owner, including attorneys' fees and costs and all other costs arising out of any dispute resolution proceeding incurred to resolve the breach or to enforce this commitment.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

§ 3.4 LABOR AND MATERIALS

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

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

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

§ 3.5 WARRANTY

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

§ 3.6 TAXES

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

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

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution 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. The Contractor shall promptly provide to the Owner copies of all such permits, licenses, notices and approvals required under this Agreement.

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are unknown and could not easily have been discovered, expected or anticipated by Contractor prior to the execution of this Agreement, and 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 written notice to the Owner and the

Architect/Engineer before conditions are disturbed and in no event later than 3 days after first observance of the conditions. The Owner may request the Architect/Engineer to promptly investigate such conditions and, if the Architect/Engineer 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 an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect/Engineer 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/Engineer shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect/Engineer's determination or recommendation, that party may proceed as provided in Article 15.

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

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 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 furnish in writing to the Owner the name and qualifications of a proposed superintendent. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to the proposed superintendent or (2) that the Owner requires additional time to review. Failure of the Owner to reply 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 has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and when applicable, the Architect/Engineer.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect/Engineer or Owner upon request and shall be delivered to the Owner or, if directed to the Architect/Engineer for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owner's or, if directed, the Architect/Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Owner or, if directed, the Architect/Engineer in writing of such deviation at the time of submittal and (1) the Owner or, if directed, the Architect/Engineer 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 Owner's or the Architect/Engineer's approval thereof.

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

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

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify, defend and hold harmless the Owner, Owners' officers, directors, consultants agents and employees from and against claims, damages, loss cost, expense and liability, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, to the extent caused in whole or in part by Contractor or anyone directly or indirectly retained by Contractor. Contractor expressly acknowledges that the parties are contractually allocating these risks to Contractor and Contractor has procured and shall maintain for the term of this Agreement. The insurance policies set forth above, for the purpose of providing a financial means to support these indemnity obligations.

Except to the extent the loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Contractor until the date of Substantial Completion.

§ 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.

ARTICLE 4 ARCHITECT/ENGINEER

§ 4.1 GENERAL

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

(Paragraphs deleted)

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect/Engineer, if directed by Owner, may provide administration of the Contract as described in the Contract Documents and if directed by Owner, may be an Owner's representative during construction until the date the Architect/Engineer issues the final Certificate For Payment. The Architect/Engineer will have authority to act on behalf of the Owner only to the extent directed by Owner and provided in the Contract Documents.

§ 4.2.2 The Architect/Engineer 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/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect/Engineer will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Communications by and with the Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

§ 4.2.6 The Owner or the Architect/Engineer, if directed by the Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Owner considers it necessary or advisable, the Owner may direct the Architect/Engineer to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect/Engineer 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/Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Owner or the Architect/Engineer, if directed by the Owner, 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 Owner's or the Architect/Engineer's action will be taken in accordance with the submittal schedule approved by the Owner or the Architect/Engineer, as applicable, or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's reasonable judgment or the Architect/Engineer'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/Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

§ 4.2.11 The Architect/Engineer 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/Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect/Engineer 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/Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and, if directed to the Architect/Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner or, if directed, the Architect/Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect/Engineer has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner 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 has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall bind every subcontractor and material supplier (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the

provisions of the Agreement, including, without limitations, the insurance provisions, and the Contract Documents .as they apply to Subcontractors' and material suppliers' portions of the Work.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

- § 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that
- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
 - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

§ 6.1.4 Intentionally Deleted

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.3 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 Owner will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, 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; a Construction Change and Directive requires agreement by the Owner and Architect/Engineer and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect/Engineer.

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

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument signed by the Owner and Contractor 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 Whenever the Contractor requests a Change Order, the Contractor shall submit a Change Order Request and shall provide documentation of labor and material costs in a form (to include Subcontractor quotes, bills of material, internal estimate worksheets, etc.) satisfactory to the Owner. Any change order request for additional time shall be documented by critical path analysis.

§ 7.2.3 Any adjustments to the Contract Sum shall be based on costs necessarily incurred in the proper performance of the changed Work and paid by the Contractor at rates not higher than the standard paid in the locality of the Work. Such costs are specifically defined by and limited to the following:

- .1 Wages paid for labor in the direct employ of the Contractor in the performance of the changed Work in the field or in the fabrication shop under applicable collective bargaining agreements or under a salary or wage schedule agreed upon by the Contractor and Owner, plus a certified payroll markup to cover all direct overhead items applicable to payroll, limited to insurance, taxes, F.I.C.A., worker's compensation, unemployment taxes, and union benefits.
- .2 Cost of all materials, supplies, and equipment incorporated and consumed in the changed Work.

- .3 Cost, including maintenance of all materials, supplies, equipment, temporary facilities owned by the Contractor which are consumed in the performance of the changed Work, and cost less salvage value on such items used but not consumed which remain the property of the Contractor.
- .4 Third party rental charges of all necessary machinery and equipment, exclusive of hand tools, used in performing the changed Work, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof at rental charges consistent with those prevailing in the area. Total third party rental charges on machinery or equipment rented under an agreement containing a purchase option clause shall not exceed seventy-five percent (75%) of the option purchase price. Contractor-owned machinery and equipment in use at the Project shall be charged at a rental rate not to exceed current Blue Book rates.
- .5 Cost of additional premiums for all bonds which the Contractor is required by the Owner or Contract Documents to purchase and maintain and which is incurred as a result of performing the changed Work.
- .6 Sales, use or similar taxes, related to the changed Work and for which the Contractor is liable, to any governmental authority.
- .7 Permit fees, licenses, inspections, test, royalties and deposits lost for causes other than the Contractor's negligence.
- .8 Costs incurred due to an emergency arising out of the changed Work affecting the safety of persons and property.
- .9 Reasonable material and equipment delivery charges.
- .10 Cost of Subcontractors in performing the Contractor's work as changed, computed in accordance with Sections 7.2.3 and 7.2.4.
- .11 Other costs incurred in the performance of the changed Work if and to the extent approved in advance in writing by the Owner.

7.2.4 Unless otherwise provided in the Contract Documents, the cost of the changed Work shall exclude the following:

- .1 Salaries or other compensation for Contractor's officers, executives, general managers, project managers, estimators, engineers, timekeepers, surveyors, mechanics, warehousemen, auditors, accountants, purchasing and contracting agents, draftsmen, receptionists, and other staff employees, whether or not employed at Contractor's principal office, branch office or field office at the job site.
- .2 Expenses of Contractor's principal office, branch office or job site field office, including, without limitation, expenses for storage space, telephone, heat, lights, office equipment, computers, etc.
- .3 Except for rental rates identified in Section 7.2.3, ownership costs or maintenance expenses for Contractor-owned equipment, including, without limitation, all construction equipment, trucks and vehicles, machines and all other owned equipment required for Contractor's performance of the Work.
- .4 Cost for purchase and maintenance of tools, materials, supplies and facilities not consumed during construction or incorporated in the Work.
- .5 Contractor's capital expense, including interest on Contractor's capital employed for the Work.

