

AGREEMENT NO:  
2020 - 11 SECTION B

 **AIA**® Document A201® - 2017

**General Conditions of the Contract for Construction**

**for the following PROJECT:**

*(Name and location or address)*

New County Courthouse for The County of Franklin, Illinois  
100 Public Square  
Benton, IL 62812

**THE OWNER:**

*(Name, legal status and address)*

The County of Franklin, Illinois  
Campbell Building  
901 Public Square  
Benton, Illinois 62812

**THE ARCHITECT:**

*(Name, legal status and address)*

White & Borgognoni Architects, P.C.  
212 North Illinois Avenue  
Carbondale, IL 62901

**TABLE OF ARTICLES**

1	GENERAL PROVISIONS
2	OWNER
3	CONTRACTOR
4	ARCHITECT
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS

**ADDITIONS AND DELETIONS:**

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

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

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

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

Init.

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## INDEX

(Topics and numbers in bold are Section headings.)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

### Access to Work

**3.16**, 6.2.1, 12.1

Accident Prevention  
10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,  
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

### Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

### Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

### Allowances

**3.8**

### Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,  
3.12.10.1, 4.2.7, 9.3.2, 13.4.1

### