



AIA[®]

Document A134[®] – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price

Master Agreement Between Owner & Construction Manager

AGREEMENT made as of the Sixteenth day of December in the year Two Thousand Twenty-Four (December 16, 2024)
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

Geneva Community Unit School District 304
227 North 4th Street
Geneva, IL 601340

and the Construction Manager:
(Name, legal status, address, and other information)

Pepper Construction Company
411 Lake Zurich Road
Barrington, IL 60010

for the following Project:
(Name, location, and detailed description)

This Agreement is a Master Agreement and shall be the agreement for projects authorized by the Owner. Specific projects under this Master Agreement shall be authorized in writing by the Owner in a written Project Work Order. To the extent that the parties intend the terms and conditions of this Agreement to be modified by any Project Work Order, any such modifications must be set forth expressly in a Project Work Order.

The Architect:
(Name, legal status, address, and other information)

See applicable Project Work Order

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

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ARTICLE 1 INITIAL INFORMATION

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

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

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

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

See applicable Project Work Order, each of which shall be attached hereto as Exhibit 1.1.1 and be binding for the duration of the Project identified therein.

§ 1.1.2 The Project's physical characteristics:

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

See applicable Project Work Order

§ 1.1.3 The Owner's overall budget for the Project:

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

See applicable Project Work Order

Init.

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§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

See applicable Project Work Order

.2 Construction commencement date:

See applicable Project Work Order

.3 Substantial Completion date or dates, if not established in this Agreement under Section 3.3.1.3:

See applicable Project Work Order

.4 Other milestone dates:

See applicable Project Work Order

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

See applicable Project Work Order

§ 1.1.6
(Paragraphs deleted)
Reserved.

§ 1.1.6.1 Reserved.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

See applicable Project Work Order

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Jeff Daurer
Geneva Community Unit School District 304
227 North 4th Street
Geneva, IL 601340

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

See applicable Project Work Order

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

See applicable Project Work Order

.2 Civil Engineer:

Init.

See applicable Project Work Order

- .3** Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

See applicable Project Work Order

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

See applicable Project Work Order

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Lance Tritsch
Pepper Construction Company
411 Lake Zurich Road
Barrington, IL 60010

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

Construction Manager shall include staffing information for any Preconstruction Services on a staffing plan set forth in Exhibit 1.1.1, including the rates for such staffing if such rates differ from those identified in Exhibits 7.2.1 and 7.2.2.

§ 1.1.14 The Owner's requirements for Prime Trade Contractor procurement for the performance of the Work:
(List any Owner-specific requirements for Prime Trade Contractor procurement.)

All Prime Trade Contractors shall comply with, and be subject to, applicable provisions of Article 3 of this Agreement and the AIA Document A201-2017, General Conditions of the Contract for Construction, as modified by Owner and incorporated herein as the "A201 General Conditions". If Owner requires Construction Manager to procure the Work through public bidding, the Owner will award the contract(s) for the Work to the lowest responsive and responsible bidder and assign the subcontracts to the Construction Manager as set forth in Article 3 below.

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

Not applicable.

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager may, by mutual written agreement, adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Contract Sum and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Master Agreement

§ 2.1.1 The Contract Documents consist of this AIA A134-2019 and the A201 General Conditions (collectively "Master Agreement"), the applicable Project Work Order as defined in Section 2.1.2, below, and the Drawings and Specifications referenced therein, Addenda issued prior to execution of a Project Work Order, other documents listed in this Master Agreement or a Project Work Order and Modifications issued after execution of this Master Agreement or any Project Work Order; these form the Contract, and are as fully a part of the Contract as if attached to this Master Agreement or

repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents is inconsistent with this Master Agreement, this Master Agreement shall govern, with order of precedence as between the Contract Documents set forth as follows: (i) Modifications; (ii) this Agreement, including any exhibits hereto; (iii) the A201 General Conditions, (iv) Specifications; (v) Drawings (large scale governing over small scale); (vi) approved submittals; (vii) information furnished by the Owner; (viii) other documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not, alone, be considered a conflict. The term of this Master Agreement is for five (5) years from the date of execution("Term").

§ 2.1.2 For each construction project performed under this Master Agreement, the Owner and Construction Manager shall agree upon and execute a work order detailing the Project specific details ("Project Work Order"). A sample Project Work Order is attached hereto as Exhibit 2.1.2, Project Work Order Sample. The Project Work Order sets forth Project-specific information, including, but not limited to:

- a. the name of the Project;
- b. the location of the Project;
- c. the name of the Architect and its representative, who shall serve as the entity or person required to review the Construction Manager's submittals to the Owner;
- d. Owner's anticipated design and construction milestone dates, if any;
- e. Owner's requirements for accelerated or fast-track scheduling, or phased construction, if any;
- f. a Project Schedule, the Commencement Date of the Work and the Date of Substantial Completion of the Work;
- g. a list of Drawings and Specifications;
- h. the Final Cost Estimate, Schedule of Values and Construction Manager's Clarifications;
- i. any alternates, allowances or unit prices; and
- j. labor, supervisory and equipment rental rates.

The Project Work Order is referred to throughout the Contract Documents as if singular in number.

§ 2.1.3 Owner at its sole discretion will decide whether to award any Project to Construction Manager and Construction Manager reserves the right to accept or decline the Project.

§ 2.2 Relationship of the Parties

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

§ 2.2.1 The Construction Manager has been engaged to provide professional construction management services because of its character, expertise, experience, education, depth of experienced personnel, and qualifications in dealing with projects of similar scope, complexity, and magnitude. The Construction Manager represents that its construction management services shall be provided in manner consistent with projects requiring public bidding and that Construction Manager has knowledge of the public bidding requirements applicable to projects to be performed under this Agreement and all related obligations set forth herein.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, the A201 General Conditions as modified shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in the A201 General Conditions. Any reference in this Agreement to the AIA Document A201™–2017, General Conditions of the Contract for Construction, shall mean the modified A201 General Conditions.

(Paragraphs deleted)

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Agreement and any related Contract Documents. The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of the A201 General Conditions referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative who hereby has express authority to bind the Construction Manager with respect to all matters requiring the Construction Manager's approval or authorization. Construction Manager's representative shall have the authority to make representations and decisions on behalf of the Construction Manager concerning estimates and schedules, construction budgets, coordination of the Work, prosecution of the Work, changes in the Work, and all other matters related to this Agreement.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to reasonably rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, if such program exists, as well as the schedule and construction budget requirements, each in terms of the other, for the Work to be performed under each Project Work Order.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

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

(Paragraph deleted)

§ 3.1.3.3 The Construction Manager shall consult with the Owner and Architect in preparing construction contracts and procurement in accordance with Section 3.1.11 and 3.1.12.

§ 3.1.3.4 The Construction Manager shall consult with Owner and Architect in the procurement of all construction services and in preparing construction subcontracts for first- and second-tier contractors in accordance with Sections 3.1.11 and 3.1.12 of this Agreement.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified in the Project Work Order, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: components of the Work; times of commencement and completion required of each Prime Trade Contractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

All Project schedules (including updates) shall be formatted using Critical Path Method (CPM) or another Owner pre-approved scheduling method.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect for Work to be performed under the Project Work Order, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Construction Manager submits a Control Estimate for the Work, pursuant to Section 3.2. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 The Construction Manager shall further assist the Owner and Architect in preparing Construction Documents and advising the Owner on the acceptability of the Prime Trade Contractors. The Construction Manager shall submit for review and approval to Owner, or its attorneys if designated by Owner, all instructions, terms, conditions, and information prepared for submission to bidders prior to release of the bid package.

§ 3.1.11 Prime Trade Contractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for Prime Trade Contractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project subject to the requirements of Section 10-20.21 of the *School Code*, 105 ILCS 5/10-20.21. The Construction Manager acknowledges and understands that the Owner, as a public body, is subject to the bidding requirements of the *Illinois School Code* and that all trade contracts shall be publicly bid in accordance with such law and awarded by the Owner.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.11.4 The Owner may (1) require the procurement of prime trade contracts through public bidding and (2) award the contract(s) for the Work to the lowest responsive and responsible bidder. When the lowest responsive and responsible multiple prime trade bidders (hereinafter referred to as "Prime Trade Contractors") are identified and awarded a contract by Owner, Owner shall assign those trade contracts (the "Prime Trade Contract") to Construction Manager. For purposes of the Contract Documents, Prime Contractor can be used interchangeably with the term Subcontractor.

In such cases, the Construction Manager shall cause the Subcontracts to incorporate substantially the following provisions:

"This Contract has been awarded by the Owner after advertisement for bids. Upon award of the Contract by the Owner, the Owner shall be deemed to have assigned its rights in this Agreement to the Owner's Construction Manager, which is identified herein as the Contractor.

By submitting its bid, the bidder shall be deemed to have consented to the aforesaid assignment, and to have agreed to become an assigned Prime Trade Contractor to the Construction Manager.

Upon assignment, the Prime Trade Contractor shall become a Contractor of the Construction Manager pursuant to this Agreement, and, except as identified within this Agreement and as provided by law, will no longer have any contractual rights against the Owner, and shall have contractual privity only with the Construction Manager."