- .6 Overhead and/or general expenses of any kind, including interest on Contractor's capital employed for the Work.
- .7 Cost due to the negligence of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to injury or damage to persons or property, the correction of defective Work, disposal of materials and equipment wrongly supplied, or making good any damage to property.
- .8 The cost of any item not specifically and expressly included in the terms described in Section 7.2.3.
- .9 Any cost arising from the use of tools for which the original price is less than \$1,000. Tools are any implement used to accomplish the Work, but not limited to any hand held implement. The Owner reserves the right to make the final determination if items shall be considered tools.

7.2.5 Allowances for profit and overhead costs shall be applied only to that portion of the cost which constitutes a net increase in the Contract Sum. Allowable amounts computed as mark-ups for profit and overhead shall be the exclusive compensation for profit and all overhead costs associated with the changed Work, except as specifically allowed in Section 7.2.3. Allowances for profit and overhead costs shall be computed as follows:

- .1 For the Contractor: Fifteen percent (15%) of the Contractor's reimbursable costs for Work performed directly by the Contractor using its own forces and direct material and equipment purchases defined in Sections 7.2.3 and 7.2.4, except for 7.2.5.2 and 7.2.5.3 below.
- .2 For the Contractor: Five percent (5%) for the cost of Work of Subcontractors supervised by the Contractor as computed in accordance with Sections 7.2.3 and 7.2.4.
- .3 For Subcontractors due compensation for changed Work under Section 7.1, allowances for profit and overhead costs shall be fifteen percent (15%) of the Subcontractor's reimbursable costs for Work performed directly by the Subcontractor using its own forces and direct material and equipment purchases consistent with Sections 7.2.3 and 7.2.4, and five percent (5%) for the cost of Work of any lower tier Subcontractors supervised by the Subcontractor as computed consistent with Sections 7.2.3 and 7.2.4.

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 As provided in Sections 7.2.3 through 7.2.6; or
- .2 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .3 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .4 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect/Engineer shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in, Section 7.2.5. In such case, and also under Sections 7.3.3.1 and 7.3.3.3, the Contractor shall keep and present, in such form as the Owner or Architect/Engineer if directed, may prescribe, an itemized accounting together with appropriate supporting data.

(Paragraph deleted)

§ 7.3.9 **Intentionally Deleted.**

§ 7.3.8 When the Owner and Contractor agree concerning the adjustments in the Contract Sum and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

(Paragraphs deleted)

§ 7.4 MINOR CHANGES IN THE WORK

The Owner or Architect/Engineer if directed by the Owner has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents.

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. Before submitting the first application for payment, Contractor shall submit to Owner, and, if directed, its Architect/Engineer, a Schedule of the Work that shall show the dates on which Contractor plans to commence and complete various parts of the Work, including dates on which information and approvals are required for Owner. Upon Owner's written approval of the Schedule of the Work, Contractor shall comply with it unless directed by Owner to do otherwise or Contractor is otherwise entitled to an adjustment in the Contract Time pursuant in a Change Order. The Contractor shall update the Schedule of the Work on a monthly basis or at appropriate intervals as required by the conditions of the Work and the Project. Notwithstanding the foregoing, no extension of the Contract Time Shall be reflected in any updated schedule of the Work without the express written consent of Owner unless pursuant to a Change Order, Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Schedule of the Work. The Owner may require Contractor to made reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Owner or Others. To the extent such changes increase Contractor's time and costs, the Contractor Price and Contract Time shall be equitably adjusted by Change Order.

§ 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 Owner and the Contractor or, if directed, the Architect/Engineer 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, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

§ 8.2.4 If the Contractor is not maintaining the pace of the Work in accordance with the construction schedule or otherwise consistent with the Contract Time, and such delays are not excusable as set forth in Section 8.3, then the Owner may require the Contractor to undertake a time recovery plan (including more personnel, overtime, and/or additional shifts) at the Contractor's sole expense, to reasonably ensure completion of the Work within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by a cause beyond the control of the Contractor, including but not limited to an act or neglect of the Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, not involving the Contractor and not Specifically related to the worksite, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect/Engineer determines may justify delay, then the Contract Time shall be equitably extended by Change Order.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner and if directed, the Architect/Engineer an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or the

Architect/Engineer may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 Intentionally Deleted.

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

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

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

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 This Section 9.5.1 applies to decisions by the Architect/Engineer to withhold Certificates for Payment based on the criteria set forth herein. The same criteria apply to the Owner's decision to withhold payment or take other action as permitted in this Section 9.5.1, whether or not an Architect/Engineer has taken action pursuant to this Article 9. The Architect/Engineer may also withhold a Certificate for Payment (or, the Owner may withhold payment, adjust or reject an Application for Payment or nullify a previously approved Application for Payment) in whole or in part, to the extent reasonably necessary to protect the Owner. If, in the Architect/Engineer's or the Owner's opinion (as applicable), the representations to the Owner required by Section 9.4.2 cannot be made or, in the Owner's case for a reason specified in the Section 9.5.1.1 through 7 below). If the Architect/Engineer, if applicable, is unable to certify payment in the amount of the Application, the Architect/Engineer will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect/Engineer (if applicable) cannot agree on a revised amount the Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the Architect/Engineer is

able to make such representation to the Owner. The Architect/Engineer may also withhold a Certificate for Payment (or the Owner may withhold payment, adjust or reject an Application for Payment or mollify a previously approved Application for Payment) or because of subsequently discovered evidence, the Architect/Engineer may nullify the whole or a part of a Certificate for Payment previously issued; to such extent as may be necessary in the Architect/Engineer's or the Owner's opinion (as applicable) to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 failure of the Contractor to provide executed Release of Waiver and Liens from the Contractor, Subcontractors, or material suppliers for Work included in previous Applications for Payment for which the Owner has issued prior payment.

Unless the Architect/Engineer has already notified the Contractor that it has withheld certification for the Application for payment as provided in Section 9.4.1 and this Section 9.5.1, not later than fourteen (14) days after receipt of an Application for Payment, the Owner shall give written notice to the Contractor of Owner's disapproval or nullification of all or part of an applicable Application for Payment, stating its specific reasons for such disapproval or nullification, and the remedial actions the Owner requires the Contractor to take in order to receive payment. When the Contractor has completed the remedial actions to the Owner's satisfaction, the Owner shall promptly pay the amount previously withheld.

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

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

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect/Engineer has issued a Certificate for Payment, (if applicable), or in the event that the Owner is not utilizing the service of an Architect/Engineer to review the Application for Payment, the Owner shall make payment no later than the forty-fifth (45th) day after the date of the Application for Payment unless otherwise provided in the Contract Documents and unless the Owner provides the notice specified in Section 9.5.1, and shall so notify the Architect/Engineer (if applicable).

§ 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/Engineer 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/Engineer and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted

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

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

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

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

§ 9.7 FAILURE OF PAYMENT

If the Architect/Engineer does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date set forth in Section 9.6.1 the undisputed amount due, as may be certified by the Architect/Engineer or awarded by binding dispute resolution, then the Contractor may, upon fourteen additional days written notice to the Owner and Architect/Engineer, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 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.

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

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

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor. 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 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, and if applicable, by decision of the Architect/Engineer.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and if directed, the Architect/Engineer 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 written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner, with the assistance of the Architect/Engineer will promptly make such inspection to determine if the Work is acceptable under the Contract Documents and if the Contract fully performed, if directed by the Owner, the Architect/Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect/Engineer's knowledge, information and belief, and on the basis of the Architect/Engineer on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect/Engineer'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 Owner or Architect/Engineer (1) an affidavit that payrolls, bills for materials and equipment, Subcontractors and material suppliers, and any other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), full releases of liens and claims from Contractor and each subcontractor, (6) all documents required by the Contract, including warranties in form acceptable to Owner, as built documentation, and submittals, and (7) other data establishing payment or satisfaction..

