

AIA[®] Document A201[®] – 2017

General Conditions of the Contract for Construction

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

THE OWNER:
(Name, legal status and address)

THE ARCHITECT:
(Name, legal status and address)

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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.

15 CLAIMS AND DISPUTES

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ARTICLE 1 GENERAL PROVISIONS**§ 1.1 Basic Definitions****§ 1.1.1 The Contract Documents**

The Contract Documents consist of the Agreement between the Owner and Contractor (hereinafter the Agreement), Project Manual, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, Bidding Requirements (Advertisement or Invitation to Bid), Instructions to Bidders and Supplementary Instructions to Bidders, the Contractor's Bid, portions of Addenda relating to the Bidding Requirements, and 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. The Project Manual is a volume assembled for the Work which may include the Bidding Requirements, sample forms, Conditions of the Contract, Specifications, and other Contract Documents.

§ 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 is the Architect, who is authorized to render initial decisions on Claims in accordance with Section 15.2.

§ 1.1.9 Furnish or Install or Provide

Unless specifically limited in context, the words "furnish" or "install" or any combination thereof, shall mean to furnish and incorporate in the Work, including all necessary labor, materials, equipment and other items required to perform the Work indicated.

The term "provide" means to furnish and install all labor, materials, equipment, transportation services, anchorage or suspension, fastening or other connection devices, connections to utilities or services, controls, trim, supports,

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standard accessories, finishes, tests, adjustments for proper operation and other items needed for complete and properly functioning portions of the Work.

§ 1.1.10 Addenda

Addenda shall be written and/or graphic instruments issued by the Architect prior to execution of the Contract that modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections. Addenda shall become part of the Contract Documents when the Contract is executed.

§ 1.1.11 Writing

A writing shall include any communications reduced to a written form, including letters, facsimiles, emails, memorandums, meeting minutes, Project website postings, or other written forms generally accepted for communication purposes on the Project and transmitted electronically or delivered hardcopy.

§ 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 and intended 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 Where a reference in the Contract Documents to a federal specification, American National Standards Institute standard, American Society of Testing Materials standard or other standard does not include the edition or date of the standard, the edition and amendments current as of the date of the Project Manual shall apply.

§ 1.2.5 Detailed Specifications take priority over general Specifications. More detailed Drawings take precedence over less detailed Drawings. In case of disagreement between Drawings and Specifications, or within either document itself, the Contractor shall immediately bring the discrepancy to the Architect's attention for clarification. At the Architect's request, the Contractor shall provide a written estimate for completing the Work as provided both in the Specification and in the Drawing, and in any case, shall comply with the Architect's instruction on how to proceed.

§ 1.2.6 In the case of an inconsistency between Drawings and Specifications or within any Contract Document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation without change in the Contract Sum.

§ 1.2.7 In the case of discrepancy, figured dimensions shall govern over scaled dimensions.

§ 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 Except to the extent the Architect and the Architect’s consultants retain rights to reuse component information from their respective Instruments of Service, as provided in the Agreement between the Owner and the Architect, the Owner shall be deemed the author and owner of the Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. 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 Owner’s reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any CAD protocols established by the Owner, 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 Contractor shall comply with the Owner’s CAD protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.8 Intentionally Deleted

(Paragraph 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 may designate in writing a representative (the Owner’s Project Manager) who shall have express authority to bind the Owner with respect to 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.

(Paragraph Deleted)

§ 2.2 Intentionally Deleted

(Paragraphs Deleted)

§ 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,

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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. If the Project requires an engineer instead of an architect, the Owner shall retain an engineer lawfully licensed to practice engineering, or an entity lawfully practicing engineering in the jurisdiction where the Project is located (the "Engineer"), and all references to the Architect in the Contract Documents shall be deemed to refer to the Engineer.

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

§ 2.3.4 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, which are reasonably requested by the Contractor 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.

§ 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 and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5 Use of Premises by Owner

§ 2.5.1 The Owner reserves the right to occupy the whole or any portion of the Project at any time prior to completion of the Work. It is understood and agreed that the right to use the Project is part of the Contract and the Contractor shall proceed with the Work in such a manner as may be directed and shall cooperate with the Owner to endeavor to limit the interruptions to the Owner's normal operations and routine as much as possible.

§ 2.6 Owner's Right to Audit Books and Records

§ 2.6.1 The Contractor agrees that the Owner, Hennepin County, the State Auditor, the Legislative Auditor and/or any of their duly authorized representatives shall at any time during normal business hours, and as often as they may reasonably deem necessary, have access to and the right to examine, excerpt, and transcribe any books, documents, papers, records, etc., which involve transactions relating to this Agreement. Such material must be retained by the

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Contractor for the longer of (1) six years after final payment; or (2) such additional period as may be necessary to comply with specific Contract Conditions (including without limitation any period covered by a written warranty). The Contractor's accounting practices and procedures relevant to this Contract shall also be subject to examination by any of aforesaid persons as often as and during such times as aforesaid.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and shall comply with all applicable laws, codes, ordinances, rules, regulations and industry standards.

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

§ 3.2.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner, and shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. The Contractor shall at once report to the Architect and Owner any errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor or its Subcontractors, recognized, or should have recognized such error, inconsistency, or omission and failed to report it to the Architect. If the Contractor performs any construction activity involving such error, inconsistency or omission in the Contract

Documents without notice to the Architect and Owner, the Contractor shall assume responsibility for such performance and shall be liable for the amount of the attributable costs for correction and any other resulting damages.

§ 3.2.3 Intentionally Deleted

§ 3.2.4 If the Contractor fails to perform the obligations of Section 3.2.2, 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. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for information when such information was available to the Contractor by reviewing and comparing the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project communications or documentation.

§ 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.

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Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

§ 3.3.4 The Contractor shall perform the Work in accordance with the Contract Documents, submittals approved pursuant to Section 3.12, and general design intent reasonably inferable from the Contract Documents. The Contractor shall review specified construction and installation procedures (including those recommended by manufacturers) prior to implementation, and shall advise the Architect in writing if the Contractor has knowledge that the specified products deviate from good construction practice, or that following the specified procedures will affect warranties, or if the Contractor has any objections to the procedures.

§ 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. Should the Contract Documents require work to be performed after regular working hours or should the Contractor elect to perform work after regular working hours, the additional cost of such work shall be borne by the Contractor.

§ 3.4.2 The Contractor shall be responsible for the costs of additional work and changes required to incorporate substitute materials, products or equipment approved during the bidding period into the Project. After award of the Contract, a request for substitution of a material, product, or piece of equipment will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government (such as declaration of a national emergency), or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justifies the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state the reason for the unavailability of the specified item, and be accompanied by such additional data and information as may be necessary to establish the acceptability of the proposed substitution.

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

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, 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. Manufacturers' product warranties shall not relieve the Contractor of general warranty obligations.

§ 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.

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§ 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 laws, ordinances, codes, rules, regulations, decrees and orders of public authorities, bodies and/or tribunals bearing on performance or nonperformance of the Work. The aforesaid requirements shall apply fully to the requirements referenced in Section 10.2.2 hereof.

Contractor shall defend, indemnify and hold the Owner, its officers, elected officials, employees and agents harmless from any and all claims, liability, costs, penalties, damages, and/or attorneys' fees or any other costs or expense whatsoever arising from or based on violations committed by the Contractor, any Subcontractor and their employees or agents.

§ 3.7.3 If the Contractor performs Work and the Contractor knows, or should know it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and for damages incurred as a result 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.

§ 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;

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

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

§ 3.9 Project Manager and Superintendent

§ 3.9.1 The Contractor shall employ a competent project manager who shall administer the Agreement between the Owner and Contractor and who shall represent the Contractor. Communications given to the project manager shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.9.2 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. Important communications shall be confirmed in writing.

§ 3.9.3 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 project manager and 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 project manager or superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.4 The project manager and the superintendent shall be assigned to the Project throughout the term of the Contract except or unless the designated individual's service to the Contractor is terminated or the Owner finds reasonable objection to the individual in which case another individual shall be assigned to the same responsibility for the remaining term of the Contract. The Contractor shall not assign to the Project a project manager or a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the project manager or 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 related to the entire Project to the extent required by the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor is required to provide a Critical Path Method Construction Schedule.

