DRAFT **AIA® Document A232® – 2019**

General Conditions of the Contract for Construction,
Construction Manager as Adviser Edition

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

«Willow Grove Annex Renovation »
«102 North York Road
Willow Grove, PA 19090»

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

«Skanska USA Building Inc. »
«1010 Spring Mill Avenue »
«Suite 300
Conshohocken, PA 19428 »

THE OWNER:
(Name, legal status, and address)

«County of Montgomery »
«PO Box 311 »
«Norristown, PA 19404 »

THE ARCHITECT:
(Name, legal status, and address)

«Norr Design »
«1617 JFK Blvd, Suite 1600»
«Philadelphia, PA 19422 »

The Project is subject to the requirements of the Pennsylvania Separations Act (53 P.S. Section 1003). These General Conditions, as amended, shall be applicable to the activities and Work of each of the Contractors separately engaged by the Owner as set forth in their respective Agreements.

It is the desire of the Owner to implement and have all of the participants on the Project utilize and adhere to procedures promulgated by the Lean Construction Institute (collectively, the "Lean Procedures") which shall be coordinated by the Construction Manager. Contractor shall refer to Specification Section 01-3200.

Notwithstanding anything to the contrary contained herein, each prime Contractor is responsible for scheduling its day-to-day activities and tasks. Each prime Contractor shall provide schedules and updates to the Construction Manager in a timely manner, who shall prepare and manage the overall Construction Schedule as hereinafter defined. The Construction Manager shall oversee the overall progress of the Work and Project.

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

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

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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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), as amended and consist of the Agreement, Conditions of the Contract (consisting of these General Conditions of the Contract, and any Supplementary and other Conditions) as amended, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of addenda relating to bidding or proposal requirements. The Contractor shall be fully familiar with all documents relating to the Project. In the event of a conflict with other contractors regarding scope as set forth in the bid documents, the Construction Manager shall make an initial determination which shall be binding on the Contractor.

§ 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 or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate the performance of their respective duties. The Owner shall be entitled to performance of the obligations intended for its benefit, and to enforcement thereof. If any Contractor fails to fulfill its responsibilities in the performance of its Work, as described in the Contract Documents, the Contractor shall remain responsible to the Owner for the final completion of the Work and for any damages, losses, costs and expenses incurred by the Owner as a result of claims by a separate contractor engaged by the Owner for the Project. The Contractor acknowledges: a) that the Work is an obligation intended for the benefit of the Owner; and b) that none of the Subcontractors of the Contractor shall have contractual or third party beneficiary rights against the Owner due to any of the Owner's obligations hereunder; and c) each of the prime Contractors engaged by the Owner for the Project may be dependent upon the timely Work of the Contractor. The Contractor shall cause its Subcontractors to so acknowledge in their respective Subcontracts. However, the Owner shall be understood to be a third-party beneficiary of the performance obligations of each and all of the Subcontractors.

§ 1.1.3 The Work. The term "Work" means the construction and services required by the Contract as defined above , whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor and the Subcontractors, Sub-subcontractors at every level, material suppliers and other entities for whom the Contractor is responsible to fulfill the Contractor's obligations, under its Contract, whether on or off the Property. The Work constitutes 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 and which includes construction by other Contractors, and by the Owner's own forces and Separate Contractors.

§ 1.1.5 Contractors. Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

§ 1.1.6 Separate Contractors. Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

§ 1.1.7 The Drawings. The Drawings are the graphic and pictorial portions of the Contract Documents applicable to the Contract and the Work thereunder, whenever issued showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

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

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

§ 1.1.10 Property The Property is the real property and all improvements thereon known as Montgomery County Willow Grove Annex and located at 102 North York Road, Willow Grove, Montgomery County, PA 19090.

§ 1.1.11. Project Site The Project Site is the Property, including the improvements thereon, and the location of the site where the Work by the respective Contractors is to be performed.

§ 1.1.12 Architect's Supplementary Instructions. Supplementary drawings, written instructions or an order for minor modifications of any of the Work issued by the Architect which does not involve an adjustment to the Contract Sum or an extension of the Contract Time.

§ 1.1.13 Addenda. Forms issued by the Architect prior to or after the execution of the Contract which interpret or modify the Bid Documents by additions, deletions, clarifications or corrections.

§ 1.1.14 Bid Documents. The drawings, specifications and other Contract Documents which are issued to prospective bidders for Contracts for the Work – in conformity with the Separations Act and applicable public bidding requirements – including any requests for proposals or other invitations to bid, and related documents that are to be executed and submitted by the Contractor with its bid proposal for the Work for the Project for which the prospective bidder submitted its bid.

1.1.15 Bulletin (or AIA Form G709 - Proposal Request). Form issued by the Architect after the execution of the Contract at the direction of the Owner, requesting a cost proposal for changes in the Work which are outlined and described in the Bulletin, which may also include revised Drawings and/or revised Specifications.

§ 1.1.16 Notice to Proceed. Written authorization to the Contractor from the Owner to commence construction activities pursuant to the Contract applicable to such Contractor. The Notice to Proceed may be delivered in person by Owner to the Contractor or mailed to the Contractor by certified or registered mail, return receipt requested.

§ 1.1.17 Indemnitees. Owner, the Architect, Construction Manager, and each of their respective officers, directors, employees, agents, representatives, successors, and assigns.

§ 1.1.18 Government Authorities (or Authorities Having Jurisdiction or AHJ). Any federal, state, local governmental entity or authority having jurisdiction over the Work, the Project or the Contractor.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents with respect to the Work of the Contractor is to include therein or by reference 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.

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control any 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.

§ 1.2.4 Subject to the provisions of Section 1.2.5, in the event of inconsistencies within or between parts of the Contract Documents applicable to the Work of a Contractor, or between the Contract Documents and applicable standards, codes, and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work, or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation and direction.

§ 1.2.5 The Architectural and Structural Drawings and details shall govern in the event of any conflicts between such Drawings and the Mechanical and Electrical Drawings, but not to the extent of allowing, nor shall the foregoing relieve the Mechanical or Electrical Contractor of responsibility for the omission of any items shown on Mechanical and Electrical Drawings.

§ 1.2.6 The provisions of the Contract Documents applicable to each Contract are binding on the Contractor, Subcontractors, and Sub-subcontractors for all Work shown or indicated on the original Contract Documents applicable thereto plus any additional work authorized by change order, interpretation or field orders pursuant to such Contract Documents.

§ 1.2.7 Should a conflict occur in or between any drawings and/or specifications, the Contractor is deemed to have estimated on and agreed to perform the more expensive way of doing the Work under its Contract. Manufacturer's equipment specifications are based on models and/or construction and installation procedures prevailing at the date of the invitation and/or advertisement to submit bid proposals. Equipment installations requiring modifications due to manufacturer's model and/or construction changes and other variations from the items specified shall be furnished and installed by the Contractor at no additional cost to Owner.

§ 1.2.8 Requests by the Contractor for written interpretations and/or detail drawings shall be made to the Architect in a timely manner such as will allow ample time for their preparation and delivery without causing delays in the Work or the Project. Failure of the Contractor to request needed clarifications and/or in the event of its proceeding with affected work prior to receiving same, shall indicate its acceptance of any and all costs and/or delays required on account of necessary corrections.

§ 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 Instruments of Service, including the Drawings and Specifications, are and shall remain property of the Owner and the Owner will retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. None of the Contractors, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution of any Drawings or Specifications to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights.

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

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§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The Contractor shall use the Architect's standard Digital Agreement.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in Architect's standard 3D Model Release Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees. The Contractor acknowledges that 3D Computer Model is not a part of the Construction or Contract Documents for the Project and that Architect makes no representations or warranties, express or implied, regarding the 3D Computer Model, the accuracy or completeness of the 3D Model or the data and/or information contained therein. Contractor will be required to execute Architect's standard 3D Computer Model release form prior to Contractor's use of said Model

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 Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Contractor recognizes that the Owner is a public body and may only act through its governing body.

§ 2.2 Evidence of the Owner's Financial Arrangements – Intentionally Omitted

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for Building permit and related fee that are the specific responsibility of the Owner under the Contract Documents, the Contractor shall secure and pay for all necessary approvals required for construction, and the performance of its Work. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall cooperate with the Construction Manager as necessary to enable the Construction Manager to secure the building permit. The Contractor shall be responsible for any and all costs associated with road closures, sidewalk closures, parking fees and such other costs related to their Work including, but not limited to those identified in the Contract Documents.

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

§ 2.3.3 The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.4 If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

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§ 2.3.5 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the Project Site, 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 as noted below.

§ 2.3.6 Contractor shall check any surveys and if the Contractor notes any inaccuracies in such surveys with the observable physical conditions of the Property and the Contract Documents, if shall so promptly notify Owner in writing. Contractor assumes full responsibility for timely acquainting itself by visual observation and review of information contained in the documents provided by Owner, Architect and Construction Manager with the location of its Work, with the location of utilities situated on, near or under its Work site or otherwise affecting its Work as shown on the Drawings and Specifications, the soils, subsurface conditions and all other construction activity and conditions presently occurring on the Project Site, as well as that being proposed at the Project Site whether to be performed by another Contractor or otherwise.

§ 2.3.6.1 The Owner shall furnish any information or services under the Owner's control and relating to the Contractor's performance of its Work after receiving the Contractor's written request for such information or services.

§ 2.3.7 The Owner and Contractor shall forward all communications to the Construction Manager.

§ 2.3.8 The Owner shall not be precluded or estopped by any approvals made or given by them under any provision or provisions of any Contract Documents and subject thereto, at any time, either before or after completion and acceptance of the Work thereunder and payment therefor, from identifying true and correct amount and character of the Work performed and materials and equipment furnished by the Contractor and its Subcontractors; nor from showing at any time that the Work or materials, equipment or any parts thereof do not conform to the Drawings and Specifications and the other Contract Documents applicable to the Contractor. The Owner shall have the right to reject the whole or any part of the aforesaid Work or materials and equipment should the said Work be inconsistent and not in compliance with the terms of the applicable Contract, or otherwise improperly performed or defective; and the Owner shall not be precluded or estopped from demanding and recovering from the Contractor such costs, expenses or damages as it may sustain or incur by reason of their failure to comply with the terms of the Contract Documents applicable to the Contractor, or on account of any over-payments made based on any estimate or certificate. Neither the acceptance by the Owner, not any certificate approved for payment of money, nor any payments for, nor acceptance of the whole or any part of the Work by the Owner, nor any extension of time, nor any possession taken by the Owner shall operate as a waiver of any portion of the Contract Documents applicable to the obligations of the Contractor or any power herein reserved by the Owner or any right to damages by the Owner, nor shall any waiver of any breach of the such applicable Contract Documents be held to be a waiver of any other or subsequent breach by the Contractor.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order 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. Owner's exercise of the right described in this section shall not give rise to any extension of the Contract Time nor increase in the Contract Sum. The Contractor shall commence and diligently complete correction of Work, including all Work identified on the Non-Conforming Work list. The Owner shall be entitled to withhold the reasonable value of such Non-Conforming Work from subsequent Applications for Payment should the Contractor fail to commence and diligently pursue correction within ten (10) business days of receipt of notice from the Construction Manager.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out its Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may immediately, without prejudice to any other remedies the Owner may have, correct such default or neglect and hold the Contractor responsible for all costs, and expenses associated therewith, including reasonable professional fees. The Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify any Certificate for Payment in whole or in part, to the extent reasonably

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necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6 Additional Rights

§ 2.6.1 The Contractor shall provide access to the Project Site and the Work so that Owner, Architect, Construction Manager and their representatives may perform their functions under the Contract Documents.

§ 2.6.2 The rights stated in this Article 2 shall be in addition to and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

§ 2.6.3 The Owner shall have the right to occupy, take possession of any/or use, or permit any designated person to occupy or use, any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire Work or such portions may not have expired, but such occupancy, taking possession and use shall not be deemed an acceptance of any Work that is deficient or not completed in accordance with the Contract Documents applicable thereto. Any such occupancy, possession and/or use by the Owner will not relieve any Contractor of its obligation to maintain insurance in acceptance with Article 11 of its Contract.

§ 2.6.4 The Owner's exercise of any of its rights or remedies under any of the Contract Documents, including without limitation, ordering changes in the Work or any portion thereof, or directing suspensions, or correction of the Work or any portion thereof, and regardless of the extent or frequency of the Owner's exercise of such rights or remediates, shall not be construed as interference, active or otherwise, with the Contractor's performance of the Work under its Contract.

§ 2.6.5 The Owner will not be responsible for and will not have control or charge over construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with any of the Work and/or the Project, and Owner will not be responsible for any Contractor's failure to carry out the Work under its Contract in accordance with the applicable Contract Documents and applicable laws, rules and regulations. Owner will not be responsible for or have control or charge over the acts or omissions of any Contractors, Subcontractors, or any of their agents or employees, or any other person performing any of the Work.

§ 2.6.6 The Owner has the authority to reject any portion of the work which does not conform to the Contract Documents applicable thereto or which is otherwise deficient. Whenever, in its sole opinion, Owner considers it necessary or advisable for implementation of the intent of the Contract Documents applicable thereto, Owner will have the authority to require special inspection or testing of the Work in accordance with Section 13.5.2, whether or not such Work is then fabricated, installed or completed. However, neither the Owner's authority to act under this Section, nor any decision made by Owner in good faith, either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of Owner to any Contractors, subcontractor, any of their agents or employees, or any other person performing any of the Work.

§ 2.6.7 In the event the Owner or Construction Manager determines that the progress of the Work affecting the critical path of the Agreed Construction Schedule is behind or otherwise does not comply with the progress set forth in the Agreed Construction Schedule due to delays of any Contractor or its Subcontractors in performing the Work under its Contract pursuant to the Agreed Construction Schedule, such Contractor is not entitled to receive an extension of the Contract Time or any additional compensation in accordance with the Contract Documents. Such Contractor shall submit to the Owner and Construction Manager for their approval a "recovery Plan" within 5 business days of request by the Construction Manager which will indicate the manner in which such Contractor intends to get its Work back on schedule in accordance with the Agreed Construction Schedule, which may include, without limitation, increasing the number of workmen performing the Work, utilizing overtime work and requiring additional work shifts and such other information as the Construction Manager may require. Such plan shall be implemented within twenty-four hours of the Construction Manager's approval. The costs and expenses of preparing and implementing the Recovery Plan shall be borne solely by the Contractor and shall not be subject of a Change Order modifying the Contract Time or the Contract Sum. In addition, the Contractor shall bear responsibility for any and all costs, damages, losses, and expenses of the Owenr, including professional fees, in

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connection with any Change Orders or claims by other Contractors arising out of or related to delays or impacts from the Contractor failing to comply with the progress set forth in the Agreed Construction Schedule ("Impact Costs'). The Owner shall be entitled to offset such Impact Costs against any sums due the Contractor or if sufficient Contract Sums are not remaining, the Contractor shall pay the Owner for the Impact Costs within seven (7) days of written demand.

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, unless other noted. 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.

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§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor, except for such activities or duties specifically assumed by Owner under any of the Contract Documents.

§ 3.1.4 Except as and to the extent specifically provided in § 2.3 and § 9.7, each Contractor shall proceed diligently with the performance of the Work under its Contract at all times in accordance with the Contract Documents applicable thereto. Such performance shall continue despite any disputes or delays and pending resolution of any request for relief, claim, appeal or other legal or equitable action related to the Contract. Contractor acknowledges and agrees that the timely provision of schedule updates and information is necessary for the overall success of the Project and will be responsible for any and all damage, costs and expenses arising out of its failure to do so. In no event shall Contractor delay the Project in the event of a good faith dispute.