§ 3.1.11.5 Construction Manager shall prepare all bid invitations, instructions to bidders, and general and supplementary conditions. Construction Manager shall ensure that the amended A201 General Conditions are incorporated into the bid package, and that no other provisions of the bid package conflict with them. Drawings and specifications shall be provided by the Architect. During preparation of the Construction Documents by the Architect, the Construction Manager shall review said Construction Documents to ensure consistency with the bid documents prepared by the Construction Manager.

§ 3.1.11.6 Prior to advertisement for bids, Construction Manager shall submit for review and approval to Owner and its attorneys all instructions, terms, conditions, and information prepared for submission to bidders prior to release of the bid package.

§ 3.1.11.7 Construction Manager shall conduct pre-bid meetings with interested bidders in accordance with publicly announced scheduled meetings.

§ 3.1.11.8 The Owner shall receive, open, and read aloud all bids as required by the applicable procurement laws. The Construction Manager shall record all bids, prepare bid analyses, and make recommendations to the Owner for the Owner's award of contracts and/or rejection of bids. The Construction Manager's analysis shall include advising the Owner on the acceptability of sub-tier subcontractors and material suppliers proposed by Prime Trade Contractors.

§ 3.1.11.9 If the Construction Manager identifies or recommends a specific bidder that is a "related party" under Section 7.8, the Construction Manager shall promptly notify the Owner as provided in Section 7.8.2.

§ 3.1.11.10 The Subcontract Documents prepared by Construction Manager shall require full compliance with all state and local laws.

§ 3.1.11.11 All trade Work shall be performed by Prime Trade Contractors which have been assigned by the Owner to the Construction Manager as provided in this Agreement. If the Construction Manager has a reasonable objection to any Prime Trade Contractor identified as the lowest responsive bidder, it shall be the burden of the Construction Manager to present demonstrative evidence to the Owner that the bidder is not responsible, and to present such evidence in a timely manner such that Owner suffers no detriment in procuring another Prime Trade Contractor if necessary. The Construction Manager shall not perform any Work with its own forces without prior approval by Owner.

§ 3.1.11.12 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee.

§ 3.1.11.13 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules subject to the requirements of Section 10-20.21 of the *School Code* (105 ILCS 5/10-20.21). The Construction Manager, with the assistance of the Architect, shall issue bidding documents, to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.1.11.14 The Construction Manager shall prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids subject to the requirements of Section 10-20.21 of the *School Code* (105 ILCS 5/10-20.21).

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If, upon request of the Construction Manager, the Owner agrees to procure any items prior advertisement for bids, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Permits

The Construction Manager shall assist the Owner in obtaining building permits and special permits necessary to carry out and complete the Work, except for permits required to be obtained directly by the various Prime Trade Contractors. The Construction Manager shall verify that the Owner has paid all applicable fees. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project. Costs to obtain building permits and specialty permits shall be borne by Owner including any associated filing costs and shall not be reimbursable or included in the Direct Cost of the Work.

§ 3.1.15 Other Preconstruction Phase Services

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

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

See applicable Project Work Order

§ 3.2 Control Estimate

§ 3.2.1 At the request of Owner, upon completion of the Construction Documents by the Architect and, provided time allows, before advertisement for bids under Section 3.1 above, the Construction Manager shall prepare a Control Estimate for the Owner's and Architect's review, and the Owner's approval. The Control Estimate shall be the sum of the Construction Manager's estimate of the Preconstruction Services costs, if any, Cost of the Work, Construction Manager Fee, General Conditions Expense, Reimbursable Allowances, Insurance Fee, and Bond Fee. The Control Estimate shall be used to monitor costs and the timely performance of the Work. The Construction Manager shall update the Control Estimate with each Application for Payment as needed to reflect changes in the Work. Upon Owner's approval, the Control Estimate, Schedule of Values and Clarifications shall be incorporated into Exhibit 3.2.1.

§ 3.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 15, including all Modifications thereto, a copy of which is attached to the Project Work Order as Exhibit 2.2.4.1.;
- .2 a list of the assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions under Section 3.2.4, to supplement the information provided by the Owner and contained in the Contract Documents;

- .3 a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingencies and the Construction Manager's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Prime Trade Contractors, activity sequence and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment, and the Owner's occupancy requirements;
- .5 a date of Substantial Completion, if not established in accordance with Section 3.3.1.3; and
- .6 contingencies for further development of design and construction, as required by Section 3.2.4.

§ 3.2.3 The Construction Manager shall meet with the Owner and Architect to review the Control Estimate. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is approved by the Owner, the Owner shall acknowledge its approval in writing upon request by the Construction Manager. The Owner's approval of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 3.2.4 In preparing the Control Estimate, the Construction Manager shall include a contingency for the Construction Manager's use to cover those costs that are included in the Control Estimate but not otherwise allocated to another line item or included in a Change Order. Construction Manager, upon written approval of the use of any such Contingency funds from Owner, which approval shall not be unreasonably withheld, conditioned or delayed, shall transfer funds from the Contingency line item to cover cost overruns in any other line item except Fee.

At Final Completion, the unused portion of the Contingency Fund shall be credited in full to the Owner.

§ 3.2.4.1 To the extent that the Contract Documents are anticipated to require further development, the Control Estimate shall include the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties. For the avoidance of doubt, the use of the phrase "reasonably inferable" refers to those items which may not be indicated in the Contract Documents but which an experienced Construction Manager will reasonably understand to be necessary for the functionality of the Work.

§ 3.2.5 The Construction Manager shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Construction Manager's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 3.2.6 Prior to commencement of the Construction Phase, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, unless the Owner provides prior written authorization for such costs.

§ 3.2.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

§ 3.2.8 If the Control Estimate shall be deemed to materially vary from the corresponding portion of the lowest responsive and responsible bid if it is at least ten percent (10%) greater or less than that portion of the bid. At the Owner's sole discretion, any contingency may be used for such variance and the Owner and Construction Manager shall proceed with the bids as received. Otherwise, in the event of such material variance, the Construction Manager shall, if the Owner chooses to accept the bid, negotiate respective change orders with the respective Prime Trade Contractors to incorporate design changes to bring the variance within ten percent (10%) of that portion of the bid at no additional charge to the Owner. If the Owner chooses to reject all bids and re-bid, Construction Manager shall administrate re-bid of the affected portions of Work at no additional cost to Owner.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201 General Conditions, the date of commencement of the Work shall mean the date of commencement of the Construction Phase under the applicable Project Work Order.

§ 3.3.1.2 Provided that Owner has obtained all required permits and approvals, the Construction Phase shall commence upon issuance of applicable permits and a Notice to Proceed from Owner for the applicable Project Work Order. The written agreement under the applicable Project Work Order shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to approval of the Control Estimate if different from the requirements set forth in the A201 General Conditions.

§ 3.3.1.3 Substantial Completion

§ 3.3.1.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

Not later than () calendar days from the date of commencement of the Work.

By the following date:

By the date to be established in the Project Work Order and approved by the Owner.

§ 3.3.1.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
See applicable Project Work Order	

§ 3.3.1.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section 3.3.1.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.7.

§ 3.3.2 Scheduling and Administration

§ 3.3.2.0.1 Time is of the essence of this Agreement. Construction Manager shall, with the Owner’s approval, establish the Construction Schedule. Construction Manager shall schedule, sequence and coordinate the performance of the Prime Trade Contractors on the Project so that completion shall be in accordance with the Construction Schedule.

§ 3.3.2.0.2 The Construction Manager shall prepare and regularly update, no less than once per month, a Construction Schedule utilizing a Critical Path Method (CPM) or another Owner pre-approved scheduling method, which incorporates the activities of the Prime Trade Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of shop drawings, Product Data and Samples and delivery of products requiring long lead times and procurement. Additionally, the schedule shall be in accordance with applicable sections of the A201 General Conditions, including the Owner’s occupancy requirements.

§ 3.3.2.0.3 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3.

§ 3.3.2.0.4 In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Prime Trade Contractors for apparent compliance with Subcontract requirements. The Construction Manager shall transmit to the Architect those submittals which have been reviewed by the Construction Manager. The Construction Manager’s actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner or Prime Trade

Contractors. The Construction Manager shall receive and process all other submittals required by the Construction Documents, including certified payrolls, work plans, safety plans, periodic schedule updates, and the like.

§ 3.3.2.0.5 The Construction Manager shall create and maintain a log of all submittals showing, at a minimum, the dates of submittal, review, and return, disposition, and description.

§ 3.3.2.0.6 The Construction Schedule shall commence with the Notice to Proceed, and shall schedule the Prime Trade Contractors' Work using a Critical Path Method or other scheduling methodology approved by Owner. Construction Manager shall update the Project Construction Schedule on a monthly basis to show current and forecasted progress and completion. A copy of each schedule and schedule update shall be transmitted to the Owner, Architect and each Prime Trade Contractor. Additionally, Construction Manager shall develop a look-ahead schedule for discussion at each weekly construction coordination meeting. The weekly look-ahead shall, at a minimum, show the schedule for the past week and upcoming two weeks.