§ 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.

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§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the 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. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 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

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the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

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

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

§ 3.12.11 The Architect's review of the Contractor's submittals will be limited to examination of an initial submittal and two re-submittals. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for review of such additional submittals.

§ 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 defend, 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, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to personal or bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, and is caused by the acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, except claims, damages, losses or expenses resulting from risks as are required to be insured by the Owner. Nothing herein is intended to impose an obligation on the Contractor that is void and unenforceable under Minn. Stat. § 337.02.

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

ARTICLE 4 ARCHITECT

§ 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. The term "Architect" means the Architect or the Architect's authorized representative. If the Owner has retained an engineer rather than an architect for the Project pursuant to Section 2.3.2, then the term "Architect" as used in this Agreement shall be deemed to refer to the Engineer or the Engineer's authorized representative.

§ 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 and Architect.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and the Agreement between the Owner and Architect, 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 and the Agreement between the Owner and Architect, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 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 familiar with the progress and quality of the portion of the Work completed, to guard the Owner against defects and deficiencies in the Work, and to determine 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

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Documents. The Contractor may not rely upon the Architect's site observations or related reports to the Owner as confirmation that the Work is being performed in accordance with the Contract Documents or for any other purpose.

§ 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 keep the Architect reasonably informed 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. To the extent that they occur, any direct communications between the Owner and the Contractor regarding performance or administration of the obligations under this Contract shall be made or confirmed in writing by the Contractor, with copies to the Architect.

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

§ 4.2.6 The Architect has authority to reject Work 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 of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review 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 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, but shall not constitute waiver of any of the requirements of the Contract Documents.

§ 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, unless specifically required by the Contract Documents.

§ 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. No increase in the Contract Sum or Contract Time shall be allowed for a change based on ineligibility under Minn. Stat. § 16C.285.

§ 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.

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§ 5.2.5 The Contractor agrees to the Owner's right to audit books and records pursuant to Section 2.6.1, in reference to the Contractor's selection of, award of contracts to, and payments to Subcontractors.

§ 5.3 Subcontractual Relations

§ 5.3.1 By 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 and limitations on liability 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. If requested by the Owner, the Contractor shall promptly supply copies of each subcontract agreement to the Owner.

§ 5.3.2 Verification of Compliance with Minn. Stat. § 16C.285, Subd. 3, Responsible Contractor Requirement: Signed verification was required in the solicitation response for all of the Contractor's first-tier Subcontractors that the Contractor intended to retain for work on the Project. If the Contractor or any Subcontractor retains additional Subcontractors or Sub-subcontractors on the Project, the Contractor or Subcontractor shall obtain verifications of compliance from each additional Subcontractor or Sub-subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification list naming the added Subcontractors or Sub-subcontractors which verifies the Subcontractors or Sub-subcontractors have certified they are in compliance within 14 days of retaining the additional Subcontractors or Sub-subcontractors. Upon request from the Owner, the Contractor shall submit copies of the signed certifications of compliance from all Subcontractors and 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 The assignment is effective only after termination of the Contract and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 The 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, except as otherwise may be provided in writing at the time the Owner accepts the assignment.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 60 days, due to unreasonable delays attributable to the Owners, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

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

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 reasonably discoverable.

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

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

§ 6.2.6 Should the Contractor wrongfully cause damage to the work or property of any Separate Contractor, the Contractor shall, upon due notice, promptly attempt to settle with such Separate Contractor by agreement, or otherwise to resolve the dispute. If such Separate Contractor sues the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense, and if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees and court costs which the Owner has incurred, if any.

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

§ 7.1.2 A Change Order or Authorization to Proceed with a Construction Change 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. In the event the Contractor ignores the Architect's directions to correct defective or noncomplying work, or if previously undetected defective work causes the Owner expense, the Architect and Owner, if in agreement and notwithstanding the Contractor's disagreement, may execute a Change Order to credit the Owner for the cost of such corrective work or repair.

§ 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 or Authorization to Proceed with a Construction Change.

§ 7.2 Change Orders

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

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

§ 7.2.2 Methods used in determining adjustments to the Contract Sum shall adhere to the requirements listed in Sections 7.3.3 and 7.3.7.

§ 7.2.3 **Unless the Owner authorizes use of an alternate form**, Change Orders shall be prepared using AIA Document G701. Computer generated forms may not be substituted, unless AIA software is used to produce a facsimile.

§ 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.

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

- .1 By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. A lump sum for an increase in the Contract Sum may contain a reasonable allowance for the Contractor's overhead and profit. No allowance for overhead and profit will be allowed if the change results in a net decrease in cost. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of net increase, if any;
- .2 By unit prices stated in the Contract Documents or subsequently agreed upon; Unit prices shall cover all of the Contractor's costs for labor, materials, equipment and related services including such costs for subcontracted work and the Contractor's overhead and profit;

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- .3 By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 By the method provided in Section 7.3.4.
- .5 The cost of a change determined under the methods in Sections 7.3.3.1, 7.3.3.3 and 7.3.3.4 shall include all costs directly related to the change, and the Contractor shall itemize these costs and provide appropriate supporting data as may be necessary to establish their correctness. All indirect costs whether incurred on or off site shall be included in the Contractor's overhead. Indirect costs shall include such items as local telephone use, coordination of trades and/or utilities, site inspection, photography, clerical support, estimating, postage, handling, general cartage and/or cleanup and field coordination.
- .6 In the case of Work authorized under Sections 7.3.3.1, 7.3.3.3 and 7.3.3.4, a reasonable allowance for overhead and profit shall be not more than ten (10%) percent of the net cost of Work accomplished by the Contractor's own forces, five (5%) percent of the net cost of Work accomplished by Subcontractors and five (5%) percent of the net cost of materials and equipment. Subcontractors, subsubcontractors and subsequent tiers of contractors may add an allowance of not more than ten (10%) percent of the net cost of the work accomplished by their own forces to cover their overhead and profit, five (5%) percent of the net cost of the Work accomplished by their Subcontractors and five (5%) percent of the net cost of materials and equipment. Further, as a condition for the Owner's authorization of a five (5%) percent allowance for work of any lower tier contractor, as aforesaid, the Owner may request the Contractor and/or any pertinent lower tier contractor to provide to the Owner detailed, written information to establish to the Owner's satisfaction the actual relationship between the contractor and any lower tier contractor. Such information shall be provided promptly to the Owner following the request therefor.
- .7 Cost of additional insurance and performance bond coverage related to the change shall not be included by the Contractor as part of the cost of each change, but shall be compensated for on the basis of actual cost by means of a single Change Order prior to Project

Close-Out.

§ 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, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the 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, all as directly attributable to the change;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed, all as directly attributable to the change;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others, all as directly attributable to the change;
- .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 only when due to approved extension of Contract Time; and
- .6 Cost of additional insurance and performance bond coverage related to the change shall not be included as part of the cost of each change, but shall be compensated for on the basis of actual cost by means of a single Change Order prior to Project Close-Out.

§ 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.

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§ 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. Adjustments to the Contract Time shall reflect only the additional time directly attributable to the Change in the Work.

§ 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 Notice to Proceed given by the Owner. The Contractor shall not commence the Work nor allow any Subcontractor to commence work until:

- .1 The Contract has been fully executed and the Owner has issued a Notice to Proceed.
- .2 The Owner has approved evidence of the Contractor's Liability Insurance and any other insurance required to be purchased by the Contractor.
- .3 The Owner has approved the Contractor's performance and payment bonds.

§ 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.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act, omission, or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by other causes, if unforeseen and beyond the Contractor's control, including labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2; (4) by delay authorized by the Owner pending mediation, arbitration or litigation; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine. Such extension of time shall be the Contractor's sole and exclusive remedy in the event of any delay hereunder. Under no circumstances shall the Contractor be entitled to recover any indirect damages, consequential damages, punitive damages, special damages, loss, expenses or charges incurred due to any delay or disruption in the performance of the Contractor's Work. The Contractor expressly agrees that it shall not be entitled to bring a claim under Article 15 for damages for delay or disruption, regardless of the cause or reason for the delay or disruption, including without limitation whether such delay or disruption was contemplated by the parties at the time the Contract was executed or was occasioned by the fault of someone other than the Contractor, except when the delay or disruption is caused solely by the Owner or solely by persons acting on behalf of the Owner for which the Owner is legally responsible. The Owner will look first to the Critical Path Method Construction Schedule, per Section 3.10.1, for justification of extensions of Contract Time.