§ 9.10.3 Intentionally Deleted.

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

The making of final payment shall constitute a waiver of Claims by the Owner except those identified or reserved in writing by Owner prior to or in conjunction with the final payment and except for those Claims arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. If the Owner deems any part of the Work or worksite unsafe, the Owner, without assuming responsibility for the Contractor's safety program, may require the Contractor to stop performance of the work or take corrective measures satisfactory to the Owner. If the contractor does not adopt corrective measures, the Owner may perform them and deduct their cost from the Contract Price. The Contractor hereby agrees not to make a Claim for an increase in the Contract Price or for a change in the Contract Time based on the Contractor's compliance with the Owner's reasonable request.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss, as well as the Owner's written safety rules, and the Contractor shall provide the Owner with copies of all such notices.

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

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care for the proper delivery, handling, application, storage, removal and disposal of all such materials and equipment, and shall carry on such activities under supervision of properly qualified personnel. Contractor shall maintain Material Safety Data Sheets as required by law and pertaining to materials and substances used or consumed in the performance of the Work, whether obtained by the Contractor, Subcontractors, the Owner, or others at the worksite and made available to the Owner, Subcontractors and others with a need to review them..

§ 10.2.5 The Contractor shall promptly remedy damage and loss at the Contractor's sole cost and expense (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except to the extent such damage or loss attributable to acts or omissions of the Owner or Architect/Engineer 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 action, omission, fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

§ 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.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

The Contractor shall immediately report in writing to the Owner all recordable accidents and injuries occurring at the worksite. When the Contractor is required to file an accident report with a public authority the Contractor shall furnish a copy of the report to the Owner. If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials, (defined now or in the future as hazardous under any applicable federal, state or local environmental law, ordinance, code, rule, regulation or order, and including but not limited to asbestos and polychlorinated biphenyl (PCB)). The Contractor shall comply with all legal requirements related to such materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents or not otherwise known, discovered or anticipated by the Contractor prior to the commencement of Work, the Contractor is entitled to immediately stop the performance of Work in the affected area and shall not be obligated to commence or continue the performance of the Work until such hazardous material has been removed or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate governmental agency, if required by law. The Contractor shall immediately report the discovery of any hazardous material to the Owner and the Architect/Engineer in writing

§ 10.3.2 When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. Except for hazardous materials noted in the Contract Documents, by Change Order the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut down, delay and start-up.

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify and hold harmless the Owner for any and all claims, damages, losses, costs and expense (including but not limited to reasonable attorney's fees) the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently or improperly delivers, applies, stores, removes or disposes of or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all reasonable cost and expense thereby incurred.

§ 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 LIABILITY INSURANCE

§ 11.1.1 **Contractor's Insurance.** Prior to the start of the Contractor's services hereunder, the Contractor shall procure and maintain in force during the term of this Agreement the following insurance written on an occurrence basis with insurance companies lawfully authorized to do business in

(Paragraphs deleted)

Pennsylvania: workers' compensation insurance with statutory limits; employers' liability insurance in the amount of at least \$5,000,000; business automobile liability insurance in the amount of at least \$2,000,000; and commercial general liability insurance, to include coverage for bodily injury and property damage liability, personal and advertising injury liability, products and completed operations, and contractual liability with policy limits of \$10,000,000 per occurrence and an annual aggregate of \$10,000,000. The general liability coverage referenced above shall not contain mold or pollution coverage exclusions. All insurance policies required to be carried by Contractor shall be primary and non-contributory with respect to any other insurance or self-insurance programs maintained by Owner. Contractor may elect to maintain a deductible or self-insured retention in the maximum amount of \$20,000 on any of the above referenced policies. As the named insured, Contractor shall be responsible for any approved deductibles on the primary and excess/umbrella general liability policies.

§ 11.1.2 Limits of coverage required by this Agreement may be maintained through primary policies of insurance or through a combination of primary and excess or umbrella policies. Thomas Jefferson University will be an additional insured on the primary and excess/umbrella general liability policies. The policies of insurance required hereunder shall contain a provision that the coverage afforded under the policies shall not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. At or preceding execution of this Agreement, the Contractor shall furnish the Owner with the following insurance documents: a certificate of insurance evidencing the required coverage to Owner; a schedule of underlying coverage on the excess/umbrella policy; and an endorsement adding Owner as an additional insured on the primary and excess general liability policies.

§ 11.1.3 If Contractor fails to obtain or maintain any insurance required by this Agreement, such failure shall constitute substantial failure to perform under Section 1.3.8.4 of this Agreement. In addition to any other remedies available to Owner due to such failure, Owner may, at Owner's option, purchase such coverage and deduct the expense from any fees due Contractor.

(Paragraphs deleted)

§ 11.1.4 Contractor shall cause each subcontractor engaged by Contractor to purchase and maintain insurance of the types specified above. The same conditions applicable to Contractor under this provision shall apply to each subcontractor. When requested by Owner, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

§ 11.1.5 Contractor and all Subcontractors, on their behalf and on behalf of their insurers, waive all rights of subrogation in connection with any losses paid or payable under their insurance policies.

§ 11.2. **Owner's Insurance.** Owner shall maintain, in a company or companies lawfully authorized to do business in Pennsylvania, property insurance on the building, to include the Project, written on an "all-risk" or equivalent policy form.

§ 11.3 PERFORMANCE BOND AND PAYMENT BOND

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

(Paragraphs deleted)

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

§ 11.3.3 If required by Owner, performance and payment bonds will be provided by Contractor. Such bonds shall be issued by a surety admitted in Pennsylvania and must be acceptable to Owner. Owner's acceptance shall not be withheld without reasonable cause. The penal sum of the Payment Bond and of the Performance Bond shall each be 100% of the original Contract Price. Any increase in the Contract Price that exceeds 10% in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such 10% amount, the penal sum of the bond shall remain equal to 100% of the Contract Price. Contractor shall endeavor to keep its surety advised of changes potentially impacting the Contract Time and Contract Price, through Contractor shall require that its surety waive any requirements to be modified of any alteration or extension of time. Contractor's Payment Bond for the Project shall be delivered to Owner prior to commencement of the Work and shall be made available by Owner for review and copying by the Subcontractors upon request.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect/Engineer, the Owner may correct it in accordance with Section 2.4.