§ 3.3.2.0.7 If a monthly Project Schedule update indicates that the previously approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the Owner.

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the Owner's approval of the Control Estimate, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of the A201 General Conditions. The Construction Schedule shall be attached in the Project Work Order.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Staffing

Construction Manager shall adequately staff the Project. At all times during the Construction Phase, Construction Manager shall maintain one competent, full-time superintendent at the Project site to supervise the Work and coordinate the progress of the Prime Trade Contractors. If any such individual is no longer employed on the Project pursuant to this paragraph, Construction Manager shall propose to Owner the names of other individuals as substitutes. No person shall be employed on the Project if Owner has a reasonable objection. If Owner notifies Construction Manager that it has reasonable objection to any such individual, Construction Manager shall remove such person from the Project and propose substitutes to Owner for Owner's approval.

§ 3.3.2.6 Cost Records Construction Manager shall verify and maintain in accordance with generally accepted accounting principles detailed cost accounting records for Work performed on the basis of unit costs, and on the basis of actual costs for labor and materials and other bases showing all costs, and shall maintain and transmit to Owner all receipts, invoices, purchase orders, canceled checks, bills of lading and other documents and evidence of payment or indebtedness to support such records as Owner may request. Construction Manager shall audit, verify and recommend approval or rejection or modification of all Change Orders submitted by Subcontractors. Construction Manager shall afford the Owner access to these records and preserve them for a period of three (3) years after final payment.

§ 3.3.2.7 Requests for Information

§ 3.3.2.7.1 The Construction Manager shall transmit to the Architect requests for interpretations, information, or clarification of the meaning and intent of the Drawings and Specifications, and shall timely assist in the resolution of such requests.

§ 3.3.2.7.2 The Construction Manager shall create and maintain a log of all requests from all Prime Trade Contractors, showing, at a minimum, a description of the request, date of submission, a description of the response, and date of response.

§ 3.3.2.8 Prime Trade Contractor Change Orders

§ 3.3.2.8.1 Without invalidating this Agreement or any Subcontract, and without notice to any respective surety, Owner may make changes to the Prime Trade Contractor contracts. The Construction Manager shall review requests for changes, assist in negotiating Prime Trade Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives which incorporate the modifications to the Construction Documents. For each change anticipated to be paid by lump sum, Construction Manager shall prepare a detailed estimate for the respective Change Order or Construction Change Directive. Construction Manager shall compare the detailed value estimate with the submittal of the Prime Trade Contractor. Construction Manager shall require that each Prime Trade Contractor submit such invoices, purchase orders, labor and material records, and schedule analyses as is necessary to verify the accuracy of the Change Order or Construction Change Directive price and/or schedule adjustment. Construction Manager shall submit a detailed recommendation for the Owner's review and approval for each Change Order or Construction Change Directive. Construction Manager shall systematically maintain all documentation supporting each change and upon completion of the Project turn over such documentation to the Owner.

§ 3.3.2.8.2 The Construction Manager shall create and maintain a log of all requests for change orders showing, at a minimum, date of submission, description of request, requested change in contract price, requested change in contract time, and disposition.

§ 3.3.2.8.3 The Construction Manager shall create and maintain a log of all approved change orders showing, at a minimum, dates of approval, description, reason for change, agreed price of change, and agreed change of contract time.

§ 3.3.2.9 Claims

§ 3.3.2.9.1 The Construction Manager shall assist the Owner and Architect in the review, evaluation and documentation of Claims. The Construction Manager shall provide a written recommendation to the Owner suggesting the proper disposition of each Claim. Construction Manager shall require that each Prime Trade Contractor submit such invoices, purchase orders, labor and material records, and schedule analyses as is necessary to verify the accuracy of the Claim's cost and schedule impact. Construction Manager shall submit a detailed recommendation that reasonably facilitates the Owner's review and consideration of each Claim.

§ 3.3.2.9.2 The Construction Manager shall create and maintain a log of all Claims showing, at a minimum, date of submission, description of Claim, demanded change in contract price, demanded change in contract time, and disposition.

§ 3.3.2.10 **Extension of Time for Delay.** To the extent that Construction Manager's services under this Agreement are delayed by the Owner, the Contract Time shall be equitably extended or, if such delay is attributable to the Owner, the Contract Time shall be equitably extended and increased for additional costs incurred by Construction Manager as General Conditions or Reimbursable Expenses.

§ 3.3.2.11 **Site Safety.** Construction Manager shall hold regular safety meetings at the site at least weekly with all Prime Trade Contractors. Construction Manager shall maintain all required safety records and logs. The Construction Manager shall review, approve and coordinate the safety programs developed by each of the Prime Trade Contractors. Neither the Owner, Construction Manager, nor the Architect are responsible for site safety. The individual Subcontracts shall provide that the Prime Trade Contractors are solely responsible for the means and methods of prosecuting their respective Work. The foregoing shall not relieve Prime Trade Contractors of their responsibility for site safety for their Work and the Work performed by their personnel.

§ 3.3.2.12 Quality Control

§ 3.3.2.12.1 Construction Manager shall inspect the Work of Prime Trade Contractors for defects and deficiencies in the Work in order to assure compliance with the requirements of the Contract Documents. As appropriate, the Construction Manager shall have authority, upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Construction Manager, in consultation with the Architect and Owner, may reject Work which does not conform to the requirements of the Contract Documents.

§ 3.3.2.12.2 The Construction Manager shall assist the Owner in obtaining from the responsible Prime Trade Contractor correction of all portions of the Work which do not comply with the Contract Documents or do not meet good workmanlike standards.

§ 3.3.2.13 **As-Built Documents.** Construction Manager shall obtain data from Prime Trade Contractors and maintain a current set of accurate As Built Drawings and Specifications clearly marked to show reported actual changes during construction. Construction Manager shall transmit a copy of all As Built Drawings and Specifications to Architect for the preparation of final As Built Documents. Construction Manager shall periodically (not less than monthly) review Prime Trade Contractors' data to verify that they are recording information sufficient to allow preparation of the As Built Documents.

§ 3.3.2.14 **Reserved.**

§ 3.3.2.15 **Operations and Maintenance Training Manuals.** Construction Manager shall arrange and schedule operating and maintenance training on mechanical, electrical and other systems for Owner's personnel by factory authorized representatives commencing upon start-up and the commissioning of each system prior to substantial completion. Construction Manager shall receive all operating and maintenance manuals from Prime Trade Contractors, and, shall cooperate with reasonable requests from Owner or the Architect to review the same for completeness, clarity, and conformance with the respective Contract Documents. After all operations and maintenance manuals are received, but no later than turnover of operations to Owner's personnel, Construction Manager shall transmit all approved operations and maintenance manuals to the Owner.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project.

§ 4.1.2 **Reserved.**

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

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

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

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

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, or, at Owner's option, Owner may require Construction Manager or Architect to subcontract directly for geotechnical engineering

services, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase under the applicable Project Work Order, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

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

§ 4.1.7 Notwithstanding anything to the contrary contained in or implied from this Article 4, Owner shall be required to furnish only information or services describes in this Article 4 requested by the Construction Manager in writing, in reasonable detail and in reasonable advance of when such information is needed by the Construction Manager to timely and properly perform Construction Manager's services. Each request by the Construction Manager for information shall specify a reasonable date by which such information is needed.

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

The Owner shall retain an Architect, as identified in the applicable Project Work Order to provide services as necessary to design and complete the Project.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 The Construction Manager's will be compensated and paid in the following amounts, which shall be reflected in the applicable Project Work Order, for each project:

- .1 the Construction Manager's Pre-Construction Fee in a lump sum amount identified in the applicable Project Work Order;
- .2 the Construction Manager's Construction Fee of [TBD] as a percentage of the Direct Cost of the Work unless modified by applicable Project Work Order;
- .3 the Construction Manager's General Conditions in an amount not to exceed the amount set forth in the Project Authorization, which shall include staffing, mobilization, storage, and other construction-related costs to the Construction Manager relating to the actual construction of the Project other than Reimbursable Expenses or, if approved by Owner, the self-performance of work. The Owner and Construction Manager agree that General Conditions can be set as a fixed amount in the Project Authorization based on an agreed upon staffing plan. This General Conditions cost is based on Construction Manager providing the number of staff who shall devote the specific number of man hours to this Project as set forth in Exhibit B. If the planned project schedule gets extended as referenced in 3.3.2.10 the General Conditions not to exceed amount or fixed amount will be equitably adjusted;
- .4 Reimbursable Expenses in an amount of the actual costs incurred by Construction Manager, as set forth in Section 5.2.1, identified as a not-to-exceed amount on the applicable Project Work Order;

- .5 the Construction Manager shall be reimbursed for Commercial General Liability, Builders Risk, Professional Liability, Automobile, and Workers Compensation insurance as a percentage of the Direct Cost of the Work identified in the applicable Project Work Order;

(Paragraph deleted)

- .6 the Construction Manager shall be reimbursed for its performance and payment bonds and any required Builder's Risk insurance, as required by the A201 General Conditions, as modified by Owner and incorporated herein, in a not-to-exceed as a fixed amount set forth in the Project Authorization; and
- .7 the Direct Cost of the Work identified in the applicable Project Work Order. Subject to Section 11.1.6.1, payments shall be computed as set forth in Section 5.2.1.
- .8 For such compensation amounts as described in this Article 5, wages, salaries and all associated taxes, costs and benefits that are combined as a comprehensive unit of pay described as "Management Rates", "Labor Rates", or "Equipment Rental Rates" constitute the primary data for accounting purposes.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and

(Paragraphs deleted)

Prime Trade Contractors, if any, are set forth in the applicable Project Work Order.