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

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party when expressly allowed under other provisions of these General Conditions.

§ 8.4 Liquidated Damages

§ 8.4.1 Time being an essential element of the Contract, and based on the Project Schedule of Substantial Completion to be more specified in the contract between Owner and Contractor, it is hereby agreed that if the Owner determines that an extension is not justified, the Owner will be entitled to damages for failure on the part of the Contractor to complete its obligations. In view of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would sustain in such event, the Owner shall be entitled to _____ dollars (\$ _____) per calendar day for each and every day beyond the date of Substantial Completion. The aforesaid specified amount shall not be construed as a penalty, but as liquidated damages for any such failure on the part of the Contractor. The act of the Owner in canceling the Contract for any such failure and/or any unexpected delay shall not forfeit its right to recover liquidated damages from the Contractor and/or its surety. In any suit involving assessment or recovery of liquidated damages, the reasonableness of the daily charges shall be presumed, and the amount assessed, as well as the aforesaid cancellation right or any other cancellation rights stated in the Contract Documents, will be in addition to every other right or remedy now or hereinafter enforceable at law, in equity, by statute, regulation and/or under the Contract.

The Contractor will not be charged with liquidated damages when any delay or failure is due to: any act, omission or neglect of the Owner; written and mutually agreed to changes in the Contract; or any other causes, when beyond the Contractor's reasonable control and without fault or negligence of the Contractor, including labor disputes; fire, flood or other natural disasters; unusual delay in transportation; adverse weather conditions documented in accordance with Section 15.1.6.2; and unavoidable casualties. Contract Time or performance dates or times may be extended for such reasonable time as the Owner's Project Manager may determine. A claim for extension will not be allowed unless the Contractor, not later than the end of the Owner's seventh business day following the day on which the claim arises, shall have contacted and informed the Owner's Project Manager, about the full details of the cause necessitating such a claim. Within seven (7) calendar days of any such communication the Contractor shall also deliver to each of the Owner's addresses referenced above a communication specifying in detail the cause(s) of the delay. The herein provisions will not preclude the Owner from canceling or terminating the Contract regardless of any act or event beyond the Contractor's reasonable control, as aforesaid, provided that the Owner shall have

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given the Contractor thirty (30) days prior written notice of the Owner's intention to so cancel or terminate, and that during said period, the Contractor shall have failed to cure such delay or failure in performance.

If liquidated damages are charged, they will be charged daily, first against monies then due to the Contractor, then against monies coming due, and then against funds held for eventual release to the Contractor. If these three sources are not sufficient to cover the liquidated damages, the Owner will bill the Contractor for the necessary balance and the Contractor shall promptly pay the invoiced amount(s).

The Owner may waive in writing all or any portion of any liquidated damage assessment after the date services or obligations are completed and accepted by the Owner.

Permitting the Contractor to continue and complete the services or obligations or any part of them after stipulated times will not in any way operate as a waiver on the part of the Owner or its rights hereunder. No act by the Owner in pursuing or affecting its rights hereunder will constitute a forfeiture of the Owner's right to recover liquidated damages from the Contractor and/or its surety.

See section 0800 of the Project Manual for the completion time, liquidated damages daily amount and Project Manager contact information.

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 portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. 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. The Schedule of Values shall list each item of value in the order of the Project Manual's Table of Contents by section number. Each value component of work within each section shall be itemized to identify labor and material value separately and to include a directly proportional amount of the Contractor's profit and overhead. The Schedule of Values shall include a separate line item for insurance premium, performance and payment bond, each Allowance, and for the Project Contract Close-out Submittals, establishing a composite value for asbuilt record drawings, maintenance and equipment manuals, test reports and warranties.

Round off all sums to whole dollars. The sum of all values shall equal the Contract Sum. The Schedule of Values shall be confirmed on Continuation Sheet, AIA Document G703, utilizing the original form or AIA software for any computerized version.

§ 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, for completed portions of the Work. The application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

§ 9.3.1.3 Unless the Owner authorizes use of an alternate form, the Contractor shall use AIA Document G702, notarized, with the continuation on AIA Document G703. Computer generated forms may not be substituted unless AIA software is utilized to produce a facsimile.

§ 9.3.1.4 The Contractor shall submit 3 copies of the Application for Payment on the first day of the month.

§ 9.3.1.5 Beginning with the second Application for Payment, the Contractor shall complete the Owner-supplied Summary of Payments form. The Summary of Payments form represents prompt payments made to Subcontractors and suppliers as required by contract, and is submitted in lieu of lien waivers, which are not required except at the time of the Final Application for Payment.

§ 9.3.1.6 With each current Application for Payment, the Contractor shall submit a written summary of payments disbursed from the previous Owner-approved Application for Payment. The Summary of Payments form shall list each Subcontractor or supplier by name, section of the Work and amount of payment, in the exact order of the approved Schedule of Values so that the individual payments in aggregate shall be identical to the total of the previous Owner-approved Application for Payment. The Contractor shall certify that the information therein is true and correct and shall affix its signature to the Summary of Payments.

§ 9.3.1.7 Failure to submit any completed Summary of Payments forms shall be cause for the Architect to withhold Certification of the Application for Payment.

§ 9.3.1.8 Final Application for Payment requires Contractor's submission of all lien waivers under Section 9.10, accounting for all parties to the Work.

§ 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 all legal title, ownership rights and insurable interest 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 Out-of state Contractors, Subcontractors and employees performing construction work in Minnesota shall be subject to the withholding requirements set forth in Minnesota Statutes, Section 290.9705.

§ 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

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor 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 the manner provided in the Contract Documents, and shall so notify the Architect. The Owner shall make payment within seven business days of receipt of a Certificate for Payment, or with reasonable promptness if payment cannot be made within seven business days. To ensure proper performance of the Contract, the Owner may retain five (5%) percent of the amount of each Certificate for Payment issued by the Architect prior to Final Completion of the Project. Such retainage will be held and disbursed by the Owner in accordance with Minnesota Statutes Section 15.71, unless the Owner in its sole discretion releases part of the retainage in accordance with Section 9.8.5.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than ten 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. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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

§ 9.7 Failure of Payment

If the 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 as provided in Section 9.6.1, 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, excluding 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 Substantial Completion shall be that point of completion and progress of the Work when:

§ 9.8.1.1 The completed Work represents a value of not less than ninetyeight percent (98%) of the current Contract Sum, as represented in the most current Certificate of Payment; and

§ 9.8.1.2 The completed Work represents a value of not less than ninety percent (90%) of the current Contract Sum as distributed for each line item in the Schedule of Values representation in the most current Certificate of Payment; and

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§ 9.8.1.3 All primary building systems, to include but not be limited to exterior envelope, structural, exiting, elevator, electrical power, heating, ventilation, air conditioning, plumbing, fire protection, controls and automation, lighting, communications, partitions, floors, ceilings, finish hardware, signage, security, millwork and casework, painting, furnishings, equipment, and furniture are essentially complete; and

§ 9.8.1.4 HVAC balancing is complete and the HVAC Balancing Report has been accepted by the Owner; and

§ 9.8.1.5 Specified operational manuals for equipment and systems as well as operational instructions for all systems and equipment have been delivered to and accepted by the Owner; and

§ 9.8.1.6 Specified warranties for equipment and systems have been delivered to and accepted by the Owner.