§ 3.2.1 Execution of the Contract by the Contractor is a representation that:

.1 Contractor has examined all of the applicable documents pertaining to the Work under its Contract and the Project Site.

.2 Contractor has visited the Project Site, has familiarized itself as to the Work to be performed by the Contractor and by the other Contractors on the Project, and job conditions, and has satisfied itself as to the accessibility to and general character of the Project Site, the nature of the Work under its Contract, visible conditions of any existing buildings and structures at the Project Site, the location of all utilities, the character of the equipment and facilities needed preliminary to and during prosecution of the Work under its Contract, the general and local conditions under which such Work is to be performed, construction hazards, and all other matters which could in any way affect the construction means, methods, techniques and procedures involved in the Contractor's Work under the Contract Documents applicable thereto, and has correlated its observations with the requirements of the Contract Documents applicable to such Work. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed including without limitation (a) the location, condition, layout, nature of the Project Site and surrounding areas, including space available for the storage or placement of its on-site offices, materials and equipment as well as the other Contractors, as determined and coordinated by the Construction Manager, (b) generally prevailing climatic conditions, (c) anticipated labor supply and cost, (d) availability and cost of materials, tools and equipment and (e) other similar issues unless specified in the Contract Documents. The Owner assumes no responsibility or liability for the safety conditions of or at the Project Site or any thereon in connection with the Project. Contractor has satisfied itself by its own investigation and research regarding the materials and equipment to be furnished by it and as to the meaning and intention of the Drawings and Specifications and these General Conditions, and other Contract Documents, referred to herein. Contractor has based its decision to execute its Contract and the other Contract Documents on its review of the Contact Documents, its own investigation and observations and the information it has obtained from the Bid Documents, Owner, Architect or others and reviewed to its own satisfaction. No verbal agreement or conversation with any representative of Owner, either before or after the execution of its Contract shall affect or modify

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any of the terms, conditions or obligations contained in the Contract and other Contract Documents. Contractor is not relying on any representations by Owner or any other party with respect to its Work under its Contract and any of the obligations, responsibilities or liabilities imposed upon the Contractor in the Contract Documents.

.3 Contractor is fully aware of the critical time restrictions for performance and completion of its Contract, and of the importance for its coordination of its scheduling and performance of its Work with the Construction Manager and with those of the other Contractors working on the Project.

.4 Contractor is fully aware of the state, contents and provisions of the Specifications and Drawings, and other Contract Documents, as of the date of this Contract

.5 Contractor is an expert in planning and performing major construction such as the Project and the Work to be performed under its Contract, and in working on multiple prime contract projects such as the Project.

§ 3.2.2 The Contractor shall, prior to starting each portion of its Work and thereafter during the course of such Work, carefully study and compare the Contract Documents applicable thereto with each other and with information furnished by the Owner pursuant to § 2.2.3 and shall at once report to the Architect any errors, inconsistencies or omissions discovered or which the Contractor should have discovered therein or relating thereto, as well as any variance form applicable laws, statues, ordinances, building codes, rules, regulations or any lawful orders of any governmental body or public or quasi-public authority, which the Contractor know or should have known of such error, inconsistency, omission or variance, and failed to timely report it in writing to the Architect. If the Contractor performs any construction activity which it knew or should have known involved an error, inconsistency, omission, or variance in the Contract Documents without such prior notice to the Architect, the Contractor shall assume responsibility for such performance and shall bear all the attributable costs for correction irrespective of the cause or source thereof.

§ 3.2.3 The Contractor shall take field measurements and verify field conditions relating to the performance of its Work and shall carefully compare such field measurements and conditions relating to the performance of its Contractor with the Contract Documents before commencing activities. Survey drawings describing utility locations are included with the Contract Documents for information purposes only. The Contractor shall, not less than seven days prior to commencing activities, notify or inform the Pennsylvania One Call System of the commencement of any activities relation to its Work that will or may disturb utility service. Errors, inconsistencies or omissions discovered as the result thereof shall be reported to the Architect, Construction Manager and Owner at once, and the Contractor shall not proceed with its Work until written instructions have been received from the Architect. .

§ 3.2.4 Contractor shall promptly notify Architect, Construction Manager and Owner, in writing, of materials, systems, procedures or methods of construction either shown on the Drawings or specified on the Specifications which the Contractor reasonably believes are incorrect or inappropriate for the purposes intended, or for which Contractor objects to furnishing the warranties required by the applicable Contract Documents. Architect, Construction Manager and Owner will make a determination of such matters in writing. Contractor shall be responsible for any additional costs resulting from its failure to promptly notify Architect, Construction Manager and Owner in writing that such materials, systems, procedures and methods are incorrect or inappropriate to the extent Contractor was aware thereof

§ 3.2.5 The Contractor shall perform its Work in accordance with the Contract Documents applicable thereto and shop drawings and other submittals relating thereto reviewed pursuant to § 3.12. The Contractor shall make no changes therefrom without prior written acceptance by the Construction Manager and Owner. Where there is an ambiguity or discrepancy, or where detailed information is lacking, the Contractor shall inquire of and refer to the Owner, Construction Manager and Architect for clarification or information before ordering any products or proceeding with its Work. The Contractor shall perform its Work reflecting the correction of such errors, inconsistencies, and omissions subject to upon Owner's execution of appropriate Change Order therefore. Work ordered, fabricated or constructed by the Contractor, when the Contractor Documents do not clearly specify in detail the Work to be done or where the Work conflicts with such Contract Documents without is the issuance of such Change Orders, shall be corrected by Contractor without claim for an increase in the Contract Sum or an extension of the Contract Time. Recommendations of Architect with regard to such ambiguities or discrepancies shall not make Architect an arbitrator to establish the responsibilities of the Subcontractors to the Contractor with regard to the Subcontractors' portions of its Work.

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§ 3.2.6 The Contractor shall furnish, without claim for an increase in the Contract Sum or Contract Time, all work and materials not mentioned or shown, but reasonably inferable from the Contract Documents applicable to its Contract as necessary for the proper execution and completion of its Work. The Contractor shall furnish, without claim for an increase in the Contract Sum or Contract Time, any work and material not mentioned in or shown, required to conform the Contractor's Work to all applicable laws and rules and regulations involving construction means, techniques, methods and procedures promulgated by all federal, state, and local governmental and quasi-governmental agencies having jurisdiction over its Work. Except for design responsibility related to its means and methods of construction and delegated design and engineering specifically required by the Contract Documents as outlines in Section 3.12.10.1, nothing in this paragraph shall be construed to impose upon the Contractor any responsibility for the design of its Work, which the Owner acknowledges shall be the responsibility of the Architect.

§ 3.2.7 Dimensions indicated on the Drawing applicable to the Contractor's Work are required dimensions, regardless of measurement per given scale. The Contractor shall verify at the Project Site necessary levels, measurements, etc. for complete fabrication, assembly and installation, fitting of equipment, fixtures and its Work. Where dimensions are not indicated and the exact location is not apparent, the Contractor shall promptly notify the Architect, Construction Manager and Owner, and the Architect shall compute the required measurements. Inadvertent discrepancies, or contradictions, or omissions of details, figures or notes of one drawing which are correctly given on another drawing shall not be cause for additional charges or claims by the Contractor or a change in the Contract Time.

§ 3.3.1 In conjunction with and subject to the overall direction and coordination by the Construction Manager of the Contractor's Work being performed at the Project, the Contractor shall supervise and direct Work in collaboration and cooperation with the Construction Manager and other Contractors as provided in these General Conditions, using the Contractor's best skill and attention provided, however, the Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for performing and coordinating all portions of the Work under its Contract.

§ 3.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing any portions of the Contractor's Work for, or on behalf of, the Contractor or any of its Subcontractors ot claiming by, through or under the Contractor, and for any damages, arising out of relating to and/or resulting from performing portions of the Contractor's Work under a contract with the Contractor.

§ 3.3.4 Notwithstanding any provision of these General Conditions, the Contractor shall not be relived of any obligations to perform its Work in accordance with the Contract Documents applicable to its Contract either by the activities or duties of the Owner, Construction Manager the Architect in their administration of the Contract, or by any tests, inspections or approvals required or performed by persons other than the Contractor

§ 3.3.5 The Contractor shall be responsible for laying out its Work and shall be responsible for all lines, elevations and measurements of its Work. The Contractor must exercise proper precautions to verify all figure shown on the applicable Drawings before laying out its Work and will be responsible for any errors or omissions resulting from the failure to exercise such precautions.

§ 3.3.6 Contractor shall not cause or permit any disruption to the streets and utilities serving any occupied portion of the Project, the remainder of the Project, work being performed by other Contractors on the project or other properties (whether or not owned by the Owner or part of the Property) without Owner's prior consent which may be conditioned upon restrictions in the time, place and manner of such disruption.

§ 3.3.7 The Contractor shall review the construction schedules, shop drawings, product data, samples and reference standards for the work of each Subcontractor to properly execute and complete the Contractor's Work without discrepancy where the work of one trade or Subcontractor joins, or is on or impacts the work of another trade or Subcontractor. The Contractor shall coordinate the relations and activities of the various Subcontractors and trades for the orderly prosecution and progress of its Work and shall ensure that required anchorage, blocking or other interactive elements are furnished and set at proper times in accordance with the detailed requirements for the proper execution of the Contractor's Work.

§ 3.3.8 Every trade or Subcontractor preparing to work in an area previously prepared or worked upon by another trade or Subcontractor sha;; review and approve the previously installed Work and the area prior commencing, and

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shall not commence their Work in the event that previously installed Work was not performed properly. Contractor ensure that any allegedly unsatisfactory conditions in the previously installed Work and/or are reported to the Construction Manager and Owner and that no Work is done in the affected area until the unsatisfactory conditions have been eliminated or corrected. Commencement of Work by a trade or a Subcontractor of the Contractor shall constitute approval and acceptance of the prior Work and the area by the Contractor and the trade or Subcontractor.

§ 3.3.9 Owner, the Contractor, Construction Manager and Architect, or any of them, shall hold meetings at the Project Site at such times as the Owner requests, including, without limitation with the Contractor and the other Contractors involved with the Project.

§ 3.3.10 Where the Contract Documents applicable to the Contractor's Work refer to particular construction means, methods, techniques, sequence or procedures or indicate or indicate or imply that such are to be used on the Contractor's Work, such mention is intended only to indicate that the operations of and as determined by the Contractor shall be such as to produce the quality of Work implied by the operations described, but that the actual determination of whether the described operations may be safely or suitable employed on the Work shall be the responsibility of the Contractor, who shall notify the Architect and Construction Manager in writing of the actual means, methods, techniques, sequences or procedures which will be employed on the Work if these differ from those mentioned in such contract Documents. All loss, damage or liability, or cost of correcting defective Work of the Contractor arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Contractor, notwithstanding that such construction means, methods, techniques, sequences or procedures are referred to, indicated or implied by the Contract Documents applicable to the Contractor's 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 its Work, whether temporary or permanent and whether or not incorporated or to be incorporated in such Work.

§ 3.4.2 Intentionally omitted.
§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out its Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractors and their employees cannot engage in behavior that is rude, threatening, or offensive. Harassment of any type, including sexual harassment is strictly prohibited. Abusive, derogatory, obscene or improper language, gestures, remarks, whistling, cat calls or other disrespectful behavior shall not be tolerated by the Contractor.

§ 3.4.4 The Contractor will be held to be reasonably familiar with all conditions affecting the labor to be utilized by the Contractor in performing its Work on the Project, including but not limited to unions, incentive pay, working conditions, procurement, living and community conditions. The Contractor shall hereby assume responsibility to the Owner for all costs resulting from the failure to verify all conditions potentially affecting its labor for the Project. The Contractor shall be responsible for the maintenance and observance of sound labor practices by its own force in performing its Work, and shall be responsible for the observance of sound labor practices by its Subcontractors and all other Sub-subcontractors, vendors and suppliers performing its Work, and shall comply with the terms of all labor agreements to which it is bound and take all steps necessary to avoid labor disputes and the potential delay and disruption arising therefrom.

§ 3.4.5 All material and equipment delivered to Project Site shall be so stored, handled and secured as to preclude loss, theft, intrusion of any foreign substance or causing of any discoloration or other deterioration therein and to prevent any damage thereto which might reduce its effectiveness and/or warranted condition as part of the Contractor's Work. Any damaged or rejected material or equipment shall be immediately removed from the Project Site.

§ 3.4.6 All Work described or required as part of the Contractor's Work shall be executed in a neat, skillful, workmanlike manner in accordance with the best recognized trade practices, and the applicable Contract Documents and governmental laws, rules, regulations and ordinances. Only competent workmen who satisfactorily perform their duties shall be employed by the Contractor on the Project and, when requested by Owner, the Contractor shall

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discharge and shall not re-employ on the Project any person who commits trespass or who is, in the Owner's opinion, disorderly, dangerous, insubordinate, incompetent or otherwise objectionable.

§ 3.4.7 Any material or equipment specified in the Contract Documents applicable to the Contractor's Work by reference to the number, symbol, or title of a specific standard such as that of the American Society for Testing Materials (ASTM), a Product or Commercial Standard, Federal Specification or other similar standards, or where the applicable Specifications contain no revision date, shall comply with the requirements of the latest revision thereof and any supplement or amendment thereto, in effect on the date of receipt of bids. The standards referred to, except as specifically modified in the applicable Specifications, shall have the same force as if they were printed in full context within the Specifications.

§ 3.4.8 Where it is required in the Specifications that materials, products, processes, equipment or the like to be installed or applied in accordance with the manufacturer's instructions, directions, or specifications or words to this effect, it shall be construed to mean that said application or installation shall be in strict accordance with current published instructions furnished by the manufacturer of the materials, products, processes and/pr equipment concerned for use under conditions similar to those at the Contractor's Work site, Unless other stated, the Contractor shall furnish one (1) copy of each of instruction to Owner, the Construction Manager, and the Architect.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager, and Architect that all materials and equipment furnished and installed under the Contract will be of good quality and new unless the Contract Documents appliable thereto require or permit otherwise. The Contractor further warrants that its Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of such Work that the Contract Documents require or permit. Work, materials, or equipment provided as part of the Contractor's Work not conforming to these requirements shall be considered defective. The Contractor's warranty relating to its Work excludes remedy for damage or defect caused by abuse, alterations to its 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, Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor shall coordinate all of its Work of like material in order to produce harmony of matching finishes, textures, colors, etc., throughout the various components of its Work and the Project Notwithstanding anything to the contrary contained in this § 3.5.1, the installation of finish materials in and as part of the Contractor's Work, including without limitation, brick, stone, glass or wood, that have a naturally occurring variation in appearance, color, grain or texture, shall be considered defective work if, in the opinion of Owner, Construction Manager or Architect, the result of such installation detracts from the appearance or aesthetic quality of the Contractor's Work or the Project, or any portion thereof. Prior to the installation of any such finish materials in and/or as part of the Contractor's Work, the Contractor shall submit a variety of samples of such finish materials to the Owner, Construction Manager and Architect. The Owner, Construction Manager and Architect shall inspect the samples and shall approves of a range of naturally occurring variations in appearance, color, grain, or texture for such materials. Finish materials that are submitted by the Contractor as provided above and within the range approved by Owner, Construction Manager and Architect shall not be considered defective.

§ 3.5.1.1 In addition, the Contractor agrees to perform its Work in such a manner so as to preserve any and all manufacturer's and other warranties or guarantees applicable thereto. The Contractor shall furnish seventy-two (72) hour callback service for all equipment provide by Contractor as part of its Work for a period of one (1) year after the making of final payment for and acceptance of its Work; provided, however, that notwithstanding the foregoing, the Contractor shall provide prompt emergency call back service for all pumping systems, security systems, emergency generator, electric switch gear, smoke exhaust fans, chillers, domestic water heaters and all other vital systems included within its Work.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. Any fee required for the transfer of any Warranty or Guarantee shall be the sole responsibility of the Contractor.

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§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof 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. The Owner is tax-exempt and all tax refunds shall inure to the benefit of the Owner.

§ 3.7 Permits, Fees, Notices, and Compliance with Laws**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, and with cooperation from the Contractor, shall secure and pay for the building permit. The Contractor shall secure and pay for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of its Work that are customarily secured after execution of the Contract and legally required at the time bids are received, and shall pay all fees and charges for connections to outside utility and other services; the use of municipal or private property for the storage and/or placement of its materials, parking, storage or personnel trailers or similar facilities; all utility services, temporary obstructions, enclosures, opening and patching of streets, etc., off of the Property arising from or related to the performance and completion of its Work.

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

§ 3.7.3 If the Contractor performs Work when it knew or should have known it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of governmental authorities, the Contractor shall assume full responsibility for such Work and shall bear the costs attributable hereto.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor contends that the actual Project Site or Work site conditions differ materially from the Project Site or Work site conditions disclosed by the Owner to the Contractor in the Contract Documents or ascertainable upon visual observation thereof by the Contractor, the Contractor shall promptly give written notice to the Owner, Architect and Construction Manager of (1) any subsurface or latent physical conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents known physical conditions at the Project Site or Work site of an unusual nature that differ materially from those ordinarily encountered to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, or (3) the existence of toxic or hazardous materials or substances not specifically described and identified in the Contract Documents, the Contractor shall promptly provide notice thereof to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 48 hours after the Contractor's first observance of the conditions. The Owner, Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they after receiving such notice. If the condition encountered as the result of such investigation do not differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, the performance of any part of the Contractor's Work pursuant to the Contract Documents applicable thereto, whether or not changed as the result of the conditions, a mutually agreed upon adjustment shall be made in the Contract Sum, and/or Contract Time if applicable, pursuant to the Contractor's Contract. If the Owner, Architect, in consultation with the Construction Manager, if applicable, pursuant to the Contractor's Contract. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or the Contract Time, any adjustment relating thereto shall be subject to further proceedings and to the claims and dispute resolution process as provided in Article 15. Notwithstanding anything set forth herein to the contrary, the Contractor shall not be entitled to an adjustment in the Contract Sum or the Contract Time if such unknown or concealed condition(s) is: (i) of a usual nature or does not differ materially from those ordinarily encountered and generally recognized as inherent in construction activities of the character provided for in the Contract Documents; (ii) not materially different from those conditions disclosed or which reasonable should have been discerned or anticipated by the Contractor's prior work, inspection, test and reviews; or (iii) of a nature which the Contractor or any of its Subcontractor or Sub-subcontractors should reasonably know or anticipate based on any of the foregoing.

§ 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, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action, if any, necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations affected by such discovery until otherwise instructed by the Owner but shall continue with all other operations that do not

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affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 A copy of the building permit(s) applicable to the Contractor's Work shall be delivered to the Architect, Construction Manager and Owner as soon as it is obtained. Upon final completion of its Work, the Contractor shall deliver all original permits, licenses and certificates relating to such Work to the Owner and shall deliver photocopies thereof to the Construction Manager and Architect.

§ 3.7.7 The Contractor shall give all notices and comply with all federal, state and local laws, ordinances and regulations bearing on the Contractor's mean, methods, techniques or procedures of the Work under its Contracts exist as of the date of the Contract, or as may be thereafter enacted during the prosecution of its work by any Governmental Authorities having any jurisdiction or authority over the Work and the performance thereof. The Contractor shall indemnity and hold harmless the Indemnitees against any claim or liability (and any and all related costs, expense or attorneys' fees) arising form, or based on, the violation of any such laws, ordinances, regulations, orders or decrees, whether by itself or its Subcontractors, Sub-subcontractors, supplies or employees.

§ 3.7.7 The Contractor shall consult with the appropriate departments of the Government Authorities form time to time to ensure that it has satisfied and is satisfying all conditions and requirements of the Government Authorities with regard to the performance and inspection of its Work, and shall use its best efforts to expedite resolution of any conflicts and discrepancies concerning any inspection and performance requirements for issuance of certificates of occupancy relating to its Work. The Owner, Construction Manager and Architect will provide their full cooperation in connection therewith. Any such conflicts or discrepancies which the Contractor may discover at any time shall be promptly brought to the attention of the Owner, Construction Manager and Architect and shall be resolved immediately by the Contactor in consultation with the Owner, the Construction Manager, the Architect and the Government Authorities involved.

§ 3.7.8 Within ten (10) days of Owner's request, the Contractor shall execute and deliver to Owner a certificate addressed to Owner confirming the compliance of the Contractor's Work with the applicable Contract Documents and applicable laws and regulations, the status of completion of its Work, the status of any payment and defaults relation to its Work, and such other matters as Owner may request.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Document. 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 Project Site, all labor and all required taxes, less applicable trade discounts; and
- **.2** Whenever the actual costs attributed to any allowances; and
- **.3** are more than or less than the amount of such allowance, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs incurred and the respective amounts of the allowances established under §3.8.2.1.

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

§ 3.9 Superintendent and Project Manager

§ 3.9.1 The Contractor shall employ a competent Project Superintendent and necessary assistants, all of whom shall be in full-time attendance at the Project Site during the performance of the Contractor's Work and maintain their sole office at the co-location space provided by the Owner which shall be onsite. The Contractor shall also employ a Project Manager on a full-time basis at the Project Site to oversee the entire Work of the Contractor. The Project Manager(s) and Project Superintendent(s) shall be fully dedicated to this project. Such persons shall not be changed without the prior written consent of the Owner unless any of them shall cease to be in the Contractor's employ. Upon reasonable request of the Owner, the Contractor shall remove from the Project any member of the

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Contractor's staff or other employee of the Contractor who, in the Owner's sole opinion, is incompetent, uncooperative, or fails to satisfactorily discharge the Contractor's responsibilities under the Contractor's Contract, or is otherwise reasonably objectionable to the Owner, Construction Manager or Architect. The Contractor shall promptly provide replacements for such removed individuals, who shall be satisfactory to the Owner. The cost and expense of effecting such replacements shall be paid for by and the sole responsibility of the Contractor, as part of its overhead costs, unless the removal was at the Owner's request for reasons other than that the staff member or other employee was incompetent, uncooperative, or failed to satisfactorily discharge the Contractor's responsibilities under its Contract. The Project Superintendent and Project Manager shall represent the Contractor, and all communications given to the Project Manager or Project Superintendent shall be binding as if given directly to the Contractor. The Contractor's Safety Manager shall visit the site on a regular basis and as necessary to ensure the safe performance of Contractor's Work.

§ 3.9.2 The Contractor's Project Manager and Superintendent shall devote himself or herself full time to this Project and the Contractor's Work and shall maintain his or her offices in the Co-Location space. The Co-Location space will be an on-site trailer designated as the Project Office. The Project Manager and Project Superintendent shall direct, coordinate, and supervise all of the Contractor's Work under its Contract and shall inspect all material and equipment delivered to the Project Site and shall cause the immediate removal from the Project Site of all non-conforming material and equipment which is under the care, custody and control of the Contractor, its Subcontractors or anyone for whose acts it is liable. The Contractor's Project Manager and Project Superintendent shall utilize a co-location space provided by the County which will be shared with the Construction Manager and the other Contractors. No Contractor's trailers will be permitted on site. It is anticipated that the Contractors will utilize this as an opportunity to meet informally on a regular basis to discuss the Project, and their respective portions of the Work for the Project, to plan for sequencing of their Work and to provide for cooperatively anticipating, avoiding and resolving potential unforeseen events and contingencies in order to mitigate the delay and/or cost effect of such events or contingencies

§ 3.9.3 The Owner shall be entitled to withhold the sum of $250 per business day for failure or refusal to utilize the co-location costs in order to cover the additional administrative time. The Contractor shall participate in meetings with other Contractors at the Co-Location space in order to facilitate informal planning, coordination, sequencing discussions, and collaborative problem solving among all contractors.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for its Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Contractor's Work to completion and shall not exceed the then current time limits under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Contractor's Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of the other Contractors, or the construction or operations of or by the Owner's own forces or Separate Contractors. The Contractor shall provide updated schedule information upon request and in a timely manner.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Owner, Construction Manager's and Architect's approval. The Owner, Architect and Construction Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, refer to §3.10.1, and (2) allow the Owner, Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall cooperate with the other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager, for the entire Project (the "Approved Project Schedule"). The Contractor shall make

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revisions to its construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the schedule for the overall Project.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent construction schedules submitted to and approved by the Owner, Construction Manager, and Architect, and incorporated into the approved agreed Work schedule, for the performance of the Contractor's Work ("Approved Work Schedule"), and the Contractor's submittal schedule, and provide monthly updating thereof showing progress in its Work in comparison to the time limits current under the Contract Documents. As part of their efforts regarding the adoption and implementation of Lean Procedures, it is anticipated that the Contractors will work in a coordinated manner in the development and implementation of their respective Approved Work Schedules to sequence and coordinate their respective Work so as to minimize delay and the cost of re-handling of materials and equipment, and to anticipate, avoid and resolve potential unforeseen events and contingencies in order to mitigate the delay and/or cost effect of such events or contingencies.

§ 3.10.5 The Contractor shall prepare for presentation at each regular construction meeting with the Owner, Construction Manager and Architect an activity look-ahead schedule delineating the construction activities by Contractor planned to occur in the subsequent two weeks, and the relation of these activities to the time limits current under the Contract Documents applicable to the Contractor's Work as reflected in its Approved Work Schedule. Consistent with Lean construction principles to be utilized on the Project, the Contractors shall, with the Construction Manager, meet and confer weekly regarding the development and implementation of their respective Approved Work Schedules, and the Approved Project Schedule, to identify potential delays or obstructions, and to develop a plan of action to address them and/or to provide alternative areas within which Work can be performed while unexpected events or contingencies are being addressed.

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Owner, Construction Manager, Architect, and Owner, and delivered in good condition in a single properly organized and complied package to the Construction Manager and Architect for their use in preparing record documents and for submittal to the Owner upon completion of the Contractor's Work and before final payment is made under its Contract to the Contractor as a record of the Contractor's Work as constructed.

§ 3.11.2 Record drawings shall be kept clean, and notations shall be made on them using clear, concise drafting techniques acceptable to the Architect.

§ 3.11.3 The Contractor shall also maintain at the Project Site for availability to the Owner, Construction Manager and Architect, all inspection reports and other written communications relating to is Work between and among the Architect, Construction Manager, Contractor and its Subcontractors, Sub-subcontractors, materials suppliers, etc.

§ 3.12 Shop Drawings, Product Data, and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for its 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 its Work.

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of its Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of§4.2.10 through §4.2.12. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive

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action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by such Contract Documents, in accordance with **the Project** their submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Contractor's Work or in the activities of the other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by the other Contractors.

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional and who has and shall maintain professionally liability insurance of no less than $2,000,000 or such higher limits as required under the OCIP Manual. 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, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

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

§ 3.13 Use of Site

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

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the Project Site. The Contractors shall meet and confer with the Construction Manager and each other no less than weekly regarding the coordination and planning of delivery and storage of their materials and equipment, and develop coordinated plans to enable each of the Contractors to minimize the need for advance delivery and storage of materials and equipment, and render more efficient the ordering and delivery of such materials and equipment to minimize handling and maintenance before staged for use in the performance of the Work of the respective Contractors at the Project Site.

§ 3.13.3 The Contractor and all of its Subcontractors and Sub-subcontractors shall keep their respective employees out of any areas that are not necessary for actual performance of the Contractor's Work.

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of stored materials, stored waste materials and rubbish stored caused by operations or activities under or related to the Contractor's Contract. At completion of its Work, the Contractor shall remove all items including, but not limited to, waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials of the Contractor's and/or its Subcontractor and Sub-subcontractors from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Construction Manager with the Owner's approval, may cause such to be done and the Owner shall be entitled to reimbursement therefore from the Contractor. In the event that clean-up is due to one or more Contractors, the Owner shall apportion the costs among the responsible Contractors.

§ 3.15.3 Each Contractor shall be responsible for all glass broken, materials, finishes, etc. damaged by its own forces or its Subcontractors and Sub-subcontractors and, at and before completion of its Work, as directed by Owner, shall replace such damaged items or broken glass. After such broken glass has been replaced or other damages repaired or replaced, the Contractor shall remove all labels, wash, and polish both sides of all glass. Further, in addition to general broom cleaning of its Work site, the Contractor shall perform the final cleaning for all trades involved with the Contractor's Work immediately upon completion of its Work, which shall include, but not be limited to, the following: (a) remove temporary protections; (b) remove marks, stains, fingerprints and other soil or dirt from painted, decorated, and natural-finish woodwork and other portions of its Work; (c) remove spots, mortar, plaster, soil and paint from ceramic tile, marble, and other finish materials and wash or wipe clean; (d) clean fixtures,

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cabinet work and equipment, removing stains, paint, dirt, and dust and leave in undamaged, new condition; (e) clean aluminum in accordance with recommendations of the manufacturer; and (f) clean resilient floors thoroughly with a well-rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring the surfaces to sheen. All remediation work shall be performed so as to preserve manufacturer's warranties.

§ 3.15.4 Costs incurred by Owner under this § 3.15 shall be deducted from any amounts otherwise due to the Contractor under its Contract, or at Owner's option, reimbursed by Contractor to Owner immediately following Owner's demand.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager, and Architect with access to its Work in preparation and progress wherever located. The Contractor shall not set up cameras at the Project Site without the prior written consent of the Owenr.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees relating to its Contract and the Work thereunder. The Contractor shall defend all suits or claims for infringement of any copyrights and patent rights and shall hold the Owner, Construction Manager, and Architect harmless from loss on account thereof, (including but not limited to, attorney's fees and any litigation costs and expenses) but shall not be responsible for defense or loss resulting 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, Architect, or Construction Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall promptly advise the Architect and Owner through the Construction Manager, in the absence of which timely notice the Contractor shall be responsible for such defense or loss.

§ 3.18 Indemnification

§ 3.18.1 The Contractor agrees to indemnify and defend and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them (collectively "Indemnitees" or individually "Indemnitee") from and against any and all claims, demands, causes of action, damages, liabilities, losses, and/or expenses, including without limitations, attorneys' and consultants' fees, and related costs and expenses attributable to any

.**1** bodily injury, sickness, disease or death,

.2 injury to or destruction of tangible property (other than Contractor's Work itself, including the loss of use resulting from herein;

.3 governmental fines and/or penalties arising out of the performance of the Contractor's Work;

.4 corrective measures required under the Federal Occupational Safety and Health Act (hereafter referred to as OSHA);

.**5** delay in completion of the Contractor's Work beyond the Contract Time therefor, as defined in Article 8, caused by proceedings under OSHA or otherwise;

.6 any and all damages, costs and expenses associated with any delay, hinderance or impact to the work of other Contractors; and

.7 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. This indemnification agreement shall be applicable, and the Indemnitees shall be indemnified, regardless of whether or not such claim, demand, cause of action, damage, liability, loss or expenses is caused in whole or in part by and Indemnitee, subject to the terms of Section 3.18.3 or Section 3.18.4.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, a Sub-subcontractor, materialman or supplier, or 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 or other such employer under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 The Contractor shall defend each Indemnitee, through counsel approved by such Indemnitee or the majority of such Indemnitees (if applicable), in any action, proceeding or arbitration brought against the Indemnitees(s) by reason of any such claim described in this Section 3.18. The Contractor's obligation to defend and Indemnitee shall

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not (a) extend to any action, proceeding, or arbitration that asserts or alleges only that the injury to the claimant resulted solely from the negligence or willful misconduct of the Indemnitee, and from no other cause, although the Contractor shall bre responsible for all attorneys' fees, costs and expenses relating to the defense of the Indemnitee(s) in the event it is not determined that such injury is solely caused by the negligence or willful misconduct of the Indemnitee(s), or (b) if a final judgment is obtained establishing that the claim for which indemnity is sought resulted solely from the negligence or willful misconduct of the Indemnitee, in which latter event Contractor's obligation to defend the Indemnitee shall cease upon the date such judgment becomes final, and the Indemnitee shall thereupon and thereafter reimburse Contractor for its reasonable attorneys' fees and court costs in so defending the Indemnitee.

§ 3.18.4 If any claim, any other demand for payment or security therefor, including claims or demands upon performance and payment bond sureties for the performance of the Contractor under its Contract, is made or filed with the Owner or the Property, by any person claiming that the Contractor or any Subcontractor, Sub-subcontractor or supplier or any other person claiming under them or any of them has failed to properly and timely perform its contractual obligations or to make payment for any labor, services, trust fund contributions, materials, equipment, taxes, or other items furnished or obligation incurred for, or in connection with the Contractor's Work, or if at any time established, the Owner or Property might become liable, and provided that the Owner has previously paid Contractor for the Contractor's Work for which the claim or other demand for payment has been made (less the applicable retainage, and unless Owner is otherwise permitted to withhold such payment in accordance with the terms of Section 9.5.1), then the Owner shall have the right to retain from any payment then or thereafter due under the Contractor's Contract or, at the Owner's sole option, to be promptly reimburses by the Contractor upon demand for an amount sufficient to (i) satisfy, discharge, and defend against any such claim or other demand, or any action or proceeding thereon that may be brought to judgment or award (ii) make good any such nonpayment, nonperformance, damage, failure, or default; and (iii) compensate the Owner for and indemnify it against any and all losses, liabilities, damages, costs and expenses (including attorneys' and consultants' fees and costs) sustained or incurred in connection therewith.

§ 3.18.5 In the event that the Contractor fails or refuses to indemnify any Indemnitee hereunder, in addition to all other obligations and upon an adjudication in favor of an Indemnitee, the Contractor shall be responsible for all costs associated with the enforcement of theses indemnification obligations including all attorneys' and expert fees and costs.

§ 3.19 Meetings

The Contractor shall send its qualified representative to periodic meetings or web meetings at the option of the Owner relating to the Project and/or Contractor's Work held at such time and at such place as the Architect, Construction Manager or the Owner shall designate. Prior to and in anticipation of such meetings, the Contractors, with the Construction Manager, shall meet and confer about the activities on the Project Site and the progress of the Project, and discuss ways to maintain and improve the progress of the Project and anticipate potential delay events, obstructions or other contingencies that might affect the Approved Project Schedule and their respective efforts on the Project Sites.

§ 3.20 Default

§ 3.20.1 The Contractor shall be in default of its Contract, and its duties and obligations thereunder, if:

- **.1** Contractor becomes insolvent, is adjudged bankrupt, or makes a general assignment for the benefit of its creditors, or becomes subject of any proceeding commenced under any statute or law for the relief of debtors, but only to the extent permitted by law; or
- **.2** a receiver, trustee or liquidator of any of the property or income of the Contractor shall be appointed, but only to the extent permitted by law; or
- **.3** Contractor refuses or fails to prosecute its Work in accordance with the applicable Contract Documents; or
- **.4** Contractor refuses or fails to timely supply enough properly skilled workers or proper material; or
- **.5** Contractor fails to make proper payment when due to Subcontractors or otherwise for materials or labor under its Contract in accordance with the respective agreements between the Contractor and the Subcontractors (provided Owner shall have paid to Contractor any payments due from Owner in connection with such materials or labor, subject to the other provisions of the Contract relating to the right of the Owner to withhold payment); or
- **.6** Contractor fails to coordinate its Work with the other Contractors, and its Subcontractors as required under Article 6; or

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.7 Contractor fails to timely comply with the scheduling requirements of its Contract as set forth in § 3.10 and elsewhere as they may appear throughout its Contract, including under its Approved Work Schedule and the Approved Project Schedule; or

.8 Contractor fails to promptly replace rejected material or correct rejected workmanship; or

.9 Contractor fails to observe any other terms, provisions, conditions, covenants, and agreements set forth in its Contract and the Contract Documents to be observed and/or performed on the part of the Contractor.

§ 3.20.2 In the event of any default by Contractor under its Contract, Owner shall have the right to terminate such Contract in accordance with § 14.2, in addition to any and all other remedies that Owner may now or hereafter have against the Contractor under its Contract, the Contract Documents, at law and/or at equity.

§ 3.21 Services and Responsibilities of Contractor

Contractor's services under its Contract consist of all services to be performed and rendered by the Contractor under and pursuant to its Contract and the Contract Documents.

§ 3.22 Lean Procedures

§ 3.22.1 Owner desires to implement procedures advocated by the Lean Construction Institute (collectively, the "Lean Procedures") as applicable to the activities of the Architect, Construction Managers and Contractors. Each of the Contractors shall cooperate with Architect, Construction Manager and other Contractors to assist the Construction Manager in the establishment and implementation of these procedures. Specific requirements for collaboration are also included in various locations throughout these General Conditions.

§ 3.22.2 In addition to all other duties and responsibilities of the Architect, Construction Manager and Contractors as set forth on these General Conditions and in their respective Contracts with the Owner, the following are a listing of some of the other activities to be implemented for the Project, in addition to those stated elsewhere in these General Conditions:

.1 "Last Planner System" (LPS) using Pull Scheduling and Percent Planned Complete (PPC) Tracking: The project will utilize the Last Planner System to develop and implement the detailed work plans for each phase of the project based on the master project schedule. Pull Plans and Percent Planned Complete (PPC) tracking will be utilized on the project. Contractor will actively participate in weekly work planning meetings to review past, current, and future work activities. Contractor shall attend pull planning meetings at the request of Construction Manager To implement the LPS effectively, it is critical for the Contractor's foremen to participate in all planning sessions and have necessary authority to make decisions on manpower, equipment, materials and other required resources to ensure commitments are met. Contractor's foremen shall attend training, provided by the Construction Manager, to orient to this system. Contractor/Supplier shall understand that the Construction Manager will be tracking major "promises made" on the Project via a reliable promising matrix. All "promised" tasks shall be tracked in the matrix with a task description, Contractor/Supplier responsible, and promised completion date. The Construction Manager will provide Contractor/Supplier feedback on their reliable promising performance during weekly Foreman's meetings. Overall PPC ratings will be provided to each Contractor/Supplier at the end of the project.

.2 Daily Huddle: The project will have Daily Huddle with all contractors to coordinate with one another, the meetings will be held in person, and should be held at a consistent time; ideally at the beginning, end or during a natural break in the day. Additionally, the huddles should be brief, generally not exceeding 15 minutes. However, the period/frequency of the meetings can be adjusted to meet the needs of the team and the project.

.3 Materials Management: Minimize the amount of materials being stored at the Project Site for extended periods of time through efficient scheduling, and to eliminate unnecessary handling or relocation. Contractor/Supplier shall consent that all material deliveries to the jobsite not already included in a prefabricated assembly, are to be "kitted" specific to their purpose. All "kit" deliveries must be labeled with Subcontractor's name, delivery date, and location to be

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installed. Contractors shall reference the project-specific logistics guidelines for material delivery and storage requirements.

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 4.1 General

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

§ 4.1.2 The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will advise and consult with the Owner and Construction Manager. The Construction Manager and the Architect in cooperation and coordination with one another, will each provide such administration of the Contract and Project as described in the Contract Documents in these General Conditions, and in their respective Contracts with the Owner for the Project during construction until the date the Architect issues the final Certificate for Payment. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent expressly provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site regularly, no less than once every two weeks during the period of Pre-construction, Construction and Close-out of the Project, or as otherwise agreed with the Owner, to become generally familiar with, and review the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of such Work, and will promptly report to the Owner and Architect any known deviations from the Contract Documents and the most recent Approved Project Schedule, and defects and deficiencies observed in the Contractor's Work.

§ 4.2.4 The Construction Manager will be responsible for the preparation and update of the overall Project schedule based upon input from the Contractor and other contractors. It shall be the obligation of the Contractor to schedule and coordinate its activities and to cooperate and coordinate with the other contractors and Construction Manager so as to not delay the Project Schedule or impede the work of others.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Contractor's Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents unless the same results from a written directive from the Architect to the Contractor. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, Sub-subcontractors or their agents or employees, or of any other persons or entities performing any portions of the Contractor's Work.

§ 4.2.6 Communications. The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance

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of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors, Sub-subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor with respect to its Work, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about such rejection. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, Sub-subcontractors, suppliers, their agents or employees, or other persons performing any of the Contractor's Work.

§ 4.2.9 Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect and Construction Manager for approval.

§ 4.2.10 Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, 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 actions will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager for dissemination to the Contractor.

§ 4.2.11 Receipt and/or review of the Contractor's submittals by the Construction Manager and Architect 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 Construction Manager and Architect's receipt and/or review of the Contractor's submittals shall not relieve the Contractor of the obligations under §3.3, 3.5, and §3.12. The Construction Manager and Architect's receipt and/or review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.12 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.13 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.14 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

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§ 4.2.15 The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by each Contract for the Project and assembled by the respective Contractors pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

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

§ 4.2.17 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents for the Project on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made in writing within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished, then the Architect's response shall be made within a reasonable time. Work which does not conform to the Architect's interpretations shall be nonconforming work subject to the provisions of Article 12.

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

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

§ 4.2.21 The Construction Manager will receive requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

§ 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 for the Project as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

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

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§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection nor enter into any subcontract to which the Owner, Construction Manager 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. Upon written request, within three business days, the Contractor shall provide Owner with copies of all Subcontracts and Purchase Order related to Contractor's Work.

§ 5.2.3 If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager 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 for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

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

§ 5.3.2 Any part of the Contractor's Work performed for the Contractor by a Subcontractor shall be pursuant to a written Subcontract between the Contractor and such Subcontractor, which, the Contractor has submitted to the Owner for its information. Each such Subcontract shall contain provisions that:

.1 informs the Contractor of any and all Sub-subcontractors of the Subcontractor;
.2 require that the Work to be performed thereunder be in accordance with the requirements of the Contract Documents;
.3 fully disclose the payment provisions under Article 5 of the Contract, and Article 9 of the General Conditions, and requires timely submission of applications for payment under each Subcontract in reasonable time to enable the Contractor to apply for payment in accordance with the provisions of the Contractor's Contract;
.4 waive all right the subcontracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils covered by the property insurance described in §11.3, except for such rights as they may have to the proceeds of such insurance held by the Owner as trustee under §11.3.8;
.5 obligate each Subcontractor, at Owner's sole election, to continue to perform under its Subcontract in the event the Contractor is terminated, and Owner takes an assignment of said Subcontract, with Owner's liability thereunder to accrue only after such assignment;

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.6 require the Subcontractor to carry and maintain insurance in accordance with the requirements of the Contract Documents;

.7 obligate the Subcontractor to specifically acknowledge and consent to the provisions of Article 8 wherein it states that all time limits in the Contract Documents are critical;

.8 require each Subcontractor to fully cooperate in order to permit the Owner to conduct Owner's Operations at the Property without interruption;

.9 require each Subcontractor to fully cooperate with the testing representatives of Owner and Contractor on the Project Site;

.10 require each Subcontractor, Sub-subcontractor and supplier to obtain prior written approval of Owner prior to the publication of any promotional material regarding the Work to be performed by or on behalf of the Contractor;

.11 preclude any right or entitlement to a Change Order for an adjustment in either the Subcontract sum or the Subcontract time for an error in the Contract Documents applicable to the Contractor's Work if the Subcontractor should reasonably have known of or anticipated the error giving rise to such requested Change Order;

.12 preserve and protect the rights of Owner under the Contractor's Contract with respect to its Work to be performed under the Subcontract so that the subcontracting thereof will not prejudice such right;

.13 include the Subcontractor's acknowledgment that Contractor has assigned its interest in the Subcontract to Owner, which assignment shall become effective only upon Contractor's default under the Contract Documents applicable to the Contractor's Work and Subcontractor's receipt of notification from Owner that (a) Contractor is in default under the applicable Contract Documents or Owner has terminated the Contractor's Contract; and (b) the assignment of the Subcontract is effective;

.14 require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Contractor's Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by Contractor upon Owner;

.15 limit the amount which the Subcontractor may charge for overhead and profit in connection with a change in the Contractor's Work to the amounts set forth in Article 7 and

.16 contain no provisions inconsistent with any of the foregoing Subparagraphs of this §5.3.2.

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§ 5.3.3 As required by § 5.2.5, the Contractor shall at all times maintain a current list of all Subcontractors, Sub-subcontractors and suppliers performing any of Contractor's Work which it shall provide to the Owner as set forth in § 5.2.5.

§ 5.3.4 All Subcontractors, Sub-subcontractors and suppliers shall waive and release any claims, causes of action or rights against Owner for property damage caused by fire or other casualties or perils for which such Subcontractor, Sub-subcontractor or supplier is or, under the terms of the Contractor's Contract, should have been insured.

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

§ 5.4.2 Upon assignment to the Owner under 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,

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the Contractor shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

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§ 5.5 Payments to Subcontractors by the Contractor

§ 5.5.1 The Contractor shall promptly pay each Subcontractor, materialman, supplier or any other person whom the Contractor has contracted or who is employed directly or indirectly by the Contractor on the Project, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's or other party's portion of the Contractor's Work, the amount to which said Subcontractor or other party is entitled, less the percentage retained by Owner from the payment to the Contractor. The Contractor shall, by an appropriate agreement with each Subcontractor, materialman, supplier or other person, require them to make payments to their Sub-subcontractors, materialmen and suppliers in similar manner.

§ 5.5.2 The Contractor shall defend, indemnify and hold harmless the Indemnitees from and against all claims, demands, damages, losses and expenses, including without limitation, any attorneys' fees, costs and expenses paid or incurred by Indemnitees in connection with the settlement or defense of any such claims, arising out of or in connection with the failure of Contractor to pay a Subcontractor, materialmen, supplier or any other person with whom Contractor has contracted or who is employed directly or indirectly by Contractor provided Contractor has been paid by Owner all sums due for any portion of the Contractor's Work.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other 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 with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the General Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

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

§ 6.2 Mutual Responsibility

§ 6.2.1 Each Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other 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's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Contractor's Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for all costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities or defective construction.

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§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction, or to property of the Owner, Separate Contractors, or other Contractors as provided in Section 10.2.5 and the Contractor shall indemnify, defend, and hold the Owner harmless from any claims or damages brought by another Contractor arising out of any actions or omissions of the Contractor in performing its Work pursuant to its Contract.

§ 6.2.5 The Owner, Separate Contractors, and other Contractors 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, other 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 through the Construction Manager may hire additional resources to clean up and the Construction Manager, with notice to the Architect, will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, 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, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor.

§ 7.1.2.1 Should either party disagree with either the cost or time on a Change Order, the provisions herein relating to a Construction Change Directive shall be followed. In no event shall the Contractor refuse to perform any Work which is the subject of a Construction Change Directive or provide the information required therein, and such shall be considered a material breach of this Agreement.

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

§ 7.2 Change Orders

A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, 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.

§ 7.2.1 Methods used in determining adjustments to the Contract Sum may include those listed in § 7.3.3.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Contractor's Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time applicable thereto.

§ 7.2.3 Notwithstanding anything set forth herein to the contrary, Contractor shall not be entitled to a Change Order for an adjustment in either the Contract Sum or the Contract Time for an error in the Contract Documents if the Contractor should reasonably have known of or anticipated the error giving rise to such requested Change Order. The preceding sentence shall not be construed to mean that the Contractor has assumed any of the Architect's responsibilities or any of the responsibilities of any engineer retained by the Architect or retained directly by the Owner with respect to the Project.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work or performance of Work in dispute

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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. Likewise, should the parties disagree on whether Work is or is not a change in the Work, a written Construction Change Directive shall be prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing the Contractor to perform the Work in question The Contractor shall perform the Work and if it believes that it is entitled to an adjustment in the Contract Sum or Contract Time, shall keep the information identified in Sections 7.3.3 below and submit a Claim in accordance with applicable provisions of Article 15. In no event shall the Contractor fail or refuse to perform the Work.

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

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

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation, including a breakdown for each trade giving separation of material, equipment and labor, providing quantities and labor hours as outlined in § 7.3.3.4. The fee payable to the Contractor, Subcontractor or Sub-subcontractor shall be the same as permitted in §7.3.3.4 ;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon; or

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 As provided below:

(a) For extra work performed by the Prime Contractor, the Owner shall pay Prime Contractor cost of the work (materials, equipment & labor) plus 5% markup which is inclusive of all overhead and profit. For change orders in which there are multiple tiers of subcontractors and/or supplier, as noted in § 7.3.3.4 (b) and (c), the total mark- up shall not exceed 15%. Change order markup percentages are inclusive of all allowable Overhead and Profit; Overhead and profit shall be inclusive of the following: home office costs, management supervision (field & office), training, vehicles and pickups, fuel, safety, travel, reproduction, temporary facilities, computers, office equipment, small tools, and other incidentals. Small tools are defined as tools that do not have a new unit cost in excess of $750.00.

(b) For extra work performed by a Subcontractor or equipment supplier, the charges to Owner shall include the Subcontractor's cost, plus a fee (payable to the Subcontractor) in an amount equal to 5% of such cost. The "fee" is inclusive of all allowable Overhead and Profit. Overhead and profit shall be inclusive of the following: fees, insurance, home office costs, management supervision (field & office), training, vehicles and pickups, fuel, safety, travel, reproduction, temporary facilities, computers, office equipment, small tools, and other incidentals. Small tools are defined as tools that do not have a new unit cost in excess of $750.00.

(c) For extra work performed by a Sub-subcontractor, the charges to Owner may include: the Sub-subcontractor's cost, plus a fee (payable to the Sub-subcontractor) in an amount equal to 5% of such cost. The "fee" is inclusive of all allowable Overhead and Profit. Overhead and profit shall be inclusive of the following: fees, insurance, home office costs, management supervision (field & office), training, vehicles and pickups, fuel, safety, travel, reproduction, temporary facilities, computers, office equipment, small tools, and other incidentals. Small tools are defined as tools that do not have a new unit cost in excess of $750.00.

(d) "Cost" shall consist exclusively of the actual cost of those expenses for which reimbursement is permitted under § 7.3.7. Cost shall not include any provision for the cost of Contractor's supervision, overhead, profit, and any other general expenses, except as expressly provided under § 7.3.3.4 (a) above.

(e) The Contractor shall furnish satisfactory bills, payrolls, vouchers, and other supporting documentation covering all items of cost, and when requested by Owner, shall give the Owner access to accounts relating thereto.

(f) The Contractor shall provide detailed labor rate breakdowns to support change order labor rates. The Owner and/or will provide the labor rate breakdown forms that shall be

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completed a submitted for each trades classification no later than 20 days from Notice To Proceed or prior to the submission of the first payment requisition. The labor rates shall be consistent with prevailing wage rates inclusive of burdens, insurances and allowable mark up.

(g) The value of work added and deleted for each item of Work shall be computed on the net difference in quantity.

(h) The fees payable to the Contractor, Subcontractors and Sub-subcontractors under § 7.3.3.4(a), § 7.3.3.4(b), § 7.3.3.4(c) and § 7.3.3.4(d) shall constitute the total reimbursement and payment to be made to the Contractor, Subcontractors and Sub-subcontractors. Change Directive markup percentages are all inclusive of all allowable overhead and profit. Overhead and profit shall include, but not be limited to the following: home office costs, management supervision (field & office), training, vehicles and pickups, fuel, safety, travel, reproduction, temporary facilities, computers, office equipment, small tools, and other incidentals. Small tools are defined as tools that do not have a new unit cost in excess of $750.00.

The Contractor shall provide the Construction Manager with all documentation requested by the Construction Manager in order to determine costs. In no case shall the Contractor include more percentages that those noted above.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Construction Manager and Architect;

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

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

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved or Work identified in the Construction Change Directive. Where the parties agree that there is a change in the Work, the Contractor shall advise the Construction Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment for

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Work which the parties agree is a change. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The 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 Construction Manager and 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 Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Contractor's Contract with the Owner.

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then the Contract Time shall be extended for such reasonable time as the Owner may determine. Nothing herein shall be construed to allow the Contractor to recover time or money in connection with any delay, disruption or impact arising out of the Contractor's negligence or failure to perform.

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

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

§ 8.4 Delay

.1 "Excusable/Non-compensable" Delay means any delay of the completion of the Contractor's Work beyond the expiration of the Contract Time therefor which could not have reasonably been anticipated and is caused by conditions beyond the reasonable control and without the fault or negligence of the Contractor, such as strikes, embargoes, or unavoidable casualties, unusual delays in transportation, complete shutdowns due to a pandemic, during which the Contractor's Work cannot continue. The financial inability of the Contractor or any of its Subcontractors or Sub-subcontractors and any default of any of its Subcontractors or Sub-subcontractors, without limitation, shall not be deemed conditions beyond Contractor's control. An Excusable/Non-compensable Delay may entitle the Contractor to an extension of the Contract Time applicable to its Work in accordance with § 8.3 but shall not entitle Contractor to any adjustment of the Contract Sum therefor.

.2 "Excusable/Compensable Delay" means any delay of the completion of the Contractor's Work beyond the expiration date of the Contract Time therefor, based on impact to the critical path of the Approved Work Schedule for such Work, caused by the gross negligence or willful act of the Owner, Construction Manager or Architect or of an employee of either or of another Contractor, or by changes ordered in the Contractor's Work, which delay completion of such Work unreasonably under the circumstances involved and not within the contemplation of the parties. A Compensable Delay may entitle the Contractor to an extension of the Contract Time and/or an adjustment of the Contract Sum for its Work, in accordance with § 8.3. Except as expressly provided herein, the Contractor shall have no claim or right to assert a claim for an adjustment of the Contract Sum and/or the Contract Time, or for damages or compensation for any delay, interruption, hindrance, or disruption of its Work.

.3 "Inexcusable Delay" means any delay of the completion of the Contractor's Work beyond the expiration of the Contract Time therefor resulting from causes other than those listed in § 8.1.5.1 and § 8.1.5.2 above. An Inexcusable Delay shall not entitle Contractor to an extension of the Contract Time or an adjustment of the Contract Sum for its Work.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum, the Contractor shall submit a schedule of values to the Construction Manager, before the first Application for Payment or within 20 days from the Notice to Proceed, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall not be front-loaded. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if

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required under Section 9.2, for completed portions of the Work. The application shall be fully executed by an authorized agent of the Contractor, notarized, and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, Certified Payroll documentation and releases of waivers of lien from the Contractor, Subcontractors. Sub-subcontractors and suppliers and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 Each Application for Payment by the Contractor for its Work shall be supported by the following documentation, each in a form satisfactory to the Owner:

- **.1** Contractor's release of liens and claims in the form
- **.2** Subcontractor certificates, statements and affidavits showing that the Contractor's Work covered by said Application for Payment has been performed and delivered free of liens.
- **.3** Subcontractors' release of liens and claims in the form attached to the Contractor's Contract as Exhibit D, and as reasonably required by the Owner, lien and claims releases from their Subcontractors, materialmen and suppliers.
- **.4** Statement of Account, indicating the Subcontract amounts, monies paid to date and monies due Subcontractors for Contractor's Work performed on the Project.
- **.5** Contractor's Monthly CPM Schedule updates
- **.6** Monthly update of cash flow projection to final completion of the Contractor's Work.
- **.7** Certified Payroll Reports.
- **.8** Daily Reports
- **.9** Exhibit A – Local Participation Requirements
- **.10** LEED Deliverables & Waste Management Plan
- **.11** Such other documents in form, scope and substance as the Owner or the applicable Contract Documents shall require for disbursement of funds.

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

§ 9.3.1.3 The Owner and Contractor acknowledge and agree that an Application for Payment for the Contractor's Work shall not be deemed invalid or unsatisfactory for the sole reason that any lien waiver or release as Owner may require pursuant to §9.3.1.1.3 shall be in a form that purports to make the waiver or release conditioned upon the receipt of payment for the Contractor's Work for which Application for Payment has been submitted.

§ 9.3.1.4 The initial payment by the Owner to the Contractor on account of the Contractor's Work performed by its individual Subcontractors shall be conditioned upon the Owner's prior receipt of the following documentation:

- **.1** The fully executed Subcontract;
- **.2** the Subcontractor's approved Certificate of Insurance and/or OCIP enrollment;
- **.3** the Subcontractor's approved Schedule of Values;
- **.4** the Subcontractor's labor rate breakdown sheet(s) for all labor classifications
- **.5** the Subcontractor's fully executed release of liens and claims form; and
- **.6** such other documentation as the Owner may from time to time require.

§ 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, suppliers, or other persons or entities that provided labor, materials and equipment relating to the Work.

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§ 9.4 Certificates for Payment

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

§ 9.4.2 Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.2.1 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§ 9.4.4 The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§ 9.4.5 The representations made pursuant to Sections 9.4.3 and 9.4.4 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 Construction Manager or Architect.

§ 9.4.6 The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Owner, Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested

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by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the 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 suppliers for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a Separate Contractor or other 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; or
- **.8** failure to submit timely schedule updates or recovery within the time designated by the Construction Manager or acceptable to the Construction Manager.

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

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. In no event may the Contractor stop performing Work in connection with a good faith dispute.

§ 9.5.4 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both will reflect such payment on the next Certificate for Payment. Nothing herein shall require the Owner to issue joint checks.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project 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 Construction Manager and Architect.

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

§ 9.6.3 The Construction Manager 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 Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

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

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

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

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's 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 Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use. The Work will not be considered suitable for Substantial Completion review until all Project components included in the area of the Work are operational as design and scheduled, all designated or required governmental inspections and certifications, including certificates of occupancy, have been made and posted. In general, the only remaining Work shall be minor in nature, so that the Owner can occupy the potion of the building on that date for its intended use and the completion of the Work of the Contractor would not materially affect or hamper the normal business operations or intended use of the Owner.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment ("punch list"). 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. The Owner shall be entitled to withhold one and one-half times the value of the items on the punch list until they are completed or corrected.

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§ 9.8.3 Upon receipt of the punch list, the Architect, assisted by the Construction Manager, 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 list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the 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 the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

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

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

§ 9.9.3 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 completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the

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Contractor's being entitled to final payment have been fulfilled. As a condition to final payment, Contractor shall assemble and provide to the Owner all warranties and manuals in the media and format acceptable to the Owner.

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

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

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

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

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§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee.

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. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager. The Owner assumes no responsibility or liability for the safety of the Project Site.

§ 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;

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

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

.4 construction or operations by the Owner, Separate Contractors, or other Contractors.

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 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, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party as soon as possible, but not later than 48 hours after the incident. 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 or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner, Construction Manager and Architect of the condition as soon as possible, but no later than 24 hours after the discovery.

§ 10.3.2 Upon receipt of the Contractor's 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, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor,

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the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 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 reimburse the Contractor for all 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 OWNER CONTROLLED INSURANCE PROGRAM

§ 11.1 OWNER CONTROLLED INSURANCE PROGRAM

The Owner shall, through an Owner Controlled Insurance Program (OCIP), purchase and maintain at its own expense Workers' Compensation and Employer's Liability, Comprehensive General Liability, Excess Liability, Contractor's Pollution Liability and Builder's Risk Insurance described in Section 11.1.1 below, including as Additional Named Insureds all enrolled Contractors and Subcontractors of every tier performing direct labor at the Project. Contractor shall abide by the terms and conditions of the OCIP Manual which shall be attached to the Agreement as Exhibit _ and incorporated herein by reference as though set forth at length.

While the OCIP is intended to provide coverages and high limits, the OCIP is not intended to meet all of the Contractor's and Subcontractor's insurance needs. The OCIP does not provide coverage for Automobile Liability, Equipment Floaters, Professional Liability or Performance Bonds. It is recommended that the Contractors and Subcontractors discuss the OCIP with their insurance agent to assure that other proper coverages are maintained.

Architects, engineers (not including design/build subcontractors), consultants, vendors, suppliers (who do not perform or subcontract installation), material dealers, guard services, janitorial services, truckers (including trucking to the Project where delivery is the only scope of work to be performed) asbestos abatement or other hazardous waste removal contractors and others whose sole function is to transport, pickup, deliver or carry materials, supplies, tools, equipment, parts or other items to or from the Project Site, or who do not perform any actual on-site labor shall not be covered by insurance purchased by the Owner through the OCIP. **Temporary labor services and leasing companies are to be treated as subcontractors.**

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At the discretion of the Owner, any contractor or subcontractor with a total contract value of $25,000 and under may be excluded from the OCIP. The Owner and OCIP Administrator must be notified of any such contract.

§ 11.1.1 INSURANCE PROVIDED BY THE OWNER

Participation in OCIP is mandatory but not automatic. The OCIP will provide the Contractors and Subcontractors at every tier who are enrolled in and have been assigned a contract number by the Owner with insurance described in paragraphs 11.1.1.1 through 11.1.1.4 below. This insurance shall terminate as of the date of the Certificate of Substantial Completion of the Work except for the extended coverage provisions set forth in paragraphs 11.1.1.2.1 and 11.1.1.3 below.

The Owner will provide each participant in the OCIP a Project Insurance Manual, which will include a summary of the insurance coverage, loss control procedures and claim procedures as well as enrollment forms and reporting requirements for the OCIP. The Contractor and all Subcontractors at every tier shall use and comply with the requirements contained in the OCIP Manual.

§ 11.1.1.1 Workers' Compensation and Employer's Liability Insurance. In accordance with the applicable state and federal statutes including United States Longshore and Harbor Workers Act, this insurance will cover the Contractors, Subcontractors, and Sub-subcontractor's employees only while they perform Work described in this Contract at the Project Site as defined as: That property owned by or under control of Owner on which construction activities are being conducted in connection with the Project and/or areas and ways contiguous thereto. Project Site includes any work site set up by Owner for use by an Insured exclusively for the storage of material or equipment, or for on-site fabrication of material to be used in the construction and staging and Project support areas. The payroll and losses of each participant in the OCIP will be filed with the appropriate rating bureau. Experience modifiers of the OCIP participant could be affected, either positively or negatively, by their loss experience while performing Work under this Contract. Insurance coverage will cease for any employee when he or she leaves the Project Site either to perform other Work not covered by this Contract, or for employee personal time. The policy shall include but not be limited to the following coverage:

(a) Statutory Workers' Compensation Benefits;
(b) Employer's Liability with limits of:
$1,000,000 Bodily Injury with accident — each accident
$1,000,000 bodily injury with disease — policy limit
$1,000,000 bodily injury with disease — each employee;
(c) Voluntary Compensation Coverage

§ 11.1.1.2 Commercial General Liability Insurance (excluding aircraft, watercraft, trucks and automobiles) written on a 2001 Occurrence Form, or equivalent, with the following limits:

$2,000,000	Bodily Injury and Property Damage — Per Occurrence
$4,000,000	General Aggregate — Per Project
$2,000,000	Personal Injury/Advertising Liability
$4,000,000	Products/Completed Operations Aggregate

The above limits in 11.1.1.2 will be Program specific. These limits shall replenish themselves annually except that there will be one products/completed operations aggregate limit of liability for the additional twelve (12) years extension after the Certificate of Substantial Completion of the Work has been issued by the Owner.

§ 11.1.1.2.1 Coverage under this policy includes, but is not limited to, the following:
Personal injury liability;
Blanket Contractual Liability covering contractual liability assumed under this Contract;
Employees included as Additional Insureds;
Cross Liability and Severability of Interest;
Incidental Medical Malpractice Coverage;
Explosion, Collapse and Underground Hazard;
Completed operations coverage with provision for an additional twelve (12) years extension after the Certificate of Final Acceptance of the Work has been issued by the Owner.

§ 11 .1.1.2.2 Coverage exclusions include, but are not limited to, the following:

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Any loss insurable by the Builders Risk Insurance policy including deductibles;
War and Nuclear Energy Liability;
Aircraft Helicopter Watercraft Automobile and Truck Liability;
Professional (Errors & Omissions) Liability;
Intentional Acts (except as provided by the ISO policy form);
Products Recall;
Asbestos;
Mold, Fungii and Microbial;
Silicosis; and
EIFS (The EIFS exclusion does not apply to "bodily injury" or "property damage" directly caused by the construction of a component of "your product" or "your work" from a structure containing such component, unless such "bodily injury" or "property damage" also arises out of, is caused by, or is attributable, whether in whole or in part, to mold or fungus).

§ 11.1.1.3 Owner has secured Excess Umbrella Liability insurance in the amount of One Hundred Million ($100,000,000) each occurrence and aggregate excess of underlying General Liability and Employer's Liability and as specified pursuant to paragraphs 11.1.1.1 and 11.1.1.2 above covering Work at the Project Site. This policy will contain the following extension:

Twelve (12) year completed operations extension after the Certificate of Substantial Completion of the Work has been issued by the Owner.

These limits shall replenish themselves annually, except as respects to the Product/Completed Operations limit.

§ 11.1.1.4 Builder's Risk insurance on an "all-risk" basis in amounts sufficient to cover repair or replacement cost of the work in progress covering the facilities and the procured property on or in transit to the Project Site or in storage off-site, in amounts sufficient to cover the replacement value of such facilities and procured property.

The Builder's Risk insurance provided under paragraph 11.1.1.4 above shall not cover loss by theft or disappearance of any materials (unless the materials are to be incorporated into the Project), Contractor's tools, equipment and facilities that are not to become part of the Work. In the event of a loss which due to the act(s) or negligence of the Contractor, Contractor shall reimburse the Owner for the deductible paid by the Owner.

Contractor assumes that the Builder's Risk Insurance procured by the Owner shall include the following coverages:

1) No Coinsurance Required – Agreed Amount Coverage

2) That the policy will allow "Permission to Occupy"

3) That the policy will provide coverage for glass breakage

4) That there will be no exclusions for Steam Boiler Explosion, Mechanical Breakdown, Electrical Injury/Arcing or Testing

5 A waiver of subrogation and recovery endorsement

6) That the policy will name the Contractor, consultants, and subcontractors of all tiers as additional named insureds

7) That the Owner shall be responsible for all policy deductibles, and uninsured/underinsured losses with no right of recovery against Contractor or its Subcontractors of all tiers

8) Terrorism per TRIA

§ 11.1.1.4.1 Owner has secured a Railroad Protective Liability Insurance policy, with policy limits of not less than « Two Million » ($ «2,000,000 ») per claim and « Six Million » ($ «6,000,000») in the aggregate, for Work within fifty (50) feet of railroad property.

§ 11.1.1.5 Other Provisions of the OCIP.

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§ 11.1.1.5.1 All policies specified in 11.1.1.1 through 11.1.1.4 above will apply on a primary and non-contributory basis regardless of any other insurance available to the Program Participants. All policies shall have an A. M. Best Rating of A:IX or better.

§ 11.1.1.5.2 All premiums associated with the OCIP including deductibles or self-insured retentions unless stated elsewhere in this contract will be paid by the Owner and all refunds will be paid to the Owner.

§ 11.1.1.5.3 The above insurance will apply only to claims arising out of operations at the Project Site and not at regularly established "away from the Project Site" offices, shops, warehouses, factories or similar location.

Note: Parties who merely make deliveries or pick-ups to or from the Project Site and materialmen are excluded from the insurance outlined in paragraphs 11.1.1.1 and 11.1.1.2 above and are not subject to the insurance requirements set forth in Article 11. Unless otherwise directed by the Owner, contractors, subcontractors not enrolled in the Project OCIP shall maintain their own insurance in accordance with coverage types and limits outlined in paragraphs 11.1.2.4.1 through 11.1.2.4.4.

§ 11.1.1.5.4 The Program Administrator will furnish separate Workers' Compensation policies to each enrolled Contractor and Subcontractor. A Certificate of Insurance evidencing Commercial General Liability Excess Liability and Builder's Risk coverage will be provided to each program participant. Policies relating hereto shall be placed on file with the Program Administrator and are available for review by approved Subcontractors and/or their designee during normal working hours.

§ 11.1.1.5.5 Insurance specified in paragraphs 11.1.1.1 through 11.1.1.4 above will be terminated at the completion of the Work by the approved Contractor and Subcontractor except as noted under paragraphs 11.1.1.2.1 and 11.1.1.3 pertaining to completed operations.

§ 11.1.1.5.6 Special Conditions – OCIP enrolled Contractor and Subcontractors will be required to:

- Provide a Certificate of Insurance in accordance with the insurance outlined in Section 11.1.2;
- Separate payroll records for the Work performed on this Project and have such records available upon request;
- Maintain separate "regular" and "overtime" payrolls in accordance with the Insurance Company's normal audit procedures;
- Submit Monthly Payroll Reports (Form 3) to the OCIP Administrator by the 10th day of the month for the preceding month; separate reports are to be submitted for each contract;
- Maintain payroll information on file for a period of not less than four (4) years beyond the termination of approved Contractor's and Subcontractor's contract;
- Assist in the reporting and investigation of any accident and, upon request, cooperate with the Insurance Company in the handling of any claim by securing and giving evidence and obtaining the cooperation of witnesses as required for any claim or suit;
- Sign a dividend release form authorizing the OCIP insurance companies to pay any dividends, refund or retrospective returns directly to the Owner;
- Allow the Owner and/or its representatives and/or the OCIP insurance company to perform periodic audits of payroll records;
- Notify its own insurance brokers, agents and insurers of the insurance coverage provided under the OCIP;
- Include these Special Conditions in its subcontracts and require each Subcontractor at any tier to do likewise.

§ 11.1.1.6 Contractor's Pollution Liability Insurance –all Contractors and Subcontractors of every tier shall be purchased and maintained by the Contractor and Subcontractors.

Limits of Liability

$10,000,000 per occurrence
$10,000,000 Combined Single Limit

The policy limits shall be dedicated solely for this Project and shall not be shared with any other Project.

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Coverages:

Punitive damages coverage, where not prohibited by law
Extended reporting period of 36 months
No exclusions for asbestos, underground storage tanks and radioactive
Mold, fungii and microbial $10,000,000 sub-limit
EIFS

§ 11.1.1.7 Contractor Insurance Credits and Audit:

§ 11.1.1.7.1 Since the Owner is purchasing the insurance described above covering the Contractor and all tiers of Subcontractors who perform direct labor at the Work Site, the Contractor and each tier of Subcontractor shall bid without the costs of the Owner provided insurance. The bid form will require the Contractor and every tier of Subcontractor to include a statement certifying that such costs have been netted out of their total bid cost and not included in their total bid cost.

§ 11.1.1.7.2 [[Intentionally Omitted]

§ 11.1.1. 7. 3 Upon completion of Work, or on policy expiration, the Owner reserves the right to allow the insurance company to audit payroll. Contractors and Subcontractors of all tiers agree to keep and maintain accurate and classified records of their payroll for operations for the Project (certified payroll is not acceptable). The Contractor and all tiers of Subcontractors will submit to the OCIP Administrator, full and accurate monthly payroll data and any additional information as may be required.

§ 11.1.1.7.4 Change Orders will be submitted net of insurance and all respective labor rates will be reduced to reflect this reduction. Contractors will itemize these net insurance costs by completing Form 4 of the OCIP manual.

§ 11.1.1.7.5 In the event that the OCIP is to be terminated by the Owner, Owner shall provide Contractor with thirty days' prior written notice of the date of termination. In said event, Contractor shall obtain the Worker's Compensation, Commercial General Liability and Excess Liability insurance described in the Contract Documents at the cost detailed in Amendment No. 1 to the Agreement. Contractor may increase the Excess Liability insurance to be provided by any first tier Subcontractor to Five Million Dollars ($5,000,000) and the Owner shall issue a Change Order to the Contractor in the amount of the actual cost to the Subcontractor for the increased Excess Liability coverage. The cost of the additional insurance will be market sensitive as respect to pricing and appropriate for this project only. Copies of invoices from the Subcontractor's insurance provider shall evidence the cost of such insurance. In the event the OCIP is terminated, within the thirty day notice period, the Contractor shall cause the EIFS Subcontractor to obtain Five Million Dollars ($5,000,000) of mold coverage and Five Million Dollars ($5,000,000) of commercial general liability coverage specific to the Project, including five (5) years of completed operations coverage. A Change Order shall be issued to cover the commercially reasonable cost thereof to the Subcontractor. Should the Subcontractor be unable to obtain such coverages, the Owner shall obtain and pay for the same.

§ 11.1.2 CONTRACTOR'S/SUBCONTRACTOR'S OBLIGATIONS UNDER THE OCIP

Insurance provided to the Contractor under OCIP does not cover the Contractor's automobiles, tools and equipment. The OCIP also does not cover Workers' Compensation claims or Commercial General Liability claims arising from "Off-Site Work." Off-Site Work as used in this document means Work performed under the Contract that is not performed at the designated Project Site. The OCIP does not cover Professional Liability claims arising from Work or services performed under contract at the designated Project Site. The Contractor/Subcontractor at their own expense must promptly furnish to the Owner certificates of insurance providing evidence that the following coverages are in force.

§ 11.1.2.1 Comprehensive Automobile Liability Insurance for contract work both occurring on-site and off-site with limits of liability not less than:

$1,000,000 Combined Single Limit

This insurance must apply to all owned, leased, non-owned or hired vehicles to be used in the performance of work and the policy shall include an additional insured endorsement naming the Owner, its affiliates, subsidiaries, their directors, officers, agents, representatives and employees and Contractor as additional insureds as respect to the

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operations of the contractors' automobile. This insurance must extend to all levels of Subcontractors. Such insurance shall waive subrogation against the Owner and/or its representatives and all Contractors and Subcontractors.

Note: Automobiles are defined in accordance with the most recent ISO insurance agreement. This definition includes but is not limited to a land motor vehicle trailer or semi-trailer designed for travel on public roads, whether licensed or not (including any machinery or apparatus attached thereto).

§ 11.1.2.2 Professional Liability Insurance. Architects and Engineers of every tier hired by the Owner shall purchase and maintain Professional Liability insurance during the term of this Project.

Minimum Limits of Liability
$5,000,000 each claim
$5,000,000 annual aggregate

Coverages:
Insured's interest in joint ventures, if applicable
Punitive damages coverage, where not prohibited by law
Limited contractual liability
Retroactive date prior to work
Extended reporting period of 36 months

§ 11.1.2.3 Contractor Provided Insurance for "Off-Site Work." "Off Site Work" as used in this Contract means Work NOT performed at the Project Site.

§ 11.1.2.3.1 Workers' Compensation Insurance, including Employer's Liability with minimum limits of

$1,000,000 Bodily Injury with Accident — Each Accident
$1,000,000 Bodily Injury with Disease — Policy Limit
$1,000,000 Bodily Injury with Disease — Each Employee

Coverage to protect Contractor / Subcontractor from and against all claims arising from performance of Work outside the Project Site under the Contract. Such insurance (where permissible by law) shall waive subrogation against the Owner and/or its representatives and all Contractors and Subcontractors.

§ 11.1.2.3.2 Commercial General Liability Insurance for Contract operations not physically occurring within the Project Site with a limit of liability not less than:

$1,000,000 Each Occurrence
$1,000,000 Personal Injury and Advertising Injury
$2,000,000 General Aggregate
$2,000,000 Products/Completed Operations Aggregate

Such policy shall include coverage for contractual liability assumed under the Contract, contractors' protective liability, and explosion, collapse and underground property damage hazards, employees and Additional Insureds. Such policy shall include an Additional Insured Endorsement naming Contractor, Owner, its affiliates, subsidiaries, their directors, officers, agents, representatives and employees. This insurance must extend to all levels of Subcontractors. Such insurance shall waive subrogation against the Owner, its affiliates, subsidiaries, and/or their representatives and all Contractors and Subcontractors.

§ 11.1.2.3.3 Excess Liability insurance for Contract operations not physically occurring within the Project Site with a limit of liability not less than:

(a) Prime Contractor, Construction Manager, General Contractor Limits of Liability Liability:

(i) $25,000,000 Any one occurrence and General Aggregate annually; and
(ii) $25,000,000 Annual Aggregate Products/Completed Operations

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(b) Subcontractors Limits of Liability.

(i) $5,000,000 Any one occurrence and General Aggregate annually; and

(ii) $5,000,000 Annual Aggregate Products/Completed Operations.

NOTE: If the Contractor/Subcontractor chooses to have their policy endorsed to include the OCIP during the construction period, coverage should be Excess and/or Difference in Conditions of the OCIP. The inclusion of the OCIP on such insurance policies shall not replace the OCIP coverage or otherwise affect the cost of insurance identified on the Form I — Insurance Premium Worksheet. The cost of any other type of insurance, or any increase in the limits of liability above those outlined in section 11.1.2.4.1 through 11.1.2.4.4 which the Contractor has procured for their own protection or on account of any statute shall be the sole responsibility of the Contractor.

§ 11.1.2.3.4 Contractors Equipment insurance for all construction tools and equipment whether owned leased rented, borrowed or used on work at the Project Site is the responsibility of the Contractor and/or Subcontractor, and the Owner shall not be responsible for any loss or damage to tools and equipment. This Contractors' Equipment insurance shall contain a waiver of subrogation against Owner and/or its representatives and all Contractors and Subcontractors. If an individual Contractor or Subcontractor does not purchase such insurance, he will hold harmless Owner and/or its representatives and other Contractors and Subcontractors for damage to his tools and equipment.

§ 11.1.2.3.5 Any Contractor or Subcontractor who has completed their work at the Project site and whose OCIP insurance has been terminated, who returns to the site to perform warranty work must do so under their own insurance.