(Table deleted)

(Paragraph deleted)

§ 5.1.3 Reserved.

§ 5.2 Payments

§ 5.2.1 Payments for Preconstruction Phase Services shall be submitted to the Owner through an invoice. The rights and duties of each party with respect to payment of the invoice for Preconstruction Phase Services shall be the same as the rights and duties for payment of Applications for Payment as set forth herein. During the Construction Phase, Direct Cost of Work shall be invoiced monthly through an Application for Payment as set forth in Article 11. Direct Cost of Work, as defined in Section 7.1.1, includes all Work performed by the Prime Trade Contractors. The Construction Manager shall not mark up the Direct Cost of the Work. The Direct Cost of the Work shall be paid by the Owner to the Construction Manager, and held in trust by the Construction Manager for payment to the Prime Trade Contractors to the extent required by the Contract Documents, unless the Owner permits the payment and performance bonds to be furnished by Prime Trade Contractors and not by the Construction Manager, in which case the Owner shall pay the Direct Cost of the Work directly to the Prime Trade Contractors.

The Construction Fee, General Conditions, and reimbursement for insurance and bonds, and Reimbursable Expenses shall be payable based on the Applications for Payment as set forth in Article 11 and as computed below:

- a. The Construction Fee and reimbursement for insurance and bonds shall be payable in proportion to the percentage of completion of each project and shall be fixed when the Cost of Work is established for each such project and identified in the applicable Project Work Order.
- b. The General Conditions shall be payable based on the Construction Manager's costs for the actual construction of the Project, and may be payable in proportion to the percentage of completion of the Project, and which shall be supported by Construction Manager's payroll and/or other evidence to support said costs.
- c. The Owner shall pay Reimbursable Expenses, as they are incurred in connection with each project, with the amount of such Reimbursable Expenses being determined by agreement of the Owner and Construction Manager at the time of Amendment., in an amount not to exceed the amount identified in the applicable Project Work Order. "Reimbursable Expenses" means the costs to the Construction Manager of temporary toilets, temporary power usage, phone and data, surveying and layout, permits and licenses, security, required laboratory testing, periodic clean up, final clean up, dumpsters, temporary enclosures, temporary handrails and ladders, safety, project signs, photographs, snow plowing, temporary heat, plan reproduction, other utility expenses during construction, and any other related items necessary for Construction Manager

to fulfill its construction management obligations under the Contract Documents. Reimbursable Expenses do not include the Direct Cost of the Work or any items of labor or materials that are the responsibility of a Prime Trade Contractor. Reimbursable Expenses do not include any capital improvements.

§ 5.2.2

(Paragraphs deleted)

Construction Manager's invoices and Applications for Payment shall be submitted monthly by a date to be determined by Owner. Payments by Owner are due and payable in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1, et seq.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 Reserved.

§ 6.1.2

(Paragraphs deleted)

Reserved.

§ 6.1.3 Reserved.

§ 6.1.4 Any additive adjustment to the Contract Sum shall include such markups for overhead and profit as follows:

- a) If the Change is to Work self-performed by the Contractor that was awarded based on competitive bidding, Contractor shall receive ten percent (10%) overhead and five percent (5%) Fee;
- b) If the Change is to Work self-performed by the Contractor that was not awarded by competitive bidding, Contractor shall receive as its fee the Contractor's Fee as set forth in the Agreement. This Fee shall also apply to changes in the Work performed by a Subcontractor under Sections 6.1.4(c) and (d), below;
- c) Work performed by a Subcontractor shall include ten percent (10%) overhead and five percent (5%) Fee. and
- d) Work performed by a Sub-subcontractor shall include ten percent (10%) overhead and five percent (5%) Fee, plus a five percent (5%) Fee to the Subcontractor.

§ 6.1.5 Reserved.

§ 6.1.6

(Paragraphs deleted)

Reserved.

§ 6.1.7 As the Owner's sole and exclusive remedy for Construction Manager's unexcused delay, liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Liquidated damages, if any, shall be assessed as set forth in the applicable Project Work Order.

§ 6.1.8 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

§ 6.2 Changes in the Work

§ 6.2.1 The Owner may, without invalidating a Project Work Order, order changes in the Work within the general scope of the Project Work Order consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time of a Project Work Order as a result of changes in the Work, as provided in Article 7 of A201 General Conditions. The Construction Manager shall incorporate all changes in the Work, Contract Sum, and Contract Time as separate entries in the Control Estimate.

§ 6.2.1.1 The Architect may order minor changes in the Project Work Order as provided in Article 7 of the A201 General Conditions.

§ 6.2.2 Increased costs for the items set forth in Sections 7.1 through 7.7 that result from changes in the Work shall become part of the Cost of the Work, and the Construction Manager's Fee shall be adjusted as provided in Section 6.1.3.

§ 6.2.3 If the Construction Manager receives any Drawings, Specifications, interpretations or instructions from the Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions, any of which will result in a significant change in the Cost of the Work in comparison with the Control Estimate or the date of Substantial Completion, the Construction Manager shall promptly notify the Owner and Architect in writing and shall not proceed with the affected Work until the Construction Manager receives further written instructions from the Owner and Architect.

§ 6.2.4 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of the A201 General Conditions, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement.

§ 6.2.5 Reserved.

ARTICLE 7 DIRECT COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1

§ 7.1.1 The terms "Direct Cost of the Work" or "Cost of the Work" shall mean the sum of all trade subcontracts assigned to Construction Manager after public bid, and any Owner-authorized additive and/or deductive change orders, Construction Manager's General Conditions, and Reimbursable Expenses. The "Direct Cost of the Work" or "Cost of the Work" shall not include Construction Manager's Fee or Construction Manager's insurance or bond fees.

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

(Paragraph deleted)

§ 7.2 Reserved.

(Paragraphs deleted)

§ 7.3 Reserved.

§ 7.4 Reserved.

(Paragraphs deleted)

§ 7.5 Reserved

(Paragraphs deleted)

§ 7.6 Reserved.

(Paragraphs deleted)

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work if, and only to the extent, approved in advance by written Change Order executed by the Owner.

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

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

(Paragraph deleted)

Init.

§ 7.8 Related Party Transactions

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

§ 7.8.2 If any of the Reimbursable Costs or Direct Costs of the Work arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, the transaction may proceed. Otherwise, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party.

§ 7.9 Reserved.

(Paragraphs deleted)

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Reserved.

§ 9.2 Reserved.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Master Agreement and Project Work Orders that follow, and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Prime Trade Contractor's proposals, Prime Trade Contractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Wages, salaries and all associated taxes, costs and benefits that are combined as a comprehensive unit of pay described as "Management Rates" in Exhibit 7.2.2, "Labor Rates" in Exhibit 7.2.1, or "Equipment Rental Rates" in Exhibit 6.15, and as described in this Articles 6 and 7, above, constitute the primary data for accounting purposes and FOIA request, provided the application of such rates (i.e., quantity of applied hours and application of rates) shall remain subject to audit.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Owner by the Construction Manager, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Project Work Order. Progress and Final Payments and payments for Preconstruction Services under Article 5 shall be made to Construction Manager's in accordance with Exhibit 11.1.1, Construction Manager's Remittance Information. Upon receipt of a properly submitted Application for Payment, each payment shall be made as provided in the Local Government Prompt Payment Act.

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

§ 11.1.3 Reserved.

§ 11.1.4 Reserved.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with Sections 9.2 and 9.3 of the A201 General Conditions. The schedule of values shall allocate each item of Work comprising the entire Direct Cost of the Work, except that the Construction Manager's Fee and Reimbursable Costs shall be shown as single separate items. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule of values, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed.

§ 11.1.6 In accordance with the A201 General Conditions and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.6.1 The amount of each progress payment shall be calculated as follows:

- .1 Take the Direct Cost of the Work completed during the period covering the Application for Payment, as adjusted by Change Orders applicable to that period, if any, as described in Section 3.3.2.8, less retainage as defined in Section 11.1.7.1;
- .2 Add the Construction Manager's General Conditions costs and Construction Fee for the period covering the Application for Payment, less retainage as defined in Section 11.1.7.1. The Construction Manager's Fee shall be computed as provided in Article 5;
- .3 Add the Reimbursable Expenses incurred during the period covering the Application for Payment
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.5 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.

(Paragraphs deleted)

§ 11.1.7 Retainage

§ 11.1.7.1 For each progress payment made prior to Substantial Completion of the Work under a Project Work Order, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

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

Ten percent (10%) retainage subject to the reduction set forth in Section 11.1.7.2.

§ 11.1.7.1.1 The following items are not subject to retainage:

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

No retainage shall be held on Construction Manager's Fee, materials, insurance premiums, or General Conditions.

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

(If the retainage established in Section 11.1.7.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

in the sole discretion of the Owner but no more than five percent (5%) after fifty percent (50%) completion of the Work.

§ 11.1.7.3
(Paragraphs deleted)
Reserved.

§ 11.1.8 If final completion of the Work under a Project Work Order is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of the A201 General Conditions.

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

§ 11.1.10 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Prime Trade Contractors and the Construction Manager shall execute Subcontracts in accordance with those agreements and the terms and conditions of the A201 General Conditions.

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

§ 11.1.12 On the first application under a Project Work Order, Construction Manager will furnish its partial waiver of lien for the net amount of the application. Assuming prior, partial applications have been paid. Construction Manager will furnish with each succeeding partial application a current waiver of lien and the applicable waivers of lien and affidavits from Prime Trade Contractors for the previous partial application. On the final application, Construction Manager will furnish the applicable waivers and affidavits from Prime Trade Contractors for the previously paid partial application. At the time the final application is approved and funds are available for payment, Construction Manager will furnish its final waiver of lien and the applicable final waivers and affidavits from its Prime Trade Contractors. In the event a Prime Trade Contractor, or Subcontractor or material supplier fails to provide a waiver of lien for any application for payment, or, should a Prime Trade Contractor or Subcontractor record a lien, the Construction Manager may furnish, either directly or through the appropriate Prime Trade Contractor, a bond in lieu of the Prime Trade Contractor's absent waiver of lien. Such bond shall be for one hundred and fifty percent (150%) of the amount of the disputed claim.

§ 11.1.13 Any "Pencil Draw" review or pre-approved review of a monthly Application for Payment prior to the end of a current month's Work shall include Work reasonably estimated to be completed at the end of such month.

§ 11.2 Final Payment

§ 11.2.1 Final payment for each Project Work Order, constituting the entire unpaid balance of the Contract Sum, including any retainage withheld pursuant to Section 11.1, shall be made by the Owner to the Construction Manager when

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

§ 11.2.2 Following Owner's receipt of the Construction Manager's final accounting for the Cost of the Work specified in the Project Work Order, the Owner, in consultation with the Architect, may conduct, and the Construction Manager shall reasonably cooperate with, an audit of the Cost of the Work.

§ 11.2.2.1 Reserved.

§ 11.2.2.2 Reserved.

§ 11.2.2.3 Reserved.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

§ 11.2.4 If, subsequent to final payment for Work specified in the Project Work Order, and at the Owner's request, the Construction Manager incurs costs described in Sections 7.1 through 7.7 and not excluded by Section 7.9 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due

(Paragraphs deleted)

as set forth in the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

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

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

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of the A201 General Conditions, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other: *(Specify)*

As set forth in the A201 General Conditions.

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Owner's Approval of the Control Estimate

§ 13.1.1 Prior to the Owner's approval of the Control Estimate, the Owner may terminate a Project Work Order upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause and the Construction Manager may terminate a Project Work Order, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of the A201 General Conditions.

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

Init.

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§ 13.1.3 In the event of termination of a Project Work Order pursuant to Section 13.1.1 after the commencement of the Construction Phase but prior to the Owner's approval of the Control Estimate, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.
- .4 Subtract the aggregate of previous payments made by the Owner for Construction Phase services, including all payments for the Direct Cost of the Work, the Construction Fee, and the Reimbursable Expenses; and
- .5 If the full cost of any insurance and bonds were reimbursed to the Construction Manager prior to termination, Owner shall subtract proportion of insurance and bond costs as prorated by the insurance company provider and bonding company related to the remaining Work under the Work Order.

§ 13.1.4 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

§ 13.2 Termination or Suspension Following the Owner's Approval of the Control Estimate

§ 13.2.1 Termination for Convenience

The Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in the A201 General Conditions. .

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of the A201 General Conditions, the Owner shall then only pay the Construction Manager an amount calculated as follows:

- .1 Take the Direct Cost of the Work incurred by the Construction Manager under the applicable Project Work Order to the date of termination;
- .2 Add a monthly installment of the Construction Fee payable up to the date of termination, as prorated up to the date of termination, plus the amount of the Construction Fee previously paid under Article 5;
- .3 Add the Reimbursable Costs incurred by the Construction Manager up to the date of termination; and
- .4 Subtract the aggregate of previous payments made by the Owner for Construction Phase services, including all payments for the Direct Cost of the Work, the Construction Fee, and the Reimbursable Expenses.
- .5 If the full cost of any insurance and bonds were reimbursed to the Construction Manager prior to termination, Owner shall subtract proportion of insurance and bond costs related to the remaining port of the Project.

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

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

§ 13.2.4 Suspension

The Work under the Project Work Order may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017. In such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201 General Conditions.

§ 14.1.1 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the Owner or the Construction Manager. Owner and Construction Manager acknowledge and agree that the obligations of the Construction Manager are solely for the benefit of the Owner and not intended in any respect to benefit the Architect, Prime Trade Contractors, or any other third parties.

§ 14.1.2 The Construction Manager shall endeavor to keep the Project free from mechanic's liens. If the Owner is required to withhold money pursuant to a notice of lien or lien against public funds, the Construction Manager shall indemnify, defend and hold harmless the Owner for all costs incurred in connection with such lien and any resulting litigation, including attorneys' fees. The Construction Manager shall ensure that a similar provision is incorporated into the Subcontracts.

§ 14.1.3 Construction Manager acknowledges that this is a public works project governed by the Illinois Prevailing Wage Act. Construction Manager shall pay its laborers, if any, and ensure that all Prime Trade Contractors pay their laborers not less than the established prevailing rate of wages. 820 ILCS 130/1 *et seq.* Construction Manager shall comply with all reporting requirements of the Illinois Prevailing Wage Act. Similarly, the Construction Manager shall assure that all Prime Trade Contractors and sub-tier subcontractors comply with the reporting requirements of the Illinois Prevailing Wage Act.

§ 14.1.4 Construction Manager represents that it has in place a Sexual Harassment Policy in accordance with the Illinois Human Rights Act and shall ensure that all Prime Trade Contractors have in place a Sexual Harassment Policy prior to commencement of Work on the Project. 775 ILCS 5/1-105.

§ 14.1.5 Construction Manager represents that it does not discriminate in its hiring practices based upon race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service

§ 14.1.6 Construction Manager represents that it is in conformance with the Drug Free Workplace Act. 30 ILCS 580/1 *et seq.*

§ 14.1.7 Construction Manager certifies that it is not barred from contracting as a result of bid rigging or bid rotation. 720 ILCS 5/33 E-11.

§ 14.1.8 Construction Manager shall consult with and assist the Owner in complying with any requirements or achieving any contracting goals required by the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, 30 ILCS 575/0.01, et seq. It is the Owner's responsibility to identify any contracting goals required.

§ 14.1.9 Construction Manager shall pay, and cause all Subcontractors to pay, prevailing wages in accordance with and shall fully comply with all requirements of the Prevailing Wage Act, 820 ILCS 130/0.01, *et seq.*, including those set forth in Section 13.1.3.1 herein. This Agreement calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. ("the Act"). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Department publishes the prevailing wage rates on its website at <http://labor.illinois.gov/>. The Department revises the prevailing wage rates, and the contractor/subcontractor has an obligation to check the Department's web site for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website. All Contractors, Subcontractors, and sub-subcontractors rendering services under this Agreement must comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties.

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

Construction Manager's Certificate of General Liability Insurance, to which the Owner and the Owner's Designer Professionals have been added as Additional Insureds, is attached at Exhibit 14.3 and establishes the coverages and limits of liability as required by the applicable insurance provisions of this Agreement.

§ 14.3.1 Preconstruction and Construction Phase

The Construction Manager shall maintain the insurance set forth in the A201 General Conditions during the Preconstruction and Construction phases in addition to any other coverages identified below. Construction Manager as principal shall obtain payment and performance bonds in accordance with Article 11 of the A201 General Conditions; provided, however, that Construction Manager may cause each Prime Trade Contractor to furnish its own payment and performance bond covering its scope of Work, if Owner gives written pre-approval for multiple bonds furnished at the Prime Trade Contractor level.

§ 14.3.1.1 The insurance to be purchased and maintained by Construction Manager under the terms of the A201 General Conditions shall include, without limitation, property insurance written on a builder's risk or equivalent policy form for all losses not covered by any professional liability insurance policies to be maintained by the Architect or Construction Manager, if applicable, in accordance with the Contract Documents in the amount of the Contract Sum, as modified by Change Orders, comprising the total value for the entire Project at the site on a replacement cost basis.

§ 14.3.1.2 Reserved.

§ 14.3.1.3 Reserved.