§ 9.8.2 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete, it shall submit to the Architect a statement that the Work meets all the requirements for Substantial Completion as defined in Section 9.8.1, and that such completed Work represents a value of not less than ninetyeight percent (98%) of the current Contract Sum. The Contractor shall also submit a list of any items of the Work remaining to be completed or corrected for final completion. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all of the Work in accordance with the Contract Documents. Based on the Contractor's statement of uncompleted Work and observations at the site, if the Architect agrees the Work appears to be substantially complete, the Architect will schedule and make an inspection of the Work and confirm to the Contractor the list of all items to be completed, replaced or corrected. If the Work is not substantially complete in the Architect's opinion, the Contractor will be advised and a subsequent date set for the inspection. The day on which the Architect inspects the last unit, phase or part of the Work, and determines the Work is substantially complete, shall be the Date of Substantial Completion. The Architect shall be required to conduct one Substantial Completion Inspection and one Final Completion Inspection. If additional inspections are required to establish Substantial Completion, the Architect shall be compensated for the Architect's inspection, review and processing requirements in full by the Contractor and such compensation shall be borne by the Contractor and accomplished by a Change Order to the Contract. 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.

The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of the responsibilities assigned to them by such Certificate.

§ 9.8.3 Upon receipt of the Contractor's 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 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 that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor 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. The Owner shall have the right to install furnishings and equipment for the Project prior to Completion of the Work. Such installation shall not constitute occupancy or use by the Owner.

§ 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. The Owner shall have the right to use or occupy the Project, or a portion thereof, prior to Completion of the Work under the following conditions:

§ 9.9.2.1 The Owner shall give the Contractor at least ten days prior written notice of intention to use or occupy the Project, or a portion thereof. Prior to use or occupancy, the Architect accompanied by the Owner and the Contractor will conduct an inspection of the area to be used or occupied; based on this inspection, the Architect will prepare a list of work to be completed or corrected. Prior to use or occupancy, the Owner and the Contractor shall agree in writing on their individual responsibilities for security, maintenance, heat, utilities, damage to the Work and insurance for the area to be used or occupied.

§ 9.9.2.2 The insurance company or companies providing the property insurance required by the Contract Documents shall consent to the use or occupancy by endorsement prior to such use or occupancy.

§ 9.9.2.3 After occupancy, the Owner will allow the Contractor reasonable access to the occupied area to complete and correct the Work.

§ 9.9.2.4 Any claims for an adjustment in the Contract Sum or an extension of the Contract Time because of the Owner's use or occupancy shall be made in writing to the Architect prior to such use or occupancy.

§ 9.9.2.5 The Contractor shall not be held responsible for any damage to the occupied part of the Project resulting from the Owner's use or occupancy.

§ 9.9.2.6 Use or occupancy by the Owner shall not be deemed to constitute a waiver of existing claims in behalf of the Owner or Contractor against each other.

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

§ 9.10 Final Completion and Final Payment

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

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§ 9.10.1.1 Contractor's Affidavit of Payment of Debts and Claims, AIA Documents G706 (a non-AIA document which includes the same information as required on the AIA Document G706 is acceptable).

§ 9.10.1.2 Contractor's Affidavit of Release of Liens, AIA Documents G706A (a non-AIA document which includes the same information as required on the AIA Document G706A is acceptable).

§ 9.10.1.3 Contractor's lien waiver for the full amount of the Contract Sum.

§ 9.10.1.4 Contractor's Summary of Payments.

§ 9.10.1.5 Consent of Surety to final payment on Consent of Surety Company to Final Payment, AIA Document G707.

§ 9.10.1.6 State of Minnesota Department of Revenue Form IC134, "Withholding Affidavit for Contractors" prepared by the Contractor and all Subcontractors and certified by the Commissioner of Revenue.

§ 9.10.1.7 Current list of Subcontractors and major material suppliers indicating type of work or product, brand name and/or manufacturer's name and model number in the sectional order of the Project Manual, firm name, address, telephone and contact person.

§ 9.10.1.8 Contractor's record copy of all Drawings, Specifications, Change Orders and other modifications, in good order, and marked to record all changes made during construction, and approved Shop Drawings, Product Data and Samples.

§ 9.10.1.9 All payroll reports, certifications and related documents necessary to fulfill the Labor Standards Provisions requirements of the Contract that have not been previously submitted.

§ 9.10.1.10 All written warranties required by the Contract Documents, which were not submitted at the time of Substantial Completion.

§ 9.10.1.11 All operational manuals, instructions, test reports and other data required by the Contract Documents and not submitted at the time of Substantial Completion.

§ 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

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

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the Owner.
(Paragraphs Deleted)

§ 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

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

§ 10.1.2 In the event the Contractor encounters material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) on the site which has not been rendered harmless and which has not been previously identified within the Contract Documents as related to the Work, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. If in fact the material is asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Owner shall cause such material to be removed or rendered harmless under separate contract. Upon written notification by the Owner to the Contractor that such material has been removed or rendered harmless in the area affected the Work shall be resumed.

§ 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. The Contractor shall be responsible for payment of all fines levied against the Owner which relate to the Contractor's performance of the Work.

§ 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. Contractor shall give the Owner and other appropriate parties reasonable notice prior to use or storage of explosives or other hazardous materials or equipment or use of unusual methods.

§ 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

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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 appoint a responsible member of its organization to act as Safety Director (fire and accident) whose duty shall be to prevent accidents, minimize fire hazards and to enforce safety precautions. The Safety Director shall develop procedures and regulations to guide the Contractor, Subcontractors and all workmen. With particular respect to existing buildings, facilities, and the Owner's staff, the Safety Director shall consult with and be guided by supplemental information, when given, by the Owner. This obligation to consult with the Owner is not intended to relieve the Contractor of its safety obligations herein.

§ 10.2.6.1 The Safety Director shall provide a written Safety Program at the outset of the Project and shall transmit copies to all Subcontractors engaged in the Work.

§ 10.2.6.2 The Contractor and Subcontractors shall conform to and abide by all requirements of the Safety Director.

§ 10.2.6.3 The Safety Director shall periodically inspect all spaces of work under this Contract and operations of the Contractor and list hazards to be removed or corrected. These shall be reported to the Owner, the Contractor and the responsible Subcontractors. The Safety Director shall ensure that the responsible parties shall promptly remove or correct the hazards.

§ 10.2.6.4 The Safety Director shall conduct regularly scheduled meetings including all Subcontractors. Minutes of these meetings, including a list of both attendees and non-participants, shall be forwarded to the Owner's Project Manager in a timely matter.

§ 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. The Contractor shall complete the Hennepin County Project Safety & Environment Checklist (Checklist) and shall submit the completed Checklist to the Owner's Project Manager, A-2208 Government Center, 300 South Sixth Street, Minneapolis, MN 55487-0228.

§ 10.2.8.1. The Checklist shall be submitted at or prior to the Project's pre-construction meeting, but not less than 14 calendar days prior to the start of contracted site work. In the event site work begins less than 14 calendar days from the date of execution of the Contract, the Checklist shall be submitted at least 24 hours prior to the start of site work. Should the Contractor expect to and/or fail to submit the Checklist any later than commencement of site work, the Contractor will notify the Owner's Project Manager in writing within 24 hours of the start of work.

§ 10.2.8.2. Contractor's failure to submit the completed Checklist shall be cause for the Architect to withhold Certification of the Application for Payment and immediately advise the Owner to consider suspension of the Work under provisions of Section 2.3. If applied, Work suspension caused by the Contractor will have no adjustments of Contract Sum or Contract Time extended to the Contractor for restart of the Work and time schedule.

§ 10.2.8.3. Submittal of the Checklist shall not relieve the Contractor of any obligation under a governing rule, standard, state or federal statute or regulation, municipal ordinance, Hennepin County policy, or of any provision in the Project Contract Documents.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party 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

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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 Intentionally Deleted

§ 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.

(Paragraph Deleted)

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Insurance and Bonds Exhibit, modified AIA Document A102, which is a part of this Agreement.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as described in the Insurance and Bonds Exhibit, modified AIA Document A102.

§ 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.

(Paragraphs Deleted)

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. If the Contractor fails to correct nonconforming Work within a reasonable time 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.

(Paragraph Deleted)

§ 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, and venue shall be in Hennepin County, Minneapolis, Minnesota.

§ 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.

§ 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. Testing agencies or consultants employed by the Contractor shall be subject to the prior approval of the Architect and Owner.

§ 13.4.2 If after the commencement of the Work the Architect determines that any of the Work requires special inspection, testing or approval which Section 13.4.1 does not include, the Architect may, upon written authorization from the Owner, in lieu of the procedure specified in Section 13.4.1, secure the services of an independent testing agency to perform such tests, inspections and approvals. The Contractor, at the Contractor's expense, shall make all arrangements, furnish all samples and materials to be tested, and deliver the samples and materials to the testing agency. Reports of such tests, inspections and approvals shall be submitted to the Architect and the Contractor. The Contractor or the Owner shall bear the costs of such tests as provided in Section 13.4.3.

§ 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.

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§ 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 TIME LIMITS ON CLAIMS

As between the Owner and the Contractor and its insurer or surety as to all acts or failures to act by any party, the time limitation for the commencement of any action shall be three (3) years and shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events on the date of issuance of the Final Project Certificate for Payment; or in the event that there is a termination of this Agreement prior to completion of the Project and no Final Project Certificate for Payment is issued, on the date of termination of this Agreement; or on the date of the act or failure to act; or on the date of discovery by the injured party of the act or failure to act; whichever is later. However, in no event may an action be brought more than twelve (12) years after the date of issuance of the Final Project Certificate for Payment, or in the event that there is a termination of this Agreement prior to completion of the Project and no Final Project Certificate for Payment is issued, the date of termination of this Agreement. This section shall supersede all other limitations periods provided by law.

§ 13.6 HENNEPIN COUNTY AFFIRMATIVE ACTION POLICY

§ 13.6.1 During the performance of this Contract, the Contractor agrees as follows:

In accordance with Hennepin County’s policies against discrimination, Contractor agrees that it shall not exclude any person from full employment rights or participation in or the benefits of any program, service, or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, or national origin; and no person who is protected by applicable Federal or State laws against discrimination shall be otherwise subjected to discrimination.

If this Agreement is for a sum over \$100,000 or is one of several contracts with said CONTRACTOR within a 12month period totaling more than \$100,000, or is amended to exceed \$100,000, and a written exemption was not granted or was withdrawn by the Owner’s Purchasing and Contract Services (PCS) Manager, Contractor agrees to complete and submit for approval an Affirmative Action Plan (AA Plan) which contains the following goals:

Construction Employment

Minority (skilled and unskilled combined) 32%

Women (skilled and unskilled combined) 20%

The AA Plan shall be reviewed by PCS for approval. Approved AA Plans shall be monitored for compliance by PCS. Contractor shall submit an Employment Utilization Report on a monthly basis. PCS may, at any intervals deemed necessary, make on-site reviews to ascertain compliance with these requirements.

If the construction AA employment goals are not met, the Owner will require the Contractor to demonstrate that good faith efforts have been made to meet the goals. To determine whether a Contractor has demonstrated good faith efforts, the Owner will require the Contractor to provide documentation that the company has actively and aggressively attempted to meet its AA goals. If the Owner determines that the Contractor has failed to demonstrate the same, and/or if the Contractor has failed to submit employment reports and/or information required by the Facilities Director, and/or the Contractor has engaged in discriminatory practices, the Owner may, in its sole discretion, withhold up to fifteen percent (15%) of the Contract Sum until such time as the Contractor is determined to have submitted the required reports and/or information and/or Contractor has demonstrated good faith efforts, as determined by the Owner.

§ 13.6.2 The Contractor shall insert in all of its subcontracts over \$100,000, which have not been granted an exemption or which have had any such exemption withdrawn, clauses requiring the Subcontractor’s compliance with the following:

- .1 Furnish the Contractor with an AA Plan containing the goals established in 13.8.1,
- .2 Submit to the PCS Manager all requested information and reports; and
- .3 Comply with the Owner’s policies with regard to non-discrimination and affirmative action (AA). It shall be the responsibility of the Contractor to monitor and enforce Subcontractor’s compliance with this

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Section 13.6.2. It is understood, however, that the Owner may take such steps as it deems appropriate to ascertain Subcontractor's compliance with this Section 13.6.2 and further, if the Owner determines that Subcontractor is not in compliance, the Owner may require the Contractor to take appropriate measures to bring Subcontractor into compliance.

§ 13.6.3 The Owner exempts certain contracts from the AA requirements. Exemptions for construction contracts over \$100,000 are granted when any of the following conditions apply:

- .1 Contract or subcontract is for purchase of supplies or services unrelated to the Owner's construction projects;
- .2 Contracts where the Owner is the recipient of funds;
- .3 Contracts for emergency or life-safety (threatening) related purchases. Such contracts must contain the Owner's non-discrimination clause;
- .4 Contracts with firms, who as members of associations with signed Hennepin County agreements respecting alternative affirmative action procedures, submit a letter indicating their active membership status in that association.

§ 13.6.4 Contractor agrees:

1. that, in the hiring of common or skilled labor for the performance of any work under this Agreement, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
2. that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
3. that a violation of this section is a misdemeanor; and
4. that this Agreement may be canceled or terminated by the Owner, and all money due, or to become due under this Agreement, may be forfeited for a second or any subsequent violation of the terms or conditions of this Agreement.

§ 13.6.5 Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless and defend the Owner, and Architect, and their respective officials, officers, and employees and consultants from and against claims, damages, losses and expenses, including but not limited to attorney's fees incurred by the Owner, the Architect, or by their officials, officers, agents, employees, and consultants, arising out of or relating to a claim against Contractor or its employees of discrimination or harassment.

§ 13.7 HENNEPIN COUNTY SMALL BUSINESS ENTERPRISE (SBE) PROGRAM

§ 13.7.1 SBE PROGRAM REQUIREMENTS Owner is committed to providing equal opportunity in contracting and to a goal of increased participation of SBE firms in contracting and subcontracting. An SBE goal of up to a maximum of 25% may be set on this project, based on the project's scope of work afforded by the opportunity and upon the availability of SBE firms. The Owner's SBE participation goal for this contract is listed in Article 13 of Section 00100- Instructions to Bidders. The following conditions apply in determining compliance with this goal:

- .1 The total payments made under a contract or subcontract to certified SBEs will be counted toward the applicable goal.
- .2 In the case of a joint venture, that portion of the payments attributable to the participation of the SBE partner in the joint venture will be counted toward the applicable goal.
- .3 Only payments to SBEs that perform a commercially useful function in the work of a contract or subcontract may be counted toward the small business utilization goals. SBEs are considered to perform a commercially useful function when they are responsible for execution of work directly applicable to the

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project and carry out their responsibilities by actually supplying labor or material to, or managing or supervising the work involved.

.4 Total payments for materials and supplies may be counted toward SBE participation goals if the SBEs assume the actual and contractual responsibility for providing the materials and supplies.

.5 The Contractor must receive written approval from the Owner's Project Manager and PCS Manager before making any changes to the previously approved Subcontractor Participation Form.

.6 The Contractor's commitment to a specified participation level is to meet the required participation levels, and is not intended and shall not be used to discriminate against any qualified company or group of companies.

.7 Only SBEs that are recognized as certified by the Hennepin County SBE Program will be counted towards the Contractor's SBE goals.

.8 With written notification that a Contractor is the Selected Contractor(s), they will be required to submit a Hennepin County Purchasing & Contract Services Subcontractor Participation Form listing all Subcontractors that they will have on the job and indicating the contract amount for each. In addition, Contractor must require all tiered Subcontractors to complete the Subcontractor Participation Form. These Subcontractor Participation Forms must also be submitted along with Contractor's Subcontractor Participation Forms to PCS. If any Selected Contractor is unable to meet the SBE required participation goal, it shall submit a detailed statement of its good-faith efforts. The good-faith effort statement shall identify all efforts made to achieve the SBE participation goal. Failure to either meet the SBE participation goal or demonstrate sufficient good-faith efforts may be cause to reject the contract award to the Selected Contractor.

§ 13.7.2 SOLICITATION AND PARTICIPATION Contractor agrees to make good faith efforts to solicit the participation of SBE's to meet the participation goal.

§ 13.7.2.1 The Selected Contractor understands that the SBE participation goal must be maintained throughout the life of its Contract. Further, credit toward the required SBE participation level will not be counted unless the SBEs utilized are recognized as certified by Hennepin County.

§ 13.7.2.2 Contractor and all tier subcontractors and suppliers shall establish and maintain records and submit regular reports, as required.