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

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

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

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

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.2 SUCCESSORS AND ASSIGNS

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an affiliate (to include, Thomas Jefferson University Hospitals, Inc.) or a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner and,

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if directed, the Architect/Engineer timely notice of when and where tests and inspections are to be made so that the Owner and, if directed, the Architect/Engineer may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect/Engineer's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.6 INTEREST

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

§ 13.7 Intentionally Deleted.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons, after the Contractor gives the Owner fourteen days' notice of termination, the Work does not resume or the Owner otherwise fails to cure the following::

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect/Engineer has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on an Application for Payment after the applicable notice and cure period following Owner's failure to pay within the time stated in Article 9; or
- .4 The Owner has repeatedly failed to fulfill Owner's material obligations, under the Contract Documents with respect to matters important to the progress of the Work.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the

Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 Upon termination for one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, recover from the Owner payment for Work executed, including reasonable overhead and profit, for Work executed, and costs incurred by reason of such termination

§ 14.1.4 Intentionally Deleted

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers, equipment or proper materials; to maintain the schedule of Work in accordance with the Contract Documents and Section 3.10;
- .2 fails to make prompt payment to employees or Subcontractors for material suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise; breaches any of its duties, responsibilities or obligations under this Agreement or
- .5 has made a representation or warranty that is inaccurate, false or incomplete.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect/Engineer's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 14.3.2 Provided that the suspension is not due to any act or omission of the Contractor or any person or entity for whose acts or omissions the Contractor may be liable, the Contract Sum and Contract Time shall be equitably adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. should the Owner later decide to continue with the Project. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and provided that the suspension is not due to any act or omission of the Contractor or any person or entity for whose acts or omissions the Contractor shall also be entitled to the reasonable costs it incurred by reason of such termination, along with reasonable profit on the Work not executed, as mutually agreed upon by Owner and Contractor.

(Paragraphs deleted)

ARTICLE 15 CLAIMS AND DISPUTES

(Paragraph deleted)

§ 15.1 DEFINITION

A Claim is defined in Section 9.10.4.

(Paragraphs deleted)

§ 15.2 NOTICE OF CLAIMS

(Paragraphs deleted)

§ 15.2.1 NOTICE. So that the Owner can properly measure the quantum of the Claim, the Contractor shall give prompt written notice to the Owner and the Architect/Engineer of any circumstances that give rise or may give rise to a Claim by the Contractor for:

1. an increase in the Contract Sum;
2. an extension of the Contract Time to perform; or
3. compensation for Work performed at the direction of the Owner which the Contractor believes is outside the scope of the Contract Documents.

(Paragraph deleted)

§ 15.2.2 FORM OF NOTICE. The notice of Claim shall be given within the time period established in Section 15.2.3 and shall set forth:

1. the reasons for which the Contractor believes additional compensation will or may be due or additional time should be granted;
2. the nature of the costs involved;
3. the Contractor's plan for mitigating such costs; and
4. if ascertainable, the amount of the potential Claim.

§ 15.2.3 TIMING OF NOTICE. The Contractor shall give such notice promptly so as to provide the Owner an opportunity to remedy any breach or to remove any cause for cost escalation or delay. Claims by the Contractor must be initiated by written notice to the Owner with a copy sent to the Architect/Engineer. Claims by the Contractor must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.3 WAIVER OF CLAIM. The Contractor shall have no claim for damages against the Owner unless notice of such Claim has been given in accordance with Paragraph 15.2 within twenty-one (21) calendar days after the date on which the Contractor has knowledge, or should reasonably have knowledge, of the circumstances giving rise to such Claim. Any Claims shall be made pursuant to the procedures established by this Article 15.

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

§ 15.5 CLAIMS FOR ADDITIONAL COST. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Any change in the Contract Sum resulting from such claim shall be authorized by a Change Order or Construction Change Directive, as the case may be.

§ 15.6 CLAIMS FOR ADDITIONAL TIME. If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

(Paragraphs deleted)

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~~(Name, legal status and address)~~Thomas Jefferson University
1020 Walnut Street
6th Floor Scott Building
Philadelphia, Pennsylvania 19107-5587

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4 ~~ARCHITECT~~ARCHITECT/Engineer

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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~~Architect/Engineer. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes 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~~ Architect/Engineer or the ~~Architect's~~ Architect/Engineer's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the ~~Architect~~ Architect/Engineer or the ~~Architect's~~ Architect/Engineer's consultants or (4) between any persons or entities other than the Owner and the Contractor. The ~~Architect~~ Architect/Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the ~~Architect's~~ Architect/Engineer's duties.

...

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~~ Architect/Engineer and the ~~Architect's~~ Architect/Engineer'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 and certify termination of the Agreement under Section 14.2.2.~~ **There shall be no Initial Decision Maker in This Agreement**

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

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

...

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

...

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. ~~Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the~~

~~Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

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§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section ~~4.5.2.1.5.2.~~, and an electronic copy of the documents subject to limits of use.

...

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

...

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

...

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

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the ~~Architect~~ Owner and, if requested by the Owner, to the Architect/Engineer any nonconformity discovered by or made known to the Contractor as a request for information in such form as the ~~Architect~~ Owner or Architect/Engineer may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the ~~Architect~~ Architect/Engineer issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or ~~Architect~~ Architect/Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions

and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 LABOR RELATIONS

Contractor shall furnish labor that will work in "Harmony" with all other elements of labor employed on the Project and at the worksite, whether pursuant to this Agreement or some other arrangement. "Harmony," as used in this Agreement, means the provision of labor that will not, either directly or indirectly, cause or give rise to any work disruptions, slow downs, picketing, stoppages, or any violence or harm to or directed at any person or property while performing any work, or activities incidental thereto at the Project or to or at the worksite.

Contractor will require every subcontractor to provide labor that will work in Harmony with all other elements of labor employed on the Project and at the worksite. Whether pursuant to this Agreement or some other arrangement will include the Commitments set forth in the Section 3.2.5 in every subcontract, and will require its Subcontractors to include such commitments in its subcontracts, for any portion of the Work under this Agreement.

The commitments stated in this Section 3.2.5 are material element of this Agreement. Failure by Contractor or any of its Subcontractors or sub-subcontractors to comply with these commitment shall be a material breach of this Agreement and may subject contractor to liability for all costs and expenses suffered by Owner, including attorneys' fees and costs and all other costs arising out of any dispute resolution proceeding incurred to resolve the breach or to enforce this commitment.

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

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

...

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

...

§ 3.7

PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution 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. The Contractor shall promptly provide to the Owner copies of all such permits, licenses, notices and approvals required under this Agreement.

...

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are unknown and could not easily have been discovered, expected or anticipated by Contractor prior to the execution of this Agreement, and 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 written notice to the Owner and the ~~Architect~~ Architect/Engineer before conditions are disturbed and in no event later than ~~21~~3 days after first observance of the conditions. ~~The Architect will~~ Owner may request the Architect/Engineer to promptly investigate such conditions and, if the ~~Architect~~ Architect/Engineer 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 an equitable adjustment in the Contract Sum or Contract Time, or both. If the ~~Architect~~ Architect/Engineer 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~~ Architect/Engineer shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the ~~Architect's~~ Architect/Engineer's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and ~~Architect~~ Architect/Engineer. 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.

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

...

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

...

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through the Architect~~ the name and qualifications of a proposed superintendent. ~~The Architect~~ Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner ~~or the Architect~~ has reasonable objection to the proposed superintendent or (2) that the ~~Architect~~ Owner requires additional time to review. Failure of the ~~Architect~~ Owner to reply 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.

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

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and ~~Architect~~ when applicable, the Architect/Engineer.

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The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the ~~Architect and shall be delivered to the Architect~~ Architect/Engineer or Owner upon request and shall be delivered to the Owner or, if directed to the Architect/Engineer for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

...

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

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

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the ~~Architect's Owner's or, if directed, the Architect/Engineer's~~ approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the ~~Architect Owner or, if directed, the Architect/Engineer~~ in writing of such deviation at the time of submittal and (1) the ~~Architect Owner or, if directed, the Architect/Engineer~~ 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 the Owner's or the Architect/Engineer's~~ approval thereof.

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

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

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

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

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

...

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 Architect/Engineer~~ harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular

manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or ~~Architect~~ Architect/Engineer. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the ~~Architect~~ Architect/Engineer.

...

§ 3.18.1 To the fullest extent permitted by law the Contractor shall ~~indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, indemnify, defend and hold harmless the Owner, Owners' officers, directors, consultants agents and employees from and against claims, damages, loss cost, expense and liability,~~ 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, to the extent caused in whole or in part by Contractor or anyone directly or indirectly retained by Contractor. Contractor expressly acknowledges that the parties are contractually allocating these risks to Contractor and Contractor has procured and shall maintain for the term of this Agreement. The insurance policies set forth above, for the purpose of providing a financial means to support these indemnity obligations.~~

Except to the extent the loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Contractor until the date of Substantial Completion.

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ARTICLE 4 — ARCHITECT

ARTICLE 4 ARCHITECT/ENGINEER

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

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

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

§ 4.2.1 The ~~Architect will~~ Architect/Engineer, if directed by Owner, may provide administration of the Contract as described in the Contract Documents and ~~will if directed by Owner, may~~ be an Owner's representative during construction until the date the ~~Architect~~ Architect/Engineer issues the final Certificate ~~for~~ For Payment. The ~~Architect~~ Architect/Engineer will have authority to act on behalf of the Owner only to the extent directed by Owner and provided in the Contract Documents.

§ 4.2.2 The ~~Architect~~ Architect/Engineer 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~~ Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The ~~Architect~~ Architect/Engineer will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in

connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

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

§ 4.2.5 Based on the ~~Architect's~~ Owner's, or if directed Architect/Engineer's evaluations of the Contractor's Applications for Payment, the ~~Architect~~ Owner's and Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The ~~Architect~~ Owner or the Architect/Engineer, if directed by the Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the ~~Architect~~ Owner considers it necessary or advisable, the ~~Architect will have authority~~ Owner may direct the Architect/Engineer to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the ~~Architect~~ Architect/Engineer 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~~ Architect/Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The ~~Architect~~ Owner or the Architect/Engineer, if directed by the Owner, 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~~ Owner's or the Architect/Engineer's action will be taken in accordance with the submittal schedule approved by the ~~Architect~~ Owner or the Architect/Engineer, as applicable, or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the ~~Architect's~~ Owner's reasonable judgment or the Architect/Engineer'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~~ Architect/Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The ~~Architect's~~ Architect/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the ~~Architect~~ Architect/Engineer, of any construction means, methods, techniques, sequences or procedures. The ~~Architect's~~ Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

§ 4.2.9 The ~~Architect will~~ Architect/Engineer will as directed by Owner, conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and

related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

§ 4.2.11 The ~~Architect~~-Architect/Engineer 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~~-Architect/Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the ~~Architect~~-Architect/Engineer 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~~-Architect/Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

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

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§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through the Architect and~~, if directed to the Architect/Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The ~~Architect~~-Owner or, if directed, the Architect/Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the ~~Architect~~-Architect/Engineer has reasonable objection to any such proposed person or entity or (2) that the ~~Architect~~-Owner requires additional time for review. Failure of the Owner or ~~Architect~~ to reply within the ~~14-day~~ 14 day period shall constitute notice of no reasonable objection.

§ 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, 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 previously selected if the Owner or ~~Architect~~ makes reasonable objection to such substitution.

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By appropriate agreement, written where legally required for validity, the Contractor shall ~~require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~ bind every subcontractor and material supplier (and require every Subcontractor to so bind it subcontractors and material suppliers) to all the provisions of the Agreement, including, without limitations, the insurance provisions, and the Contract Documents .as they apply to Subcontractors' and material suppliers' portions of the Work.

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

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

...

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

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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~~ Owner will allocate the cost among those responsible.

...

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

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

...

.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Whenever the Contractor requests a Change Order, the Contractor shall submit a Change Order Request and shall provide documentation of labor and material costs in a form (to include Subcontractor quotes, bills of material, internal estimate worksheets, etc.) satisfactory to the Owner. Any change order request for additional time shall be documented by critical path analysis.

§ 7.2.3 Any adjustments to the Contract Sum shall be based on costs necessarily incurred in the proper performance of the changed Work and paid by the Contractor at rates not higher than the standard paid in th locality of the Work. Such costs are specifically defined by and limited to the following:

- .1 Wages paid for labor in the direct employ of the Contractor in the performance of the changed Work in the field or in the fabrication shop under applicable collective bargaining agreements or under a salary or wage schedule agreed upon by the Contractor and Owner, plus a certified payroll markup to cover all direct overhead items applicable to payroll, limited to insurance, taxes, F.I.C.A., worker's compensation, unemployment taxes, and union benefits.
- .2 Cost of all materials, supplies, and equipment incorporated and consumed in the changed Work.
- .3 Cost, including maintenance of all materials, supplies, equipment, temporary facilities owned by the Contractor which are consumed in the performance of the changed Work, and cost less salvage value on such items used but not consumed which remain the property of the Contractor.
- .4 Third party rental charges of all necessary machinery and equipment, exclusive of hand tools, used in performing the changed Work, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof at rental charges consistent with those prevailing in the area. Total third party rental charges on machinery or equipment rented under an agreement containing a purchase option clause shall not exceed seventy-five percent (75%) of the option purchase price. Contractor-owned machinery and equipment in use at the Project shall be charged at a rental rate not to exceed current Blue Book rates.
- .5 Cost of additional premiums for all bonds which the Contractor is required by the Owner or Contract Documents to purchase and maintain and which is incurred as a result of performing the changed Work.
- .6 Sales, use or similar taxes, related to the changed Work and for which the Contractor is liable, to any governmental authority.
- .7 Permit fees, licenses, inspections, test, royalties and deposits lost for causes other than the Contractor's negligence.
- .8 Costs incurred due to an emergency arising out of the changed Work affecting the safety of persons and property.
- .9 Reasonable material and equipment delivery charges.
- .10 Cost of Subcontractors in performing the Contractor's work as changed, computed in accordance with Sections 7.2.3 and 7.2.4.

- .11 Other costs incurred in the performance of the changed Work if and to the extent approved in advance in writing by the Owner.

7.2.4 Unless otherwise provided in the Contract Documents, the cost of the changed Work shall exclude the following:

- .1 Salaries or other compensation for Contractor's officers, executives, general managers, project managers, estimators, engineers, timekeepers, surveyors, mechanics, warehousemen, auditors, accountants, purchasing and contracting agents, draftsmen, receptionists, and other staff employees, whether or not employed at Contractor's principal office, branch office or field office at the job site.
- .2 Expenses of Contractor's principal office, branch office or job site field office, including, without limitation, expenses for storage space, telephone, heat, lights, office equipment, computers, etc.
- .3 Except for rental rates identified in Section 7.2.3, ownership costs or maintenance expenses for Contractor-owned equipment, including, without limitation, all construction equipment, trucks and vehicles, machines and all other owned equipment required for Contractor's performance of the Work.
- .4 Cost for purchase and maintenance of tools, materials, supplies and facilities not consumed during construction or incorporated in the Work.
- .5 Contractor's capital expense, including interest on Contractor's capital employed for the Work.
- .6 Overhead and/or general expenses of any kind, including interest on Contractor's capital employed for the Work.
- .7 Cost due to the negligence of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to injury or damage to persons or property, the correction of defective Work, disposal of materials and equipment wrongly supplied, or making good any damage to property.
- .8 The cost of any item not specifically and expressly included in the terms described in Section 7.2.3.
- .9 Any cost arising from the use of tools for which the original price is less than \$1,000. Tools are any implement used to accomplish the Work, but not limited to any hand held implement. The Owner reserves the right to make the final determination if items shall be considered tools.

7.2.5 Allowances for profit and overhead costs shall be applied only to that portion of the cost which constitutes a net increase in the Contract Sum. Allowable amounts computed as mark-ups for profit and overhead shall be the exclusive compensation for profit and all overhead costs associated with the changed Work, except as specifically allowed in Section 7.2.3. Allowances for profit and overhead costs shall be computed as follows:

- .1 For the Contractor: Fifteen percent (15%) of the Contractor's reimbursable costs for Work performed directly by the Contractor using its own forces and direct material and equipment purchases defined in Sections 7.2.3 and 7.2.4, except for 7.2.5.2 and 7.2.5.3 below.
- .2 For the Contractor: Five percent (5%) for the cost of Work of Subcontractors supervised by the Contractor as computed in accordance with Sections 7.2.3 and 7.2.4.
- .3 For Subcontractors due compensation for changed Work under Section 7.1, allowances for profit and overhead costs shall be fifteen percent (15%) of the Subcontractor's reimbursable costs for Work performed directly by the Subcontractor using its own forces and direct material and equipment purchases consistent with Sections 7.2.3 and 7.2.4, and five percent (5%) for the cost of Work of any lower tier Subcontractors supervised by the Subcontractor as computed consistent with Sections 7.2.3 and 7.2.4.

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

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

...

- .1 As provided in Sections 7.2.3 through 7.2.6; or
- .2 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- ~~.2~~ .3 Unit prices stated in the Contract Documents or subsequently agreed upon;
- ~~.3~~ .4 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- ~~.4~~ As provided in Section 7.3.7.

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§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the ~~Architect~~ Owner's 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.

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§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the ~~Architect~~ Architect/Engineer shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth ~~in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount in, Section 7.2.5.~~ In such case, and also under ~~Section~~ Sections 7.3.3.1 and 7.3.3.3, the Contractor shall keep and present, in such form as the ~~Architect~~ Owner or Architect/Engineer if directed, may prescribe, an itemized accounting together with appropriate supporting data. ~~Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:~~

- ~~.1~~ Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- ~~.2~~ Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- ~~.3~~ Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- ~~.4~~ Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- ~~.5~~ Additional costs of supervision and field office personnel directly attributable to the change. **§ 7.3.9**

Intentionally Deleted.

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

recorded by preparation and execution of an appropriate Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

~~§ 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 will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

~~The Architect-Owner or Architect/Engineer if directed by the Owner has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.~~

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§ 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. Before submitting the first application for payment, Contractor shall submit to Owner, and, if directed, its Architect/Engineer, a Schedule of the Work that shall show the dates on which Contractor plans to commence and complete various parts of the Work, including dates on which information and approvals are required for Owner. Upon Owner's written approval of the Schedule of the Work, Contractor shall comply with it unless directed by Owner to do otherwise or Contractor is otherwise entitled to an adjustment in the Contract Time pursuant in a Change Order. The Contractor shall update the Schedule of the Work on a monthly basis or at appropriate intervals as required by the conditions of the Work and the Project. Notwithstanding the foregoing, no extension of the Contract Time shall be reflected in any updated schedule of the Work without the express written consent of Owner unless pursuant to a Change Order, Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Schedule of the Work. The Owner may require Contractor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Owner or Others. To the extent such changes increase Contractor's time and costs, the Contractor Price and Contract Time shall be equitably adjusted by Change Order.

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§ 8.1.3 The date of Substantial Completion is the date certified by the ~~Architect-Owner~~ and the Contractor or, if directed, the Architect/Engineer in accordance with Section 9.8.

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§ 8.2.4 **If the Contractor is not maintaining the pace of the Work in accordance with the construction schedule or otherwise consistent with the Contract Time, and such delays are not excusable as set forth in Section 8.3, then the Owner may require the Contractor to undertake a time recovery plan (including more personnel, overtime, and/or additional shifts) at the Contractor's sole expense, to reasonably ensure completion of the Work within the Contract Time.**

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by a cause beyond the control of the Contractor, including but not limited to an act or neglect of the Owner or Architect, Architect/Engineer, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, not involving the Contractor and not Specifically related to the worksite, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the

Owner pending mediation and arbitration; or by other causes that the ~~Architect~~ Architect/Engineer determines may justify delay, then the Contract Time shall be ~~extended by Change Order for such reasonable time as the Architect may determine.~~ equitably extended by Change Order.

...

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

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

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

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

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

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§ 9.5.1 ~~The Architect may withhold a Certificate for Payment-~~ This Section 9.5.1 applies to decisions by the Architect/Engineer to withhold Certificates for Payment based on the criteria set forth herein. The same criteria apply to the Owner's decision to withhold payment or take other action as permitted in this Section 9.5.1, whether or not an Architect/Engineer has taken action pursuant to this Article 9. The Architect/Engineer may also withhold a Certificate for Payment (or, the Owner may withhold payment, adjust or reject an Application for Payment or nullify a previously approved Application for Payment) in whole or in part, to the extent reasonably necessary to protect the Owner, if in

~~the Architect's opinion~~ Owner. If, in the Architect/Engineer's or the Owner's opinion (as applicable), the representations to the Owner required by Section 9.4.2 cannot be ~~made. If the Architect made or, in the Owner's case~~ for a reason specified in the Section 9.5.1.1 through 7 below). If the Architect/Engineer, if applicable, is unable to certify payment in the amount of the Application, the ~~Architect~~ Architect/Engineer will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and ~~Architect~~ Architect/Engineer (if applicable) cannot agree on a revised amount, the ~~Architect~~ amount the Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the ~~Architect~~ Architect/Engineer is able to make such ~~representations~~ representation to the Owner. The ~~Architect~~ Architect/Engineer may also withhold a Certificate for Payment ~~or, because of subsequently discovered evidence, (or the Owner may withhold payment, adjust or reject an Application for Payment or mollify a previously approved Application for Payment) or because of subsequently discovered evidence, the Architect/Engineer may nullify the whole or a part of a Certificate for Payment previously issued, issued, to such extent as may be necessary in the Architect's opinion~~ Architect/Engineer's or the Owner's opinion (as applicable) to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 failure of the Contractor to provide executed Release of Waiver and Liens from the Contractor, Subcontractors, or material suppliers for Work included in previous Applications for Payment for which the Owner has issued prior payment.

Unless the Architect/Engineer has already notified the Contractor that it has withheld certification for the Application for payment as provided in Section 9.4.1 and this Section 9.5.1, not later than fourteen (14) days after receipt of an Application for Payment, the Owner shall give written notice to the Contractor of Owner's disapproval or nullification of all or part of an applicable Application for Payment, stating its specific reasons for such disapproval or nullification, ad the remedial actions the Owner requires the Contractor to take in order to receive payment. When the Contractor has completed the remedial actions to the Owner's satisfaction, the Owner shall promptly pay the amount previously withheld.

...

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

...

§ 9.6.1 After the ~~Architect~~ Architect/Engineer 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, (if applicable), or in the event that the Owner is not utilizing the service of an Architect/Engineer to review the Application for Payment, the Owner shall make payment no later than the forty-fifth (45th) day after the date of the Application for Payment unless otherwise provided in the Contract Documents and unless the Owner provides the notice specified in Section 9.5.1, and shall so notify the Architect/Engineer (if applicable).~~

...

§ 9.6.3 The ~~Architect~~ Architect/Engineer 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~~ Architect/Engineer and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor ~~Architect~~

Architect/Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

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If the ~~Architect~~Architect/Engineer does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date ~~established in the Contract Documents~~ the amount certified by the Architect set forth in Section 9.6.1 the undisputed amount due, as may be certified by the Architect/Engineer or awarded by binding dispute resolution, then the Contractor may, upon ~~seven additional days'~~ fourteen additional days' written notice to the Owner and ~~Architect~~Architect/Engineer, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

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§ 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~~Owner and, if directed, the Architect/Engineer a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the ~~Architect~~Owner, or the Architect/Engineer as directed will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the ~~Architect's~~ inspection discloses any item, whether or not included on the Contractor's 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 Owner shall, promptly compile a list of items to be completed or corrected and the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect, all such items upon notification. In such case, the Contractor shall then submit a request for another inspection by the ~~Architect~~Owner to determine Substantial Completion.

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

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§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the ~~Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project.~~Contractor. 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, 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, and if applicable, by decision of the ~~Architect~~Architect/Engineer.

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

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§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the ~~Architect~~ will promptly make such inspection and, when the Architect finds the Work Owner, with the assistance of the Architect/Engineer will promptly make such inspection to determine if the Work is acceptable under the Contract Documents and if the Contract fully performed, the Architect if directed by the Owner, the Architect/Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect's Architect/Engineer's knowledge, information and belief, and on the basis of the Architect's Architect/Engineer on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's Architect/Engineer'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~~ Owner or Architect/Engineer (1) an affidavit that payrolls, bills for materials and equipment, Subcontractors and material suppliers, and any other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. full releases of liens and claims from Contractor and each subcontractor, (6) all documents required by the Contract, including warrantees in form acceptable to Owner, as built documentation, and submittals, and (7) other data establishing payment or satisfaction..

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

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

The making of final payment shall constitute a waiver of Claims by the Owner except those identified or reserved in writing by Owner prior to or in conjunction with the final payment and except for those Claims arising from

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The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. If the Owner deems any part of the Work or worksite unsafe, the Owner, without assuming responsibility for the Contractor's safety program, may require the Contractor to stop performance of the work or take corrective measures satisfactory to the Owner. If the contractor does not adopt corrective measures, the Owner may perform them and deduct their cost from the Contract Price. The Contractor hereby agrees not to make a Claim for an increase in the Contract Price or for a change in the Contract Time based on the Contractor's compliance with the Owner's reasonable request.

...

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or ~~loss~~-loss, as well as the Owner's written safety rules, and the Contractor shall provide the Owner with copies of all such notices.

...

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care for the proper delivery, handling, application, storage, removal and disposal of all such materials and equipment, and shall carry on such activities under supervision of properly qualified personnel. Contractor shall maintain Material Safety Data Sheets as required by law and pertaining to materials and substances used or consumed in the performance of the Work, whether obtained by the Contractor, Subcontractors, the Owner, or others at the worksite and made available to the Owner, Subcontractors and others with a need to review them.

§ 10.2.5 The Contractor shall promptly remedy damage and loss at the Contractor's sole cost and expense (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except to the extent such damage or loss attributable to acts or omissions of the Owner or ~~Architect~~ Architect/Engineer 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 action, omission, fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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The Contractor shall immediately report in writing to the Owner all recordable accidents and injuries occurring at the worksite. When the Contractor is required to file an accident report with a public authority the Contractor shall furnish a copy of the report to the Owner. If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

...

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials, (defined now or in the future as hazardous under any applicable federal, state or local environmental law, ordinance, code, rule, regulation or order, and including but not limited to asbestos and polychlorinated biphenyl (PCB)). The Contractor shall comply with all legal requirements related to such materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site

~~by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop or not otherwise known, discovered or anticipated by the Contractor prior to the commencement of Work, the Contractor is entitled to immediately stop the performance of Work in the affected area and report the condition to the Owner and Architect in writing, shall not be obligated to commence or continue the performance of the Work until such hazardous material has been removed or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate governmental agency, if required by law. The Contractor shall immediately report the discovery of any hazardous material to the Owner and the Architect/Engineer in writing~~

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. ~~By Change Order, Except for hazardous materials noted in the Contract Documents, by Change Order the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut down, shut down, delay and start-up.~~

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

...

§ 10.3.5 The Contractor shall indemnify ~~the Owner for the cost and expense and hold harmless the Owner for any and all claims, damages, losses, costs and expense (including but not limited to reasonable attorney's fees)~~ the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently ~~handles, or improperly delivers, applies, stores, removes or disposes of~~ or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all reasonable cost and expense thereby incurred.

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§ 11.1.1 ~~The Contractor shall purchase from and maintain in a company or~~ **Contractor's Insurance.** Prior to the start of the Contractor's services hereunder, the Contractor shall procure and maintain in force during the term of this Agreement the following insurance written on an occurrence basis with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- 1 — Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

- ~~.2 — Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;~~
- ~~.3 — Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;~~
- ~~.4 — Claims for damages insured by usual personal injury liability coverage;~~
- ~~.5 — Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;~~
- ~~.6 — Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;~~
- ~~.7 — Claims for bodily injury or property damage arising out of completed operations; and~~
- ~~.8 — Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.1.8.~~

Pennsylvania: workers' compensation insurance with statutory limits; employers' liability insurance in the amount of at least \$5,000,000; business automobile liability insurance in the amount of at least \$2,000,000; and commercial general liability insurance, to include coverage for bodily injury and property damage liability, personal and advertising injury liability, products and completed operations, and contractual liability with policy limits of \$10,000,000 per occurrence and an annual aggregate of \$10,000,000. The general liability coverage referenced above shall not contain mold or pollution coverage exclusions. All insurance policies required to be carried by Contractor shall be primary and non-contributory with respect to any other insurance or self-insurance programs maintained by Owner. Contractor may elect to maintain a deductible or self-insured retention in the maximum amount of \$20,000 on any of the above referenced policies. As the named insured, Contractor shall be responsible for any approved deductibles on the primary and excess/umbrella general liability policies.

~~§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.~~

Limits of coverage required by this Agreement may be maintained through primary policies of insurance or through a combination of primary and excess or umbrella policies. Thomas Jefferson University will be an additional insured on the primary and excess/umbrella general liability policies. The policies of insurance required hereunder shall contain a provision that the coverage afforded under the policies shall not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. At or preceding execution of this Agreement, the Contractor shall furnish the Owner with the following insurance documents: a certificate of insurance evidencing the required coverage to Owner; a schedule of underlying coverage on the excess/umbrella policy; and an endorsement adding Owner as an additional insured on the primary and excess general liability policies.