§ 14.3.1.4 Reserved.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million dollars (\$ \$2,000,000) per claim and five million dollars (\$ 5,000,000) in the aggregate.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ 14.3.2 Construction Manager shall procure Certificates of Insurance, as well as any required Performance and Payment Bonds, for each of the Prime Trade Contractors immediately upon award of the Contract and verify conformance of same with the Contract Documents prior to allowing the Prime Trade Contractors onto the Site. Insurance of Prime Trade Contractors shall name Owner, Construction Manager, and Architect as "Additional Insureds". Copies of same shall be transmitted to the Owner and Architect before Prime Trade Contractors may commence Work on the Project.

(Paragraph deleted)

§ 14.4 Notice

Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given as set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

See Sections 1.1.9 and 1.1.12 for contact information of Owner and Construction Manager’s respective representatives.

(Paragraphs deleted)

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 This AIA Document A134™–2019, where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price, as modified
- .2 AIA Document A134™–2019, Exhibit A, Insurance and Bonds, as modified
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified and incorporated herein as the "A201 General Conditions"
- .4

(Paragraphs deleted)

In the event a virtual design model is implemented for the coordinated design and construction of the Project, the parties may execute a BIM Addendum on a form to be agreed to by the parties. The Owner shall cause an identical BIM Addendum to be appended or incorporated into all written agreements between the Owner and any design professional performing obligations to be modeled

- .5 Other Exhibits:
(Check all boxes that apply.)

AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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- .6 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals,

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

LIST OF EXHIBITS

- Exhibit 1.1.1 Sample Project Work Order/Project Work Order
- Exhibit 2.1.6.4 Sample Trade Contractor Agreement
- The following Exhibits mentioned herein will be mutually agreed upon and attached to individual Project Work Orders:
- Exhibit 3.2.1 Final Cost Estimate, Schedule of Values and Clarifications, List of Drawings and Specifications
- Exhibit 3.3.2.2 Project Construction Schedule
- Exhibit 6.15 Construction Manager’s Equipment Rental Rates and Practices
- Exhibit 7.2.1 Construction Manager’s Comprehensive Trade Labor Rates
- Exhibit 7.2.2 Construction Manager’s Comprehensive Management Rates
- Exhibit 11.1.1 Construction Manager’s Remittance Information
- Exhibit 14.3 Construction Manager’s Certificate of Insurance

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

OWNER *(Signature)*

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

 **AIA[®] Document A201[®] – 2017****General Conditions of the Contract for Construction**

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

ALL PROJECTS

THE OWNER:

Geneva Community Unit School District 304
227 North 4th Street
Geneva, IL 601340

THE ARCHITECT:

(Name, legal status and address)

See applicable Project Work Order

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ADDITIONS AND DELETIONS:

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

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Master Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, Project Work Order 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 Project Work Order shall take precedence over terms and conditions in the Master Agreement.

§ 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 a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

§ 1.2.4 If any two or more provisions of the Contract Documents conflict, and such conflict relates to the quantity or quality of the Work, the Contractor agrees to provide the greater quantity and/or better quality of such Work.

§ 1.2.5 The term "Contractor" as used in the A201 General Conditions shall mean the Construction Manager.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights claimed by the owner(s) and any licensee(s) who have an interest in and to the Instruments of Service.

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

§ 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.

§ 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 parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

(Paragraphs deleted)

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Reserved.

§ 2.2.2 Reserved.

§ 2.2.3 Reserved.

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

§ 2.3 Information and Services Required of the Owner

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

§ 2.3.2 The Owner 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 Reserved.

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

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

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or approved construction schedule and fails within a five-day period after receipt of written notice from the Owner to commence and continue correction of such default, neglect, or failure, the Owner may, without prejudice to other remedies the Owner may have, correct such default, neglect, or failure. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor for the reasonable cost of correcting such deficiencies, including Owner's expenses and reasonable attorney's fees and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within thirty (30) days after a request by the Owner.

§ 2.6 Owner's Right to Audit. The Contractor shall keep full and accurate records of all labor and material costs incurred and items billed in connection with the performance of the Work, which records shall be open to inspection, copying, and audit by the Owner or its authorized representatives during performance of the Work and until three years after Final Payment.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative. This Project is utilizing a construction manager at-risk, which is reflected in a separate agreement between the Owner and Construction Manager. When the lowest, responsive and responsible multiple prime trade bidder(s) are identified and awarded contracts by the Owner, each such award shall constitute the automatic assignment of that trade contract by the Owner to the Construction Manager, who shall then be known as the "Contractor," and each such successful bidder shall then be known as a "Subcontractor." For purposes of the work of this agreement each "Subcontractor" shall be responsible for all terms and conditions as outlined for the "Contractor" unless stipulated further herein.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 The Contractor represents that it has visited the Project site, become generally familiar with local conditions under which the Work is to be performed, correlated personal observations with requirements of the Contract Documents, and has satisfied itself as to the nature and location of the Work, the general and local conditions, including those bearing upon access (including partial or total restrictions on access), transportation, delivery, disposal, staging, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, ground water table or similar physical conditions of the ground, excluding subsurface or otherwise concealed physical conditions and unknown physical conditions, the character, quality and quantity of existing conditions to be encountered, the character of equipment and facilities needed prior to and during the prosecution of the Work and all other matters which can in any way effect the Work or the cost thereof under this Agreement. Any failure by the Contractor to acquaint itself with all the available information concerning these conditions will not relieve the Contractor from any obligation under the Contract Documents.

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

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

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

§ 3.2.5 In all cases where Work interconnects with existing facilities, Contractor shall reasonably field measure and verify at the site all dimensions relating to such existing facilities. Any conflicts in the Work and the existing facilities which could have been mitigated by the Contractor's obligation to reasonably verify the dimensions of the existing facilities shall be promptly rectified by the Contractor at its own expense, and such obligation does not limit the Owner's other rights and remedies under the Contract Documents.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Contractor shall not proceed performing the Work using its alternative means, methods, techniques, sequences, or procedures without approval from the Owner as documented in weekly meeting and/or progress reports.

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

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

§ 3.3.4 The Contractor shall coordinate inspections by governmental authorities having jurisdiction over the Work.

§ 3.3.5 No inspection performed or failed to be performed shall be a waiver of any of the Contractor's obligations hereunder.

§ 3.4 Labor and Materials

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

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

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

§3.4.4 The Contractor shall pay prevailing wages in accordance with and shall fully comply with all requirements of the Prevailing Wage Act, 820 ILCS 130/0.01, *et seq.*, including those set forth in Section 13.1.3.1 herein. This Agreement calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/01 *et seq.* ("the Act"). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Department publishes the prevailing wage rates on its website at <http://labor.illinois.gov/>. The Department revises the prevailing wage rates, and the contractor/subcontractor has an obligation to check the Department's web site for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website. All Contractors, Subcontractors, and sub-subcontractors rendering services under this Agreement must comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties.

§ 3.4.5 The Contractor shall not at any time permit on the Project site any alcohol or controlled substances whether inside or outside of buildings or structures. Possession or use of any of the foregoing at or adjacent to the site shall obligate the Contractor to remove such offending personnel from the site and replace them at no additional cost to the Owner.

§3.4.6 The Contractor and any Subcontractors shall conform to labor laws of the State and various acts amendatory and supplementary thereto and to other laws, ordinances and legal requirements applicable thereto. Contractor shall enforce among all personnel directly or indirectly employed by it, and among all Subcontractors and their employees, all rules which the Owner may establish for conduct of such personnel on the site.

§ 3.5 Warranty

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

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

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

§ 3.7.3 Without assuming any liability or responsibility for design obligations of the Architect, the Contractor performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

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

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

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection. Notwithstanding any provision of the Contract Documents to the contrary, any use of an allowance account is subject to the review and approval of the Owner and documented in the weekly meetings.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 Superintendent

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Owner and Architect to provide notice within the 14-day period shall constitute notice of no initial objection but shall not affect Owner's right to make a subsequent rejection.

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

§ 3.10 Contractor's Construction and Submittal Schedules

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

§ 3.10.1.1 The Contractor's construction schedules shall be in a bar chart format, and shall depict, at a minimum, activity identification and durations, critical path, float, early start, early finish, late start, and late finish.

§ 3.10.1.2 The float in the construction schedules will not be deemed exclusively available to the Contractor or Owner, but rather shall be available to either party as needed.

§ 3.10.1.3 No less than once per month, the Contractor shall submit an updated construction schedule. The updated construction schedule shall depict actual start and completion dates for Work commenced and, if appropriate, Work completed. Additionally, the updated construction schedules shall depict updated estimates of anticipated commencement and completion dates for all upcoming Work.

§ 3.10.1.4 The Contractor's submission of the initial construction schedule and monthly schedule updates shall be conditions precedent to certification of the Contractor's application for payment.

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. The Owner shall be entitled to rely on Contractor's schedules for coordination of its own activities, as well as the activities of other contractors working at the Project site or on the Project.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals (collectively the "As-Built Documents"). These As-Built Documents shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner

upon completion of the Work as a record of the Work as constructed. Adequate maintenance of the As-Built Documents shall be a condition precedent to certification of the Contractor's applications for payment.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Architect will specify all

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

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

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

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

§ 3.18.3 "Claims, damages, losses and expenses" as these words are used herein shall be construed to include, but not be limited to (1) injury or damage resulting from the failure of or use or misuse by Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees and costs incurred in defense of the claim or in bringing an action to enforce the provision of this Indemnity or any other indemnity contained in the Contract Documents, including the fees charged by the indemnitee's expert witnesses; and (3) all costs, expenses, lost time, opportunity costs and other similar indirect or incident damages incurred by the party being indemnified or its employees, agents or consultants.

§ 3.18.4 In the event that the Contractor or its Subcontractors are requested to, but refuse to, honor the indemnity obligations hereunder or to provide a defense, then in addition to all other obligations hereunder, the Contractor and its Subcontractors shall reimburse the Owner and Architect the cost of any legal action concerning Contractor's or Subcontractor's duty to defend and indemnify under this Agreement, including attorneys' fees, time expended, costs and expenses.

§ 3.18.5 The Contractor hereby knowingly and intentionally waives the right to assert, under the case of *Kotecki v. Cyclops Welding Corp.*, 146 Ill.2nd 155 (1991), that Contractor's liability may be limited to the amount of its statutory liability under the Workers' Compensation Act, and agrees that Contractor's liability to indemnify and defend the Owner and Architect is not limited by the so called "Kotecki Cap". The Contractor shall include this provision in each of its Subcontract agreements and shall require its Subcontractors to be so bound.

§ 3.18.6 The Contractor shall include in each and every Subcontract with any and all Subcontractors and/or material suppliers performing Work and require each and every Subcontractor and/or material supplier performing Work to agree to be bound by all of the provisions 3.18.1 through 3.18.10 under the Contract Documents.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

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

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

§ 4.2.4 Communications

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

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

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

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

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

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

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

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

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

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, 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 If this Project is utilizing a construction manager at-risk, then when the lowest, responsive and responsible multiple prime trade bidder(s) are identified and awarded contracts by the Owner, each such award shall constitute the automatic assignment of that trade contract by the Owner to the construction manager, who is also known as the "Contractor". Each such successful bidder shall then be known as a "Subcontractor." A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

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

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

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

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, 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.

Each Subcontractor acknowledges: (1) that the Owner is a direct intended third party beneficiary of each Subcontract between the Contractor and Subcontractor; (2) that notwithstanding any contract provision to the contrary, Subcontractor shall be bound to perform the Work in accordance with these AIA A201 General Conditions, as amended; and (3) that the Subcontractor is not a third-party beneficiary of any contract between Contractor and Owner.

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

§ 5.3 Subcontractual Relations

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

§ 5.4 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 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

§ 5.4.2 Reserved.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity, and upon such further assignment, neither the Owner nor the Contractor shall have further liability to such subcontractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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

§ 6.2 Mutual Responsibility

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

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

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

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

§ 6.2.5 Reserved.

§ 6.2.6 The Owner shall take reasonable steps to require its separate contractors to name the Owner and Contractor as Additional Insureds on the separate contractors' general liability insurance policies and file certificates of insurance with Owner and Contractor showing such compliance prior to commencing Work at the Project site.

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.1.4 No Change Order shall be approved or paid until written approval for the Change Order is provided by the Owner. This requirement cannot be waived by conduct, custom, or practice with respect to this Project or other projects. There shall be no implied or constructive change orders.

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order for the purposes of defining the change and/or how any payment shall be calculated, but not for the purpose of approving payment.

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

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

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings 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. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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

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

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

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. 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. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall achieve Final Completion within thirty (30) days following Substantial Completion or as soon thereafter as Owner agrees.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by a cause that (1) was reasonably unforeseeable to the Contractor; and/or (2) is not within the Contractor's control, then the Contract Time shall be extended for such reasonable time as the Architect may determine. Should Contractor incur additional costs

pursuant to the conditions set forth in this Section 8.3.1, Contractor shall make a written request to Owner for an adjustment in the Contract Price for Owner's review and approval.

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

§ 8.3.3 Except as provided in Section 8.3.1, extension of Contract Time under the Project Work Order pursuant to this Article 8 shall be the Contractor's sole and exclusive remedy for delay.

§ 8.3.4 Extension of Contract Time under the Project Work Order resulting from Changes in the Work shall be negotiated into respective Change Orders. Whenever the Contractor seeks an adjustment in the Contract Time as part of a Claim or Change Order, the Contractor shall justify the request with proper written reference to the approved construction schedules. All executed Change Orders shall be deemed to include adjustments in the Contract Time, if any, resulting from the underlying Change in the Work.

§ 8.3.5 In addition to other rights and remedies set forth elsewhere in the Contract Documents, the Contractor shall reimburse the Owner for all Architect's fees and expenses for additional services necessitated by (1) Contractor's failure to achieve Substantial Completion within the time established in the Contract Documents through no fault of the Owner; (2) for more than one inspection to determine Substantial Completion; and (3) for more than one inspection to determine Final Completion.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

The Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various Subcontractors. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. Each section of the schedule organized by Subcontract shall further allocate each Subcontractor's Work into discrete tasks with values corresponding to each task. The total of all values for all tasks for all Subcontractors shall equal the Contract Sum. Portions of the Work not subcontracted shall be allocated into discrete tasks and corresponding values. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. Approval by the Owner of the schedule of values (and revisions thereto) shall be a condition precedent to certification of Contractor's applications for payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. The Contractor's inclusion in an Application for Payment of an amount owed to a Subcontractor shall constitute the Contractor's certification to the Owner that such Subcontractor is entitled to payment in that amount and that there are no Claims or other disputes then pending or anticipated which may impact that Subcontractor's right to such payment. Contractor shall submit all Applications for Payment in a consistent format.

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

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

§ 9.3.2 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.

§ 9.3.4 All Applications for Payment shall be accompanied by lien waivers from the Contractor and applicable Subcontractors. The lien waivers, when taken together, shall equal the sum due and paid under the immediately preceding Application for Payment, and shall be effective through the submittal date of the immediately preceding Application.

§ 9.3.5 Submission of properly executed lien waivers and the certified payrolls are conditions precedent to certification of each Application for Payment.

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made, or if any other condition precedent to payment has not occurred. If the Architect is unable to certify payment in

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed 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.

§ 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.

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

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1, et seq. and as may be otherwise provided in the Contract Documents, and shall so notify the Architect.

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

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

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

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

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

§ 9.6.7 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.

§ 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 lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If at any time there is evidence of any liens or claims for which the Owner may become liable, the Owner shall have the right to retain, out of any payment due or thereafter to become due to Contractor or a Subcontractor, an amount sufficient to completely indemnify and defend the Owner from and against such lien or claim, including any reasonable attorneys' fees and litigation expenses that have been or may be incurred by the Owner. Should any such evidence be established after all payments are made, the Contractor or Subcontractor shall repay the Owner all sums which the Owner may be compelled to pay in discharging such lien or claim, including all reasonable attorneys' fees, litigation expenses, and other costs resulting from such lien or claim.

§9.6.9 The Owner shall withhold ten percent (10%) from all progress payments to the Contractor as retention until 50% completion of the work. The Owner shall withhold five percent (5%) from all progress payments to the Contractor thereafter as retention. The Contractor shall request retention with its final Application for Payment as provided in Section 9.10. No interest shall accrue on monies held in retention. Contractor shall ensure that each contract between Contractor and each Subcontractor contains this same provision for the withholding and release of retention.

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final Payment, which shall be attached to the Certificate of Substantial Completion (the "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.

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion with the Punch List attached. The Certificate of Substantial Completion 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 Punch List accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date

of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 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

§ 9.8.6 Upon Substantial Completion, the Contractor and Subcontractors hereby assign all vendor and manufacturers' warranties to the Owner, if and to the extent any such warranty identified the Contractor or a Subcontractor, and not the Owner, as the entity to whom the warrantor is obligated.

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Work depicted on the Contractor's Punch List and thereafter identified in the Architect's inspection shall be completed by Contractor within thirty (30) days of issuance of the Certificate of Substantial Completion or as soon thereafter agreed to by the Owner. Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate, including retainage, is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. 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 Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims. If the Contractor does not complete remaining work within thirty (30) days after Substantial Completion or as soon thereafter as agreed by Owner, Owner may complete the remaining Work and backcharge the Contractor in accordance with Section 2.5. All related costs incurred by Owner shall be deducted from Contractor's final payment, and if the amount of Contractor's final Application for Payment is insufficient to cover such costs, Contractor shall pay such insufficiency to Owner upon demand.

§ 9.10.4

(Paragraphs deleted)

Reserved.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

§ 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 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under

Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

If any person suffers injury or damage to person or property because of an act or omission of a party, or of others for whose acts such party is legally responsible, the responsible party shall give notice of the injury or damage, whether or not insured, to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 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 and Architect of the condition.