§ 11.1.2.3.6 Certificates of Insurance evidencing the required coverages outlined in the previous paragraphs and containing a provision for thirty (30) days prior written notice of cancellation must be submitted with the bid.

§ 11.1.2.3.7 Contractor may accept lesser limits of liability insurance coverages for its Subcontractors and consultants with the prior written consent of the Owner.

§ 11.2 Owner's Insurance

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

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in

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accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use

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

§ 11.5 Adjustment and Settlement of Insured Loss

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

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

§ 11.6 Bonds The Contractor shall provide Performance Bonds and Payment Bonds in the full amount of the Contract Sum, from a company or companies lawfully authorized to issue surety bonds in the Commonwealth of Pennsylvania, listed on most recent Treasury Circular 470. Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

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 Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their 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 Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

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§ 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 any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5. No warranty or warranty period shall relieve the Contractor of responsibility under the Contract Documents. Nothing herein shall be construed to be a limitation of the Owner's remedies either in law or in equity.

§ 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.

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the 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. The Owner's acceptance of the Work or any portion thereof that is not in accordance with the requirements of the Contract Documents shall be effective only when the Owner's acceptance is memorialized in writing and signed by an agent of the Owner authorized by law to do so.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, the Contractor shall not assign the Contract as a whole without written consent of the Owner. If the Contractor attempts to make an assignment without such consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

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

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, in addition to the procedures and compensation for the Owner's and the independent test and inspection firm's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.4.7 Tests and inspections for the convenience of the Contractor shall be at the Contractor's expense.

§ 13.5 Interest – Intentionally Deleted

§ 13.6 Electronic Project Management Information System (PMIS)

The Owner has implemented an electronic PMIS, "Trimble Unity Connect also known as e-Builder", an internet-based information and project communication system that will allow the entire project team to collaborate in a centralized and secured repositories for all projects. The Contractor shall submit information to Procore as directed.

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The Contractor shall utilize the PMIS during all phases of the project, unless directed otherwise by the Owner. All project specific correspondence, workflow processes, and documentation will be stored and routed within the PMIS. The Contractors and the Owner shall agree on file name convention of submissions in advance.

The Contractor, or those direct-employee(s) responsible, on the Project will be expected to participate in the necessary training to use the PMIS effectively. Periodic training sessions on the PMIS will be provided by the Owner. It is the responsibility of the Contractor to coordinate with the Owner regarding the training schedule and to register as designated by the Owner. Training will be provided by Montgomery County. All costs for personnel time, travel, meals, and lodging to attend the training shall be borne by the Contractor and, as such, will not be reimbursed by the Owner.

The Contractor shall obtain, at their own cost, the necessary equipment and web connections to access and utilize the PMIS. The Contractor will not incur any registration fees or licensing costs to utilize the PMIS. The Owner will not entertain or acknowledge any amendment requests by the Contractor for claimed inefficiencies or other costs related to the implementation and subsequent use of the PMIS.

§ 13.7 Use of Unmanned Aircraft ("UA")

If the Work involves the use of UA (Drones), and if UA use is approved by the Owner, the Contractor and those Subcontractors involved in UA use must follow all applicable federal regulations, and all state and local rules, laws and regulations. In addition, a request to operate UA must be submitted to Montgomery County's Capital Projects & Programs Director, a minimum of 48 hours prior to the planned UA usage and UA flight operations may not proceed until approval is granted in writing by the Capital Projects and Programs Director.

§ 13.8 Smoking and Tobacco Policy

Smoking and the use of tobacco are prohibited in and on all County owned or leased properties, facilities, and vehicles except for designated smoking areas. Smoking inside any building may result in the Contractor's employee being immediately and permanently removed from the site.

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 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- **.3** Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- **.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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 more, unless suspension or delay is the result of a governmental order or pandemic.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fourteen days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, and reasonable out-of-pocket costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 120 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work 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' notice to

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the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.1.5 Notwithstanding anything to the contrary set forth herein, the parties agree that if the Work is stopped due to a pandemic and/or any related governmental laws, rules, declarations, regulations or guidance for whatever duration, the Contractor may not terminate the Contract and the parties shall modify the Contract Time and Contract Sum in accordance with the terms of this Agreement. Nothing herein shall require a modification of the Contract Time or Contact Sum to the extent stoppage is a result of the Contractor's failure to abide by governmental laws, rules, declarations, regulations or guidance in existence at the time of execution of the Contract. Contractor bears all risk relating to COVID-1 or any other pandemic and compliance with governmental laws, rules, declarations, regulations or guidance in existence at the time of execution of the Contract.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- **.1** persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- **.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- **.4** otherwise is guilty of substantial breach of a provision of the Contract Documents; or
- **.5** shall institute proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Code or any similar or applicable federal or state law; or if a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing; or if the Contractor admits in writing, his inability to pay his debts generally as they become due, or if it makes a general assignment for the benefit of its creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of its bankruptcy or insolvency; or if a receiver of all or any substantial portion of the Contractor's properties is appointed.

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

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. The Owner's right to terminate the Agreement between Owner and Contractor pursuant to this Subparagraph 14.2 shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant hereto or at law or in equity

§ 14.2.4 If the costs and damages incurred by the Owner in finishing the Work, including but not limited to, compensation for the Architect and Construction Manager's services and expenses and professional fees and expenses and other damages incurred by the Owner and not expressly waived in writing, exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

§ 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. Any suspension by the Owner for convenience does not constitute grounds for termination by the Contractor under Section 14.

§ 14.3.2 Subject to Section 14.1.5, the Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1 to the extent permitted in accordance

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with the terms of this Agreement. 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 this 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, even though the Contractor has not failed to perform any part of the Contract. Termination by the Owner under this Section shall be by written notice of termination delivered to the Contractor specifying the extent of termination and the effective date.

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

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; 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; and

.4 proceed to complete the performance of the Work not terminated. Deliver drawings, specifications, instruments of service, warranties, operation and maintenance manuals, project closeout documents and other necessary information to the Owner.

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§ 14.4.3 Upon such termination the Contractor shall recover as its sole remedy payment for Work properly performed prior to the effective date of termination as provided in the Agreement, and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions; and reasonable out-of-pocket costs incurred by reason of the termination of subcontractors, proven restocking fees and reasonable out-of-pocket demobilization costs. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated and/or unearned profits, consequential or indirect damages.

Upon such termination the Contractor shall recover as its sole remedy payment for Work properly performed prior to the effective date of termination as provided in the Agreement, and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions; and reasonable out-of-pocket

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

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

§ 15.1.2 Time Limits on Claims

The Contractor shall commence all Claims and causes of action arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party with a copy sent to the Construction Manager and Architect. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. The Claim shall

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identify all causes of action, basis for requested relief including all facts and events, and to the extent possible, an itemization of the claim amount including supporting documentation.

§ 15.1.3.2 Claims by the Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the Owner. Failure of the Contractor to timely initiate a Claim in writing as required herein shall constitute an irrevocable waiver of such Claim. A statement during a meeting or that is reflected in meeting minutes, or a Change Order Request shall not constitute sufficient or timely notice of a claim.

§ 15.1.4 Continuing Contract Performance

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

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

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

§ 15.1.6 Claims for Additional Time

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

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, where they were beyond fifteen (15) year coverages for the area could not have been reasonably anticipated and had an adverse effect on the scheduled construction. The Contractor shall anticipate adverse weather delays in all-weather dependent activities.

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

damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

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

§ 15.2 Miscellaneous-Claims

§ 15.2.1 In the event of a dispute giving rise to a Claim, the party making the Claim may request that representatives of the parties meet within fifteen (15) days of receipt of Notice of a Claim in an effort to reach a resolution. If unable to do resolve the Claim at the meeting or if no meeting takes place, the Claim shall be subject to the dispute resolution provisions herein.

§ 15.2.2 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.

§ 15.2.3 In evaluating Claims, the Owner 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 Owner in rendering a decision.

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

§ 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 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution, and after exhaustion of the informal dispute resolution process set forth in section 15.2.1.

§ 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.

§ 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.

§ 15.3.4 Mediation may include, by consolidation on joinder or in any other manner, persons or entities other than the Owner and Contractor who are substantially involved in a common question of fact or law and whose presence is required if complete relief is to be accorded in mediation. The Contractor specifically consents to the inclusion of such other persons or entities in mediation. The Contractor furthermore waives all objections (and consents) to joinder of the Contractor as a party to any mediation related to the Project in which the Owner is joined or is otherwise positioned as a party and in which the Contractor's conduct or its performance is in any way relevant to the subject of a dispute. The Contractor agrees to participate in good faith in any mediation proceeding in an effort to resolve the dispute(s) at issue therein. The provisions of this § 15.3.4 shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The Contractor also agrees to include the provisions of this § 15.3.4 in all Subcontracts, Purchase Orders, and other agreements to which it is a party concerning the Project, thereby comparably committing its Subcontractors, suppliers, materialmen, and like entities.

§ 15.4 Litigation

§ 15.4.1 Any and all claims shall be subject to litigation in the Court of Common Pleas of Montgomery County, Pennsylvania which shall have exclusive jurisdiction and venue.

ARTICLE 16 ADDITIONAL PROVISIONS

§ 16.1 Project Site Requirements

~~**§ 16.1.1 Temporary Ventilation.** The Prime General Contractor shall be responsible to adequately maintain temporary enclosure of the building with materials suitable to control temperature and humidity from entering or escaping from the building. The Prime Mechanical Contractor shall provide temporary ventilation to remove from the structure any excessive heat and/or humidity in enclosed portions of the Work resulting from its construction operations so that the Work may be carried on without interruption and under correct conditions, including required dryness for installation of the various materials. Removing any dangerous or noxious fumes or particles suspended in the air is the responsibility of the Prime Mechanical Contractor whose construction operations caused these conditions to exist. Temporary equipment used for this temporary ventilation shall produce no hazard to the Work or to any person in or near it. The Contractor shall furnish all such temporary equipment; pay all costs for it and for its~~

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~~operation, including fuel and power supplies during operation both in and out of normal working hours. The Prime Mechanical Contractor shall remove the equipment when it is no longer required, or when so directed by the Owner.~~

§ 16.1.2 Work Beyond Limit of Contract. For purposes of performing the Work, the site is defined by the Limit of Contract lines shown on the drawings. The Contractor is responsible for any work performed beyond the limit of Contract.

§ 16.1.3 Advertising. No advertising is permitted within the Work area or adjacent area. This does not apply to corporate vehicles or attire.

§ 16.1.4 Storage and Stockpiling on Roofs. No materials of any type may be stored or stockpiled overnight on roofs.

§ 16.1.5 Temporary Traffic Control. The Project site may have active pedestrian, bike or automobile traffic adjacent to site for the entire duration of the Project. If applicable, the Contractors shall, incorporate, furnish and implement the following work as part of this Project:

> **Traffic Control – Temporary Traffic Control Guidelines (Penndot Publication 213):** Publication 213 applies to Contractors; utilities; Federal, State, County, township and municipal governments; and others performing applicable construction, maintenance, emergency or utility/permit work 9on highways or so closely adjacent to a highway that workers, equipment or materials encroach on the highway or interfere with the normal movement of traffic. The needs and control of all road users (motorists, bicyclists, and pedestrians within the highway, including persons with disabilities in accordance with the Americans with Disabilities Act of 1990 (ADA), Title II, Paragraph 35.130 and Temporary Traffic Control Guidelines (PennDOT Publication 213) through a Temporary Traffic Control (TTC) zone shall be an essential part of highway construction, utility work, maintenance operations, and the management of traffic incidents.

§ 16.1.6 Noise Reduction. The Contractor must take reasonable steps to minimize noise and shall perform work in accordance with local noise ordinances. The Contractor shall perform noise-producing work in less sensitive hours of the day or week as directed by the Owner. The Contractor shall maintain noise-producing work at or below the decibel levels and within the time periods specified and shall perform construction activities involving repetitive, high-level impact noise only between 8:00 a.m. and 6:00 p.m. unless otherwise permitted by the Owner and permissible by local ordinance.

§ 16.1.7 Visible Dust Emissions. No person shall perform any construction, demolition, excavation, extraction, or other earthmoving activities unless appropriate measures are sufficiently implemented to limit Visible Dust Emissions (VDE) to 20% opacity and comply with the conditions for a stabilized surface area when applicable. The Contractor shall apply sufficient water to building exterior surfaces, and/or unpaved surface areas where equipment will operate to limit VDE to 20% opacity throughout the duration of razing and demolition activities or handling, storage, and transport of bulk materials on-site or off- site. The Contractor shall apply sufficient dust suppressants to unpaved surface areas within 100 feet where materials from razing or demolition activities will fall in order to limit VDE to 20% opacity. The Contractor shall also apply sufficient dust suppressants to unpaved surface areas where wrecking or hauling equipment will be operated in order to limit VDE to 20% opacity.

§ 16.1.8 Tobacco Use on Project Site. Use of tobacco products (smoke and smokeless, including vapor) shall be restricted on site after the building has been enclosed (with permanent or temporary enclosures). Personnel found in noncompliance with this directive may be removed from the site upon discovery of this noncompliance.

§ 16.1.9 Professionalism. All Prime Contractors shall be responsible for their own employees and those performing Work by or on behalf of the Prime Contractor, including employees of subcontractors and suppliers. There shall not be any verbal confrontations, physical altercations, graffiti, damage to any Work by any Prime Contractor or behavior which would considered unprofessional. Such unprofessional behavior or actions shall be grounds for immediate and permanent removal from the Project.

§ 16.1.10 Drug Testing. All workers that will be on site for any Prime Contractor or Subcontractor must pass a drug screening and background verification, except delivery personnel or truck drivers. There is additional information pertaining to how this is performed in Exhibit B to the Agreement..

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§ 16.1.11 Testing and Inspection Reports. To the extent any Prime Contractor or Subcontractor performs or causes to be performed any testing or inspection, copies of any results or reports shall be made available to the Owner, Construction Manager and Architect within 48 hours of written request.

§ 16.2 Federal and A.S.T.M. and Other Specifications. Reference to Federal, A.S.T.M. and other standard specifications references and designations means those in effect at the date of bid. Basic codes and regulations incorporated by reference, standard regulations and codes refer to editions in effect at the date of proposals, including current addenda or errata. The most stringent section of each code applies.

§ 16.3 Prevailing Minimum Wage Predetermination. The Contractor is hereby notified that this Contract is subject to the provisions, duties, obligations, remedies and penalties of the Pennsylvania Prevailing Wage Act, 43 P.S. §165-1 et seq., as amended, which is incorporated herein by reference as if fully set forth herein. In compliance with said Pennsylvania Prevailing Wage Act, the Prevailing Minimum Wage Predetermination is hereto attached and made part hereof as approved by the Secretary of Labor and Industry. If a job classification is not covered by the Prevailing Wage Predetermination, the Contractor may not pay individuals in that classification less than the lowest rate for laborers, as set out in the predetermination.

§ 16.4 Tax Liability and Offset

§ 16.4.1 The Contractor, by execution of this Agreement, certifies that it has no outstanding tax liability to the Commonwealth of Pennsylvania or the Owner; authorizes the Department of Revenue to release information related to its tax liability to the Owner; and authorizes the Owner to set off any State and local tax liabilities of the Contractor or any of its subsidiaries, as well as any other amount(s) due to the Owner from the Contractor that are not being contested on appeal by the Contractor, against any payment due to the Contractor under an agreement with the Owner.