~~§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.~~

If Contractor fails to obtain or maintain any insurance required by this Agreement, such failure shall constitute substantial failure to perform under Section 1.3.8.4 of this Agreement. In addition to any other remedies available to Owner due to such failure, Owner may, at Owner's option, purchase such coverage and deduct the expense from any fees due Contractor.

~~§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.~~

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.1.4 Contractor shall cause each subcontractor engaged by Contractor to purchase and maintain insurance of the types specified above. The same conditions applicable to Contractor under this provision shall apply to each subcontractor. When requested by Owner, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

§ 11.1.5 Contractor and all Subcontractors, on their behalf and on behalf of their insurers, waive all rights of subrogation in connection with any losses paid or payable under their insurance policies.

§ 11.2. Owner's Insurance. Owner shall maintain, in a company or companies lawfully authorized to do business in Pennsylvania, property insurance on the building, to include the Project, written on an "all-risk" or equivalent policy form.

§ 11.3 PROPERTY INSURANCE PERFORMANCE BOND AND PAYMENT BOND

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

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

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

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

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

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

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

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

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

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

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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

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

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

~~§ 11.4 PERFORMANCE BOND AND PAYMENT BOND~~

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

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

~~§ 11.3.2~~ Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

~~§ 11.3.3~~ If required by Owner, performance and payment bonds will be provided by Contractor. Such bonds shall be issued by a surety admitted in Pennsylvania and must be acceptable to Owner. Owner's acceptance shall not be withheld without reasonable cause. The penal sum of the Payment Bond and of the Performance Bond shall each be 100% of the original Contract Price. Any increase in the Contract Price that exceeds 10% in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such 10% amount, the penal sum of the bond shall remain equal to 100% of the Contract Price. Contractor shall endeavor to keep its surety advised of changes potentially impacting the Contract Time and Contract Price, through Contractor shall require that its surety waive any requirements to be modified of any alteration or extension of time. Contractor's Payment Bond for the Project shall be delivered to Owner prior to commencement of the Work and shall be made available by Owner for review and copying by the Subcontractors upon request.

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~~§ 12.1.1~~ If a portion of the Work is covered contrary to the ~~Architect's~~ Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the ~~Architect,~~ Owner be uncovered for the ~~Architect's~~ Owner'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~~ Architect/Engineer or Owner has not specifically requested to examine prior to its being covered, the ~~Architect~~ Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

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

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or ~~Architect~~, Architect/Engineer, the Owner may correct it in accordance with Section 2.4.

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

...

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an affiliate (to include, Thomas Jefferson University Hospitals, Inc.) or a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

...

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

...

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the ~~Architect~~ Owner and, if directed, the Architect/Engineer timely notice of when and where tests and inspections are to be made so that the ~~Architect~~ Owner and, if directed, the Architect/Engineer may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the ~~Architect~~ Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the ~~Architect will, upon written authorization from the Owner,~~ Owner or, if directed, the Architect/Engineer will, 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~~ Owner and, if directed, the Architect/Engineer of when and where tests and inspections are to be made so that the ~~Architect~~ Owner and, if directed the Architect/Engineer may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by

such failure including those of repeated procedures and compensation for the ~~Architect's~~ Architect/Engineer's services and expenses shall be at the Contractor's expense.

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

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

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§ 13.7 ~~TIME LIMITS ON CLAIMS~~

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

...

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~ 90 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following ~~reasons~~ reasons, after the Contractor gives the Owner fourteen days' notice of termination, the Work does not resume or the Owner otherwise fails to cure the following::

...

- ~~3~~ 3 Because the ~~Architect~~ Architect/Engineer has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a ~~Certificate for Payment within the time stated in the Contract Documents; an Application for Payment after the applicable notice and cure period following Owner's failure to pay within the time stated in Article 9; or~~
- ~~4~~ 4 The Owner has ~~failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1; repeatedly failed to fulfill Owner's material obligations, under the Contract Documents with respect to matters important to the progress of the Work.~~

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

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

...

- .1 repeatedly refuses or fails to supply enough properly skilled ~~workers or proper materials;~~ workers, equipment or proper materials; to maintain the schedule of Work in accordance with the Contract Documents and Section 3.10;
- .2 fails to make prompt payment to employees or Subcontractors for material suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

...

- .4 ~~otherwise is guilty of substantial breach of a provision of the Contract Documents.~~ otherwise; breaches any of its duties, responsibilities or obligations under this Agreement or
- .5 has made a representation or warranty that is inaccurate, false or incomplete.

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

...

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

...

§ 14.3.2 ~~The~~ Provided that the suspension is not due to any act or omission of the Contractor or any person or entity for whose acts or omissions the Contractor may be liable, the Contract Sum and Contract Time shall be equitably adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. 14.3.1. should the Owner later decide to continue with the Project. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and provided that the suspension is not due to any act or omission of the Contractor or any person or entity for whose acts or omissions the Contractor shall also be entitled to the reasonable costs it incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed. ~~executed, as mutually agreed upon by Owner and Contractor.~~

ARTICLE 15 — CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

~~Claims by either the Owner or Contractor must 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. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

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

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (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 such request, and shall either (1) provide a

response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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

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

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

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

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

§ 15.3 MEDIATION

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

ARTICLE 15 CLAIMS AND DISPUTES

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

§ 15.1 DEFINITION

A Claim is defined in Section 9.10.4.

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

§ 15.4 ARBITRATION

§ 15.2 NOTICE OF CLAIMS

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry

Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

§ 15.2.1 NOTICE. So that the Owner can properly measure the quantum of the Claim, the Contractor shall give prompt written notice to the Owner and the Architect/Engineer of any circumstances that give rise or may give rise to a Claim by the Contractor for:

1. an increase in the Contract Sum;
2. an extension of the Contract Time to perform; or
3. compensation for Work performed at the direction of the Owner which the Contractor believes is outside the scope of the Contract Documents.

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

§ 15.2.2 FORM OF NOTICE. The notice of Claim shall be given within the time period established in Section 15.2.3 and shall set forth:

1. the reasons for which the Contractor believes additional compensation will or may be due or additional time should be granted;
2. the nature of the costs involved;
3. the Contractor's plan for mitigating such costs; and
4. if ascertainable, the amount of the potential Claim.

§ 15.2.3 TIMING OF NOTICE. The Contractor shall give such notice promptly so as to provide the Owner an opportunity to remedy any breach or to remove any cause for cost escalation or delay. Claims by the Contractor must be initiated by written notice to the Owner with a copy sent to the Architect/Engineer. Claims by the Contractor must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.3 WAIVER OF CLAIM. The Contractor shall have no claim for damages against the Owner unless notice of such Claim has been given in accordance with Paragraph 15.2 within twenty-one (21) calendar days after the date on which the Contractor has knowledge, or should reasonably have knowledge, of the circumstances giving rise to such Claim. Any Claims shall be made pursuant to the procedures established by this Article 15.

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

§ 15.5 CLAIMS FOR ADDITIONAL COST. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Any change in the Contract Sum resulting from such claim shall be authorized by a Change Order or Construction Change Directive, as the case may be.

§ 15.6 CLAIMS FOR ADDITIONAL TIME. If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.4.4 CONSOLIDATION OR JOINDER

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

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

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

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:10:41 on 04/15/2013 under Order No. 9875627340_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)