§ 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 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 and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall 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, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance 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 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor, and the Subcontractors, to the extent applicable as specified below, 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 this Section 11.1 and its subparts and elsewhere in the Contract Documents. To the extent of any conflict between this Section 11.1 and other Contract Documents, the Contractor and Subcontractors shall purchase and maintain the insurance with the higher limits, broader coverage, and better protections for the Owner. The Contractor and Subcontractors 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. Such coverage shall be procured on an occurrence basis. Such coverage shall be procured from insurers with a Best's Key Rating Guide rating of at least A / VIII. The Owner, Architect, and Architect's consultants shall by endorsement be named as additional insureds under the Contractor's and each Subcontractor's commercial general liability policy, automobile liability policy, and excess or umbrella policy, all on a primary and noncontributory basis.

§ 11.1.1.1 Commercial general liability insurance including coverage for contractual liability and completed operations, explosion, collapse and underground hazards, covering personal injury, bodily injury and property damage, in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate.

§ 11.1.1.2 Automobile liability insurance, including hired, rented, and non-owned vehicles, covering personal injury, bodily injury and property damage, with a combined single limit of One Million Dollars (\$1,000,000).

§ 11.1.1.3 Umbrella / excess insurance coverage with a limit of at least Ten Million Dollars (\$10,000,000).

§ 11.1.1.4 Workers' compensation insurance in the amount of the statutory minimum with an employer's liability coverage of at least One Million Dollars (\$1,000,000).

§ 11.1.1.5 The Contractor, and Subcontractors as applicable, shall maintain the insurance required by this Section 11.1 without interruption from the date of the Agreement until the date of final payment, and, with respect to their completed operations coverage, until three (3) years after Substantial Completion of Work, or for such other period for maintenance of completed operations coverage as specified in the Contract Documents, whichever is greatest.

§ 11.1.1.6 Prior to commencement of the Work, and again prior to the expiration of any policy, the Contractor and all Subcontractors shall furnish to the Owner and Architect certificates of insurance, policy declarations, all policy endorsements, and if requested by the Owner the policies, all reflecting the insurance required by this Section 11.1. An additional certificate and endorsements evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted by Contractor and all Subcontractors with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the time permitted for expiration. If any aggregate limit is reduced on account of claims paid, Contractor and Subcontractor shall immediately notify the Owner and Architect in writing of the amount of such reduction.

§ 11.1.1.7 Failure of either the Architect or Owner to demand certificates of insurance and/or policies and/or endorsements shall not constitute a waiver of the Contractor's and Subcontractor's responsibilities under this Section 11.1. Nor shall review and/or approval by either the Owner or Architect in any way relieve Contractor or any Subcontractor of its responsibility for furnishing sufficient insurance.

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§ 11.1.1.8 Liability of Contractor or Subcontractor is not limited by these insurance requirements or by actual insurance coverage. Nothing related to insurance requirements in the Contract Documents is to be construed as limiting the liability of the Contractor, the liability of any Subcontractor of any tier, or the liability of the Architect, or any of their respective insurance carriers. Owner does not represent that the coverages or limits of insurance specified are sufficient or adequate to protect the Owner, Contractor, Architect, or any Subcontractor's interest or liabilities, but are merely minimums.

§ 11.1.1.9 Each Subcontractor shall comply with all requirements of this Section 11.1, except that the Owner may in writing excuse a Subcontractor from procuring and maintaining an excess / umbrella policy in conformance with Section 11.1.1.3, where deemed appropriate by the Owner, in its sole discretion.

§ 11.1.2 The Contractor as principal shall furnish to the Owner as obligee bonds covering faithful performance of the Contract and payment of obligations arising from the Contract, unless otherwise provided by Subcontractor. The payment and performance bonds shall strictly comply with the Public Construction Bond Act, 30 ILCS 550/0.01, *et seq.* (the "Act"), and with all provisions of this Section 11.1.2 and its subparts to the extent not in conflict with the Act. The Contractor or Subcontractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. Each such surety shall have a Best's Key Rating Guide rating of at least A / VIII.

§ 11.1.2.1 The payment and performance bonds shall be executed on AIA Document A311 or A312, or on another form acceptable to the Owner, and shall include a penal sum equivalent to or greater than the Contract Sum as defined in Section 9.1.1. If the Project involves a Contractor who is also serving as a construction manager at risk that will take or has taken assignment of trades pursuant to Section 5.1.1, then for purposes of determining the penal sum of the bond, the Contract Sum means the aggregate sum of all bids awarded by the Owner and assigned to the Contractor as provided in Section 5.1.1.

§ 11.1.2.2 All terms and conditions of all Contract Documents, including those that comprise these A201 General Conditions, as amended, shall be deemed incorporated by reference into each bond furnished in connection with this Section 11.1.2. In case of any conflict between any provision of any performance or payment bond and the Contract Documents, the provisions of the Contract Documents shall prevail to the extent of such conflict. Any provision of any bond purporting to create a condition precedent for Owner not otherwise contained in the Contract Documents, or which otherwise purports to abrogate or nullify the Owner's rights or remedies otherwise available in contract, law, or equity, is void. If any provision of any bond purports to shorten the period of limitations and/or the period of repose as provided in Section 13-214 of the Code of Civil Procedure, 735 ILCS 5/13-214, or if any provision of any bond purports to shorten any other applicable statute of limitation or repose, such provision of such bond shall be null and void, but all other provisions of such bond shall remain enforceable.

§ 11.1.2.3 No surety shall assert solvency of its principal or its principal's denial of default as a defense to any claim under any bond furnished in accordance with this Section 11.1.2.

§ 11.1.2.4 If any surety shall make any assignment for the benefit of creditors or commit any act of bankruptcy, or is declared bankrupt, or if it shall file a voluntary petition in bankruptcy, or shall in the opinion of the Owner be insolvent, the Contractor shall immediately upon request by the Owner furnish and maintain other bonds satisfactory to the Owner. No further payment shall be due nor shall be made to Contractor until the new surety or sureties shall have met the Owner's qualifications.

§ 11.1.2.5 If at any time the Owner shall become reasonably dissatisfied with any surety, or for any other reason such bonds shall cease to be adequate security for the Owner, Contractor shall, within five (5) days after notice to do so, substitute acceptable bonds in such form and sum and signed by such other surety or sureties as may be reasonably satisfactory to the Owner. No further payment shall be deemed due nor shall be made to Contractor until the new surety or sureties shall have met the Owner's qualifications.

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

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

§ 11.2 Owner's Insurance

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

§ 11.2.2 Builder's Risk Insurance

The Contractor or, if this Project is utilizing a construction manager at-risk and without otherwise limiting the construction manager's obligations as Contractor under this Agreement, the construction manager as Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a Special Form Builder's Risk policy form in accordance with the Contract Documents in the amount of the Contract Sum, as modified by Change Orders, comprising the total value for the entire Project at the site on a replacement cost basis. Insurance obtained by Contractor shall insure against the risks and peril of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, airborne property, debris removal and other perils or causes of loss, including physical loss or damage to the Work and any materials or equipment in transit, at the Project Site or another location. Such insurance, or other coverage necessary to be obtained by Contractor, shall include mechanical breakdown insurance, including startup and testing in the interest of the Owner or Contractor and its subcontractors. Any required deductible shall be paid by the Contractor or Subcontractors not to exceed \$50,000 on a "per loss" basis unless the Contract Documents otherwise provide or the Owner acknowledges its obligation to pay such deductibles in writing and prior to commencement of the Work. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.2.1 to be covered, whichever is later. This insurance shall include purchased and maintained under this Section 11.2.1 and in accordance with the A201 General Conditions shall include as Primary Named Insureds the Contractor, and as Additional Insured the Owner, Subcontractors and Sub-subcontractors in the Project.

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

§ 11.3 Waivers of Subrogation

§ 11.3.1 Reserved.

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

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

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

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

§11.5 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 Contractor as fiduciary and made payable to the Contractor 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 Contractor shall pay the Architect and Owner their just shares of insurance proceeds received by the Contractor, and by appropriate agreements the Architect shall make payments to their consultants and Subcontractors in similar manner.

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of 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 or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first 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 or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.1.1 Contractor and each Subcontractor shall comply with the Illinois Human Rights Act, 775 ILCS 5/2-101 *et seq.*, and Contractor and each Subcontractor hereby certifies that he / she / it has and will maintain at all times during the term of this agreement a written sexual harassment policy in accordance with 775 ILCS 5/2-105(A)(4).

§ 13.1.2 Contractor and each Subcontractor hereby certifies pursuant to Section 33E-11 of the Illinois Criminal Code that he / she / it is not barred from bidding on, or contracting in connection with, the Project as a result of a conviction for either bid-rigging or bid rotating under Section 33E-3 or 33E-4 of the Criminal Code.

§ 13.1.3 The Contractor and each Subcontractor hereby certifies that he / she / it will provide a drug free workplace in compliance Section 3 of the Drug Free Workplace Act, 30 ILCS 580/3.

§ 13.2 Successors and Assigns

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, 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.

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§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

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

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

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

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing only in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1, *et seq.*

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, 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 Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor 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 less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities 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 the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors 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.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party 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 claimant first recognizes the condition giving rise to the Claim, whichever is later.

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

§ 15.2 Initial Decision

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

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

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a

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

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

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

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

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

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

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, may be subject to mediation.

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

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

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

§ 15.4 Arbitration

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

filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

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