§ 13.7.2.3 PCS maintains a current listing of certified SBEs. This list can be obtained from PCS by calling (612) 348-2528 or by accessing the following website at <http://www.cert.smwbe.com>. Bidders are encouraged to inspect these lists to assist in locating SBEs for the work.

§ 13.7.3 SBE REPORTING REQUIREMENTS Contractors shall submit payment reports using the G702 and G703 Contractor Payment Disbursement form accompanied with the Summary Sheet to confirm payments to all Subcontractors/Suppliers.

§ 13.7.4 EXEMPTIONS FROM SBE REQUIREMENTS A request for an exemption to the SBE goal requirement must be made to the Project Manager or PCS Manager. The PCS Manager must approve all exemptions. The Contractor may request an exemption based upon any one of the following situations:

.1 Contracts with Government Jurisdictions – This exemption applies when another government jurisdiction or quasi-governmental agency is contracting with the county.

.2 Emergency-Related Purchases – This exemption applies for emergency or life-safety (threatening), related purchases authorized by the County Administrator, Deputy Administrator, or the Purchasing Manager.

.3 Sole-Source or Unique Goods, Commodities, or Services – This exemption applies to requests for

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bids/proposals in which the scope is necessarily written such that there is only one source, regardless of the marketplace that possesses the capability to perform the contract.

.4 Other Special Circumstances – These would be evaluated on a case-by-case basis, after Contractor’s submittal of a detailed written petition.

§ 13.7.5 GOOD FAITH EFFORTS DURING BID EVALUATION PROCESS

§ 13.7.5.1 The Selected Contractor will be required to submit all detailed documentation of its good-faith efforts . The good-faith effort documentation shall identify all efforts made to achieve the SBE participation goal and shall accompany the SBE Subcontractor/Supplier Participation Form. Failure to either meet the SBE participation goal or submit requested documentation may be cause to reject the contract award to the Selected Contractor. The good-faith effort documentation will verify the following:

.1 Verification that the Selected Contractor rejected SBEs because they did not submit the lowest bid or they were not qualified. Such verification shall include a verified statement of the amounts of all bids received from potential subcontractors on the project and that the Selected Contractor rejected SBEs because they did not submit the lowest bid from among such bids or they were not qualified. For each SBE found to be not qualified, the verification shall include a statement giving the Selected Contractor’s reason for its conclusion.

.2 Verification of efforts to provide timely written or telephone notice to all appropriate SBEs within identified subcontracting categories listed in the most current, approved certification directory. If the Selected Contractor has purchased project plans seven (7) calendar days or fewer before bids are due, documented phone calls in lieu of written notice may be permitted.

.3 Verification of efforts to subcontract, consistent with industry practice, with the SBEs whom the Selected Contractor has contacted, or who have contacted the Selected Contractor. Include the names, addresses, and telephone numbers of all SBEs contacted; a description of efforts made to subcontract; and a description of the information provided to the SBE regarding the plans and specifications for the portion of the work to be performed by subcontractors. If attempts to subcontract actually occurred, provide the dates and places of such process and a description of the outcome.

.4 Verification that the Selected Contractor attempted to recruit SBEs from at least the same geographic area from which it attempted to recruit other subcontractors.

.5 Verification that, consistent with industry practice, the Selected Contractor gave SBEs necessary access to and adequate time to review all necessary project plans, drawings, specifications and other documents, as well as adequate time to prepare subcontract bids.

.6 Verification that, consistent with industry practice and the Selected Contractor’s past practices on similar projects, the Selected Contractor selected portions of the work to be performed by SBEs in order to achieve the project participation goal. This includes consideration of structuring the contract into economically feasible units to facilitate meaningful SBE utilization as subcontractors or suppliers.

.7 Statement giving the reasons why the Selected Contractor and each SBE contacted or each SBE that contacted the Selected Contractor did not succeed in reaching a subcontracting agreement.

.8 Statement that the Selected Contractor attended pre-bid meetings or otherwise obtained the information on subcontracting opportunities that is provided at such meetings.

§ 13.7.5.2 If PCS determines that the Selected Contractor failed to meet the SBE participation goal and failed to successfully demonstrate good-faith efforts to meet the goal during the bid/proposal/contract evaluation process, the Selected Contractor will be notified in writing of the County’s decision within five (5) business days of such determination, the Selected Contractor may appeal PCS’ decision that the Selected Contractor failed to meet the SBE participation goal and successfully demonstrate good-faith efforts to meet the goal.

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To appeal, the Selected Contractor must, within five (5) business days after receipt of the above-referenced written notice, appeal the decision to the County Administrator or designee. An appeal must be made in writing and shall be accompanied by any supporting documentation. If Selected Contractor fails to submit an appeal within five (5) business days, PCS' determination shall remain in effect. The County may, at its option, enter into a contract with the next lowest bidder, or other vendor meeting contract specifications or pursue such other measures as the County deems to be in its interest.

§ 13.7.6 GOOD FAITH EFFORTS DURING CONTRACTOR PERFORMANCE

§ 13.7.6.1 If Contractor fails to maintain the SBE participation goal during the performance of the contract and cannot demonstrate good-faith efforts in accordance with the following guidelines, the Contractor may, at the County's sole option, be deemed in breach of contract and subject to sanctions. The following are good faith effort guidelines.

- .1 Verification that the Contractor entered into a contract with the SBE firm(s) identified on the Subcontractor/Supplier Participation Form to perform work on the project.
- .2 Verification that, consistent with industry standards, the Contractor maintained communication with the SBE to insure that the SBE understood when to begin work and was available to fulfil its contractual agreement.
- .3 Statement giving the reason(s) why the subcontractor/supplier contracted with to meet the SBE utilization goal did not fulfill its contractual agreement.
- .4 Verification of efforts to replace a non-performing SBE by written or telephone notice to all appropriate SBEs within required subcontracting categories listed in the most current, approved certification directory.

§ 13.7.6.2 In all of its contracts over \$100,000, Contractor shall insert clauses requiring the Subcontractor to: (1) adopt the contract-specific designated goal; (2) submit all information and reports required by Hennepin County; and (3) comply with all Hennepin County Board policies with regard to SBE utilization. It shall be the responsibility of the Contractor to monitor and enforce Subcontractor's Compliance with this Section 13.9.6.2.

The County may take such steps as it deems necessary and appropriate to ascertain compliance with the County's SBE requirements, and further, if the County determines that subcontractor is not in compliance, the County may require the Contractor to take appropriate measures to bring subcontractor into compliance.

§ 13.7.7 SANCTIONS

If the SBE participation goal is not met after contract award/approval, the County will require Contractor to successfully demonstrate that good-faith efforts have been made to meet their goal. If the County determines that the Contractor has failed to demonstrate good-faith efforts, and/or if the Contractor has failed to submit information required by PCS, and/or the Contractor has engaged in discriminatory practices, the County may, in its sole discretion, suspend, cancel, or terminate, in whole or in part, the aforesaid contract. Additionally, the County may, in its sole discretion, withhold up to fifteen (15) percent of the Contract Sum until such time as the Contractor is determined to have submitted the required reports and/or information, and/or the Contractor has demonstrated good-faith efforts, as determined by the County.

§ 13.8 NOT USED

§ 13.9 LABOR STANDARDS PROVISIONS

§ 13.9.1 MINIMUM WAGE RATES

Contractor agrees that all laborers, workers, and mechanics employed or working upon the site of work will be paid unconditionally and not less often than once a week, and without subsequent rebate, kickback, refund or deduction on any account (except such payroll deductions as are permitted by regulations), the required prevailing wage rate. For purposes thereof, the term prevailing wage rate is defined as that amount required to be paid for a classification of work which is equal to the sum of the basic hourly rate plus applicable fringe benefits as noted in the Wage Rate Determination of the Minnesota Department of Labor and Industry (MN DOLI) for Commercial Construction Within Hennepin County (hereinafter referred to as the Wage Determination). Said Wage Determination, current as of the release date of bidding documents and viewable on the MN DOLI website:

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http://workplace.doli.state.mn.us/prewage/commercial_data.php?county=27, is made a part hereof, and the work classifications therein shall govern irrespective of the terms of any contractual and/or employee/employer relationship which may be alleged to exist between the contractor and such laborers, workers, and mechanics. All laborers, workers, and mechanics shall be paid the appropriate prevailing wage for the classification of work actually performed, without regard to skill, except as provided in Section 13.9.5, APPRENTICES. In determining the appropriate work classification, the Owner will look at area practice (construction customs and usage common within Hennepin County).

During the period from the time an hourly employee is required to report for duty at the site of work until such time that he/she is released or permitted to leave the site of work, no deduction shall be made from his/her time for any delays of less than thirty consecutive minutes.

A contractor or subcontractor may discharge his/her prevailing wage rate obligation as defined above by (1) making cash payments to the employee plus payments to an employee's fringe benefit program (funded or unfunded), the sum of which is equal to the total prevailing wage rate; or (2) making payments in cash to the employee in the amount equal to the total prevailing wage rate. If the contractor pays employee benefits into plans or programs the contributions must be irrevocable, and the contractor shall maintain records which show: that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and the costs anticipated or the actual cost incurred in providing such benefits.

No credit for fringe benefits may be taken for any benefit required by federal, state or local law (e.g., workers compensation, unemployment compensation, social security contributions, etc.).

It is the responsibility of bidders to inform themselves as to local labor conditions and prospective changes or adjustments of wage rates. No increase in the Contract Sum shall be allowed or authorized on account of payment of rates in excess of those listed herein.

The Wage Determination, current per the aforementioned release date, shall be posted by the Contractor at the site of work in at least one conspicuous place for the information of laborers, workers and mechanics working on the project.

§ 13.9.2 WITHHOLDING OF FUNDS/LIQUIDATED DAMAGES/DEBARMENT/SUSPENSION

The County of Hennepin, in its sole discretion (and without any liability whatsoever), may withhold or cause to be withheld from the contractor so much of the contract payments or advances as may be considered necessary to pay laborers, workers, and mechanics employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event the Owner determines that the successful bidder or any of its subcontractors have (1) failed to pay the prevailing wages to, and/or on behalf of, any laborer, worker, or mechanic (including apprentices) employed or working on the site of work; (2) demanded a rebate, kickback or refund from any of its employees; (3) made a deduction not expressly allowed by law or regulation; (4) failed to submit or make the records available as required and/or requested herein; and/or (5) failed to permit employee interviews; the Owner may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due and/or to the applicable fringe benefit plan for such employees; allow the contractor or subcontractor to disburse the appropriate amounts to the respective employees to whom they are due, and/or the appropriate fringe benefit plan; withhold such amounts as deemed reasonable by the Owner from contract payments or advances until such violations have ceased; require the successful bidder to pay to the Owner--and the successful bidder shall so promptly pay--(or the Owner may withhold and keep moneys due the successful bidder) as liquidated damages an amount equal to five percent (5%) of the contract amount; and/or debar or suspend the contractor or subcontractor from the Owner's responsible bidders list. The duration of debarment or suspension will be determined by the circumstances relating to the violation.

The above remedies shall be in addition to any other remedies available to the Owner under these contract documents, law, statute, ordinance, rule, regulation, and/or equity.

§ 13.9.3 PREVAILING HOURS OF LABOR

The Wage Determination sets forth the prevailing hours of labor as eight (8) hours per day and forty (40) hours per week. Employees may not be permitted or required to work longer than the prevailing hours of labor unless the

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employee is paid for all hours in excess of the prevailing hours at a rate of at least one and one-half (1-1/2) times his/her basic hourly rate of pay plus applicable fringe benefits; nor shall he/she be paid a lesser rate of wages than the prevailing wage rate in the same or most similar trade or occupation in the area.

§ 13.9.4 PAYROLLS AND BASIC RECORDS

The contractor and all subcontractors (including lower-tier) are required to pay prevailing wages. The contractor is required to maintain and preserve payrolls and canceled payroll checks, time cards and payroll registers all relating thereto (such canceled payroll checks, time cards and payroll registers hereinafter referred to as "basic records").

Such payrolls and basic records shall contain the name, address, and social security number of each worker, his or her correct classification (the work classification must come from the Wage Determination issued for the project), hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. In addition, the contractor shall maintain daily time records showing the hours worked by all hourly employees. Such time cards shall be signed by the employee and the employer.

Unless otherwise instructed, the contractor shall report within fourteen (14) calendar days after the end of each weekly pay period in which any contract work is performed all Certified Payrolls for said pay period by using LCPTracker or other designated reporting system/method determined by Hennepin County Attorney's Office. Correspondence concerning prevailing wage reporting and/or questions may be submitted by email to prevwage@hennepin.us.

Upon request by the Owner representative, the contractor shall promptly furnish to said person the basic records to substantiate the payroll documents submitted.

The contractor shall require all subcontractors to maintain and preserve the pertinent information required to be contained in the contractor's payrolls and basic records. The contractor shall require all subcontractors to submit to the contractor their pertinent payrolls so as to allow the contractor to submit to the assigned representative, within the fourteen (14) calendar day time frame, said payrolls and contractor's payrolls pertaining to the same weekly pay period. The contractor shall also require its subcontractors to promptly submit their basic records to the contractor upon its request.

Each payroll submitted shall be accompanied by a Statement of Compliance signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

§ 13.9.4.1 That the payroll period contains all required information and that such information is correct and complete;

§ 13.9.4.2 That each laborer, worker, or mechanic (including apprentices) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, kickback, or refund either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned (other than permissible deductions); and

§ 13.9.4.3 That each laborer, worker, or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable Wage Determination incorporated into the contract.

The falsification of any of the above certifications may subject the contractor or subcontractor to any remedies available to the Owner whether under these specifications, law, statute, ordinance, rule, regulation and/or equity, including — without limitation whatsoever — liquidated damages in the amount set forth herein.

Supplementary to, and not in limitation of, any other record provision contained in the contract documents, the contractor and/or any subcontractor shall promptly make the records required under the labor standards clauses of the contract available for inspection, copying, or transcription by representatives of the Owner, and/or MN DOLI, and shall permit such representatives to interview employees during working hours on the job. The contractor shall be as fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as for the acts or omissions of persons directly employed by the contractor.

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§ 13.9.5 APPRENTICES – WORKFORCE ENTRY PROGRAM (WEP)

The WEP requires that the successful bidder either hire a specific number of graduates of local jobs training programs or that it demonstrate that it has made good faith efforts to do so.

Under the WEP, the County contractor hires graduates of approved jobs training programs for their apprenticeship training program. (Contact Hennepin County Purchasing & Contract Services for a list of the approved job training programs.) These apprentices gain valuable skills and knowledge while working on County projects. To qualify for a specific job classification, apprentices must not have completed an apprenticeship training course that leads to journeyman status or have been employed as a journeyman.

Contractors employing apprentices under approved programs shall maintain written evidence of the registration (i.e., Apprenticeship Agreement) -of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

The following conditions apply to the use of apprentices on the project:

§ 13.9.5.1 Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program under the Division of Voluntary Apprenticeship of MN DOLI.

§ 13.9.5.2 Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journey worker hourly rate specified in the applicable Wage Determination.

§ 13.9.5.3 Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the Wage Determination for the applicable classification.

§ 13.9.5.4 The allowable ratio of apprentices to journey workers on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable journey worker wage rate as indicated on the Wage Determination for the work actually performed.

§ 13.9.5.5 In the event MN DOLI withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

§ 13.9.6 REQUIRED CONTRACT PROVISIONS

These Labor Standards Provisions shall apply to all work whatsoever performed on the contract. The contractor shall insert in each of his/her/its subcontracts all terms, conditions and stipulations contained in these Labor Standards Provisions and also a clause requiring his/her/its subcontractors to include these Labor Standards Provisions in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of these provisions in any further subcontracts that may in turn be made. The Labor Standards Provisions shall in no instance be incorporated by reference.

A breach of any of the terms, conditions and stipulations contained in these Labor Standards Provisions (or any other provisions of these specifications and/or the contract) may be grounds for termination of the contract, recovery of liquidated damages (where specifically authorized herein), debarment, and/or suspension of the contractor and/or subcontractor, as well as any other right or remedy available under law, statute, ordinance, rule, regulation and/or equity.