§ 16.4.2 The foregoing certification of no outstanding tax liability is a material representation of fact upon which reliance is placed by the Owner in entering this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous or inaccurate certification, the Owner may find the Contractor in default and terminate this Agreement. Such erroneous or inaccurate certification may also be grounds for initiation of civil or criminal proceedings.

§ 16.5 Debarment or Suspension

The Owner shall recommend debarment or suspension action against the Contractor whenever there is substantial evidence that there exists a cause for debarment or suspension.

§ 16.6 Contractor's Responsibility

§ 16.6.1 The Contractor certifies, in writing, for itself, its Subcontractors and consultants required to be disclosed or approved by the Owner, that as of the date of its execution of this Agreement, that neither the Contractor, nor any such subcontractors or consultants, are under suspension or debarment by the Commonwealth of Pennsylvania, Owner or any other governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit a written explanation of why such certification cannot be made.

§ 16.6.2 The Contractor also certifies, in writing, that as of the date of its execution of this Agreement it has no tax liabilities or other County of Montgomery, PA obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist or is subject to a duly approved deferred payment plan if such liabilities exist. If the Contractor cannot so certify because of the scope and nature of its organizational structure, then it agrees to make such certification to the best extent possible and to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made in full.

§ 16.6.3 The Contractor's obligations pursuant to these provisions are continuing from and after the effective date of this Agreement through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Owner if, at any time during the term of this Agreement, it becomes delinquent in the payment of taxes, or other County of Montgomery, PA obligations, or if it or any of its subcontractors or consultants are suspended or debarred by the Commonwealth of Pennsylvania, Owner, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment. To the extent the size or nature of the Contractor prevents it from carrying out this obligation in full, it shall provide written documentation explaining why this obligation cannot be fully complied with and shall have a continuing obligation to report to the greatest extent possible.

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§ 16.6.4 The failure of the Contractor to notify the Owner of its suspension or debarment by the Commonwealth of Pennsylvania, Owner, any other state, any other county, or the federal government shall constitute an event of default of this Agreement.

§ 16.6.5 The Contractor agrees to reimburse the Owner for the reasonable costs of investigation incurred by any investigative office of the Owner for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Owner that results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

§ 16.7 Covenant Against Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee (excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business). For breach or violation of this warranty, the Owner shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Contractor's compensation hereunder, or otherwise recover, the full amount of such commission, percentage, or contingent fee.

§ 16.8 Americans with Disabilities Act. Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act (28 C.F.R. 35.101 et seq.), no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, the Contractor agrees to comply with the General Prohibitions Against Discrimination (28 C.F.R. 35.130), and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Owner through contracts with outside contractors. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Owner from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Owner as a result of the Contractor's failure to comply with the provisions of this section.

§ 16.9 Recycled Materials

§ 16.9.1 In accordance with Section 108, Recycled Materials, of the Commonwealth Procurement Code (62 P.S. Section 108), all insulation products incorporated into the Project shall contain the following minimum percentages, by weight, of postconsumer recovered paper or recovered material:

Cellulose Loose-Fill Spray-On	5 % Postconsumer Recovered Paper
Perlite Composite Board	23% Postconsumer Recovered Paper
Plastic Rigid Foam, Polyisocyanurate/Polyurethane:	
Rigid Foam	9% Recovered Material
Foam In-Place	5% Recovered Material
Glass Rigid Foam	6% Recovered Material
Phenolic Rigid Foam	5% Recovered Material
Rock Wool	50% Recovered Material

§ 16.9.2 "Postconsumer Recovered Paper" is defined as "any paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item including used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards and used cordage; as well as all paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste."

§ 16.9.3 "Recovered Materials" is defined as "waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process."

§ 16.9.4 Materials and installations specified for the Project by the Architect shall comply with this requirement.

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§ 16.10 Trade Practices Act

§ 16.11.1 The Contractor, in the preparation of the design documents for the Project, shall comply with the requirements of the Trade Practices Act (71 P.S. § 773.101, et seq.). The Act prohibits the Owner from specifying, purchasing, or permitting to be furnished or used, in any public works, aluminum or steel products made in a foreign country which has been determined as "discriminating" by the Commonwealth.

§ 16.10.2 Aluminum or Steel Products means aluminum or steel products rolled, formed, shaped, drawn, extruded, forged cast, fabricated, or otherwise similarly processed, or processed by a combination of two or more of such operations, from aluminum or steel not made in the United States.

§ 16.10.3 The countries of Brazil, South Korea, Spain, and Argentina have been found to discriminate against certain aluminum and steel products made in Pennsylvania. Therefore, the purchase or use of those countries' products, as listed below, is not permitted:

- **.1** **Brazil:** Welded carbon steel pipes and tubes; carbon steel wire rod; tool steel; certain stainless-steel bar; stainless steel wire rod and cold-form stainless steel bar; pre-stressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet, and cold-rolled carbon steel sheet.
- **.2** **Spain:** Certain stainless-steel products, including stainless steel wire rod, hot-rolled stainless steel bars and cold-formed stainless steel bars; pre-formed stainless steel bars; pre-stressed concrete steel wire strand; certain steel products including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet, hot-rolled carbon steel bars, and cold-formed carbon steel sheet.
- **.3** **South Korea:** Welded carbon steel pipes and tubes hot-rolled carbon steel place; hot-rolled carbon steel sheet and galvanized steel sheet.
- **.4** **Argentina:** Carbon steel wire rod and cold-rolled carbon steel sheet.

§ 16.11 Steel Products Procurement Act

§ 16.11.1 The Contractor shall comply with the requirements of the Steel Products Procurement Act (73 P.S. 1881, et seq.). The Steel Products Procurement Act requires that any steel products being used or supplied in the performance of the Contract must be "steel products" as defined in the Act. Steel Products are considered to be products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel making process.

- **.1** Includes cast iron products.
- **.2** Includes machinery and equipment listed in United States Department of Commerce Standard Industrial Classification 25 (furniture and fixture), 35 (machinery; except electrical), and 37 (transportation equipment) and made of, fabricated from, or containing steel components.
- **.3** Does not include steel products which will not be incorporated into the Project (i.e., tools – hammers/wrenches); scaffolding used to construct the Project and removed after completion; and trailers used as offices by contractors and removed after completion of the Project.
- **.4** Transportation equipment shall be determined to be a United States steel product only if it complies with Section 165 of Public Law §§ 97-424 (96 Stat. 2136).
- **.5** Owner vs. Product. Each "product" in the Owner is identified as a separate and distinct steel product.

§ 16.11.2 When the Owner's design specifies trade names, catalog numbers, and manufacturers for materials and equipment, they are provided for the purpose of establishing a standard of quality, performance, and appearance, and for establishing a standard of competitive bidding. The use of such descriptive information will not relieve the Contractor with compliance with all respects of the Act.

Origin of Steel.

- **.1** If the product contains 100 percent United States manufactured steel, it is a "steel product" under the Act, no matter where the non-steel components of the product are manufactured.
- **.2** If the product contains 100 percent steel manufactured in a foreign country, its acquisition is prohibited.
- **.3** If the product contains both foreign and United States manufactured steel (no matter how little or how much of each), the product shall be determined to be a United States steel product if at least 75 percent of the total cost of the articles, materials, and supplies have been mined, produced, or manufactured in the United States.

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§ 16.11.3 If 100 percent of the steel product is identifiable (i.e., stamped United States Steel), then the Contractor shall submit certification documentation. If the steel product is unidentified, the Contractor shall provide documentation including, but not limited to invoices, bills of lading, and mill certification. The Owner is authorized to withholding payments until the documentation or certification has been provided. If payments have been made but should not have been made because of noncompliance, the Owner or the Commonwealth Attorney General may recover the payments directly from the Contractor, subcontractor, or manufacturer who did not comply. Additionally, any person who willfully violates the Act shall be prohibited from submitting bids or performing work for the Commonwealth for five years.

§ 16.11.4 The Steel Products Procurement Act requirement may be waived by the Owner when the Owner determines that steel products are not produced in the United States in sufficient quantities to meet the requirements of the Contract and/or when the product appears on the Department of General Services' annual Final List of Exempt Machinery and Equipment Steel Products.

§ 16.12 Environmental Quality Control

§ 16.12.1 All Prime Contractors and their subcontractors shall perform the Work in a manner that shall minimize the possibility of air, water, land, and noise pollution. Each Prime Contractor shall comply with all statutes and regulations, as amended, concerning environmental quality control administered by the Pennsylvania Department of Environmental Protection, including but not limited to:

- **.1** Clean Streams Law
- **.2** Pennsylvania Sewage Facilities Act
- **.3** Air Pollution Control Act
- **.4** Surface Mining Conservation and Reclamation Act
- **.5** Bituminous Coal Open Pit Mining Conservation Act
- **.6** Dams and Encroachments Act
- **.7** Water Well Driller's Act
- **.8** Water Works Act and Atomic Energy Act

§ 16.12.2 The Contractor shall be solely responsible for securing all required permits and for any violations. Storage, collection, transportation, processing, and final disposal of solid waste shall be in accordance with regulations and standards of the Pennsylvania Department of Environmental Protection (DEP). Immediately upon notice of award of the Contract the Contractor shall apply for the necessary permits from DEP. A copy of this permit must be submitted to the Owner before commencing waste disposal.

§ 16.13 Right to Know Law

§ 16.13.1 Unless otherwise determined by a Pennsylvania appellate court subsequent to the execution of this Agreement, the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104 ("RTKL"), applies to this Agreement. Unless the Contractor provides the Owner, in writing, with the name and contact information of another person who will act on behalf of the Contractor regarding the RTKL, the Owner shall notify the Contractor if the Owner needs the Contractor's assistance in connection with a request made under the RTKL. The Contractor shall notify the Owner in writing of any change in the name or the contact information within a reasonable time prior to the change.

§ 16.13.2 Upon notification to the Contractor that the Owner has received a request for the Contractor's records under the RTKL (the "Requested Information"), the Contractor agrees to assist the Owner in responding to the request. Such assistance shall include providing the Owner, within three (3) days, with copies of any Requested Information in the Contractor's possession that the Contractor deems a Public Record, as that term is defined in the RTKL, or otherwise notify the Owner that the Requested Information is not a Public Record. If the Contractor is unable to provide the Requested Information within three (3) days for one of the reasons specified in the RTKL, the Contractor agrees to timely notify the Owner that it will need up to an additional twenty-five (25) days and must provide in writing the reason the additional time is needed. If the Contractor decides the Requested Information is within the scope of the RTKL but fails to provide the Requested Information to the Owner within the period specified in this provision, the failure shall be considered an event of default and the Contractor shall pay, indemnify, and hold the Owner harmless for any damages, penalties, detriment, or harm that the Owner may incur as a result of the Contractor's failure.

§ 16.13.3 The Contractor's determination as to whether the Requested Information is a Public Record is dispositive of the question as between the parties. The Contractor agrees to provide information and/or to appear before the Office of Open Records or Pennsylvania Courts in support of the Owner's denial of access to a record the Contractor

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determined was not a Public Record. The Contractor agrees to indemnify the Owner for any court costs, attorneys' fees, or civil penalties awarded against the Owner under the RTKL in connection with or as a result of the Contractor's denial of access to Requested Information.

§ 16.13.4 If in the course of this Agreement, the Owner is provided with information the Contractor clearly identifies as a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, the Owner agrees to abide by the terms of Section 707 of the RTKL and timely provide the Contractor with notice of a request for this information and allow the Contractor the ability to respond, as provided by the RTKL. The Contractor reserves all rights and remedies as allowed by law relating to the Owner's unauthorized disclosure of the Contractor's Trade Secret or Confidential Proprietary Information. This provision shall not be construed to limit the sovereign immunity of the Owner.

§ 16.13.5 The Owner will reimburse the Contractor for any costs associated with complying with this provision only to the extent allowed under the applicable fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

§ 16.13.6 The Contractor agrees to abide by any decision to release a record to the public made by the Office of Open Records after timely appeal to the Pennsylvania Courts.

§ 16.14 Labor Harmony/Jurisdictional Disputes

§ 16.14.1 The Contractor shall hire all personnel necessary for the proper and diligent prosecution of the Work in accordance with the Project Schedule. The Contractor shall maintain labor peace and harmony throughout the duration of the Project. In the event of a labor dispute, the Contractor shall not be entitled to any increase, nor shall any adjustment be made to the Contract Sum or Contract Time.

§ 16.14.2 In the event of a jurisdictional dispute among or between any labor unions arising out of or relating to Contractor's Work, Contractor shall be solely responsible for promptly resolving the same without involvement by the Owner, Construction Manager or Architect. The Contractor shall be responsible for any delays or impacts arising out of jurisdictions disputes arising out of or relating to Contractor's Work.

§ 17 EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION

§ 17.1 Non-Discrimination/Sexual Harassment

During the term of this Contract, Contractor agrees as follows:

§ 17.1.1 Contractor shall not discriminate against any employee, applicant for employment, any independent Contractor or any other person because of race, color, religious creed, ancestry, national origin, service in the uniformed services

As defined in state and federal law), veteran status, age, sex, sexual orientation, marital or family status, pregnancy, pregnancy-related conditions, physical or mental disability, gender, perceived gender, gender identity, genetic information or political ideas, or any other basis prohibited by law.

Contractor shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, service in the uniformed services (as defined in state and federal law), veteran status, age, sex, sexual orientation, marital or family status, pregnancy, pregnancy-related conditions, physical or mental disability, gender, perceived gender, gender identity, genetic information or political ideas, or any other basis prohibited by law. Such affirmative action shall include, but is not limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

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§ 17.1.2 Contractor shall in solicitations or advertisements placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.

§ 17.1.3 Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this non-discrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment. Similar notices shall be sent to every other source of recruitment utilized by Contractor.

§ 17.1.4 It shall be no defense to a finding of a non-compliance with Executive Order 1972-1 or any regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause that recipient had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations.

§ 17.1.5 Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under Executive Order 1972-1 or any regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause, the Contractor shall then employ and fill vacancies through other employment procedures without regard to race, color, religious creed, ancestry, national origin, sex, or age, taking affirmative action to obtain qualified minority group persons.

§ 17.1.6 Contractor shall comply with all rules, regulations and orders issued by the Governor, the Attorney General, and the Human Relations Commission relating to laws, prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's non-compliance with the non-discrimination clause of this Contract or with any such rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part, and recipient may be declared ineligible for further Commonwealth contracts, and such other sanctions may be imposed and remedies invoked as provided by rule, regulation or order of the Governor, Attorney General, or the Human Relations Commission, or as otherwise provided by law.

§ 17.1.7 Contractor shall furnish all information and reports required by the Governor, Attorney General, and the Human Relations Commission and will permit access to its books, records and accounts by the contracting agency and the Human Relations Commission, for purposes of investigation to ascertain compliance with provisions of Executive Order 1972-1 or any regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause.

§ 17.1.8 Contractor shall actively recruit minority Subcontractors or Subcontractors with substantial minority representation among their employees.

§ 17.1.9 The Contractor and each of its subcontractors or consultants shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

§ 17.1.9 Contractor shall include the provisions of Paragraphs 17.1.1 through 17.1.90 in every Subcontract or Purchase Order, so that such provisions will be binding upon each Subcontractor or vendor or other person. If the Contractor cannot fully comply with this subsection due to the nature or scope of its organization, it must use best efforts to do so and provide a written explanation as to why it is unable to fully comply.

§17.1.10 The Owner may cancel or terminate this Agreement and all money due or to become due thereunder may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

§ 17.1.10 The terms used in this non-discrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code Ch. 49.

§ 17.1.11 No signs, banners, etc. may be posted.

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