The County's failure to insist upon strict performance of any term, condition or stipulation of these specifications and/or contract or to exercise any right herein contained shall not be a waiver or relinquishment of such term, condition, stipulation or right, unless the Owner consents thereto in writing. Any such written consent shall not constitute a waiver or relinquishment of the future of such condition, stipulation or right.

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The rights and remedies available hereunder shall be construed as cumulative, and the exercise of one shall not preclude the exercise of others in combination or singularly. Any or all such rights or remedies may be exercised as often as deemed appropriate by the Owner.

§ 13.10 OFFICE PAPER AND NEWSPRINT RECYCLING PROGRAM

The Owner encourages the Contractor to develop and implement an office paper and newsprint recycling program.

§ 13.11 DATA PRACTICES

Contractor, its officers, agents, owners, partners, employees, volunteers and Subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA), the Health Insurance Portability and Accountability Act and implementing regulations, if applicable, and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, and as any of the same may be amended. If Contractor creates, collects, receives, stores, uses, maintains or disseminates data because it performs functions of the Owner pursuant to this Agreement, then Contractor must comply with the requirements of the MGDPA as if it were a government entity, and may be held liable under the MGDPA for noncompliance.

Contractor agrees to defend, indemnify and hold harmless the Owner, its officials, officers, agents, employees, and volunteers from any claims resulting from Contractor's officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of such protected data, or other noncompliance with the requirements of this section. Contractor agrees to promptly notify the Owner if it becomes aware of any potential claims, or facts giving rise to such, under the MGDPA. The terms of this section shall survive the cancellation or termination of this Agreement.

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; or
- .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;

(Paragraph Deleted)

§ 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, by action of the County Administrator, may terminate the Contract if the Contractor

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- .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.
- .5 **fails to make satisfactory progress in performing the Work for a period of thirty (30) days; or**
- .6 **becomes insolvent, makes a general assignment for the benefit of its creditors, or is unable to pay its debts as they generally come due;**

or

- .7 suspends its business operations or otherwise fails to operate its business in the ordinary course.

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

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

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

§ 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 Architect, 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.
- .3 that performance is, was or would have been so suspended, delayed or interrupted due to an epidemic,
pandemic, declaration of emergency by the governor, declaration of local emergency, or other order issued by federal, state, or local unit of
government.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner, by action of the County Administrator, may, at any time, terminate the Contract, in whole or in part, for the Owner's convenience and without cause. In the event the Owner elects to terminate this Contract pursuant to this provision, the Owner shall notify Contractor by certified or registered mail, return receipt requested, fifteen (15) days prior to the effective date of the basis and extent of termination. Termination shall be effective at the close of business on the date specified in the notice.

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§ 14.4.2 Upon delivery by certified or registered mail to Contractor of a notice of termination specifying the nature of the termination and the date upon which such termination becomes effective, Contractor shall:

§ 14.4.2.1 Stop Work under this Contract on the date and to the extent specified in the notice of termination.

§ 14.4.2.2 Place no further orders and enter into no further subcontracts.

§ 14.4.2.3 Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.

§ 14.4.2.4 With the advance approval of the Owner, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part in accordance with the provisions of the Contract.

§ 14.4.2.5 Within ten (10) work days from the effective date of termination, transfer title to Owner (to the extent that title has not already been transferred) and deliver, in the manner, at the times, and to the extent directed by the Owner, all files, processing systems (excluding equipment and operating systems), data manuals, and other documentation in any form that relate to the work terminated by the Notice of Termination.

§ 14.4.2.6 Complete the performance of such part of the work as has not been terminated by the Notice of Termination; and

§ 14.4.2.7 Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to this Contract, which is in the possession of Contractor and in which Owner has or may acquire an interest.

§ 14.4.3 Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item or reimbursable price under this clause.

§ 14.4.4 Upon termination of this Contract in full, Contractor shall return to Owner any property made available for its use during the term of this Contract.

§ 14.4.5 In the event that any work is terminated under the provisions hereof, all completed items or unit of work will be paid for at contract bid prices. Payment for partially completed items or units of work will be made as provided below and as otherwise mutually agreed to, the intent being that an equitable settlement will be made to the Contractor. Loss of anticipated profits will not be considered in this settlement. In addition to Contractor's other obligations, Contractor shall allow the Owner prompt and free access to the Contractor's cost records and other data relating to the Contract, as may be needed to determine the amount of payment due the Contractor.

§ 14.4.6 Termination of the Contract or any portion thereof shall not relieve the Contractor of responsibility for the completed work, nor shall it relieve the Contractor's sureties of their obligation for and concerning any just claims arising out of the work performed.

(Paragraph Deleted)

§ 14.4.7 Compensation will be made on the following basis:

§ 14.4.7.1 The accepted quantities of work completed in accordance with the Contract will be paid for at the Contract prices.

§ 14.4.7.2 For materials that have been ordered but not incorporated in the work, reimbursement will be made as provided below.

§ 14.4.7.3 For partially completed items, the accepted work will be paid for on the basis of a percentage of the contract bid price equal to the percentage of actual accomplishment.

§ 14.4.7.4 The Contractor will also be reimbursed for such actual expenditures for equipment, mobilization and overhead as the Owner considers directly attributable to the eliminated work and that are not recovered as part of the direct payment for the work.

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§ 14.4.8 Payment for completed work at the Contract prices and for partially completed work and materials in accordance with the above provisions shall constitute final and full compensation for the Owner's contract cancellation for convenience.

§ 14.4.9 Payment for materials that have been ordered for the work, but that are not to be used because of cancellation of the contract for convenience, will be made in accordance with the following provisions, unless the contractor or supplier elects to take possession of the surplus material without expense to the Owner:

§ 14.4.9.1 Payment for surplus materials that have been purchased and shipped or delivered to the Project will be made at the Contract bid price when the pay item covers the furnishing and delivering of the material only.

§ 14.4.9.2 When the Contract bid price covers the furnishing and placing of the material, the Owner will take possession of the surplus materials that have been purchased and shipped or delivered to the Project, or will order the material returned to the supplier for credit, and will pay the Contractor the actual purchase price of the material plus transportation costs, to which will be added ten (10%) percent of the total thereof, and from which will be deducted any credits received by the Contractor for materials returned.

§ 14.4.9.3 Materials that have been ordered but have not been consigned for shipment will be paid for upon delivery the same as materials in transit or delivered only when the supplier is unwilling to cancel or modify the order such as in the case of materials requiring special manufacture, fabrication or processing so as to be unsuitable for general use.

§ 14.4.10 In no case will payment for surplus materials exceed the Contract bid price for the materials complete in place. The Contractor shall furnish receipted invoices or an affidavit showing the purchase price and transportation charges on materials to be taken over by the Owner.

§ 14.4.11 Surplus materials that are taken over by the Owner shall be delivered to the storage sites designated by the Owner.

§ 14.4.12 Except as above provided, no payment will be made to the Contractor for any materials that are not incorporated in the work. Materials are to be ordered in the quantities needed unless a specific quantity is to be furnished by direct order of the Owner.

§ 14.4.13 No payment will be made for surplus materials that have not been inspected, tested and accepted for use, nor will any payment be made for accepted materials that have not been properly preserved, stored and maintained to the date on which they are delivered to the Owner.

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 dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 12 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.

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§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party with a copy sent to the Architect.

§ 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 Architect 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, except as provided in Section 9.5, 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 Architect'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 its decision.

§ 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 extreme and 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 Architect for initial decision. 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 Architect, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Architect and all affected parties agree, the Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

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§ 15.2.2 The Architect 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 Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Architect 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 Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Architect 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 Architect when the response or supporting data will be furnished, or (3) advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

§ 15.2.5 Architect will render an initial decision approving or rejecting the Claim, or indicating that the Architect 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 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 arbitration or litigation, at the sole discretion of the Owner.

§ 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.

(Paragraph Deleted)

§ 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 9.10.5, and 15.1.7, may be submitted to mediation by agreement of the parties.

§ 15.3.2 Intentionally Deleted

§ 15.3.3 Intentionally Deleted

§ 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 Owner elects to arbitrate a Claim, any Claim related to or arising out of the Contract 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.

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§ 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 If agreed to by the parties 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.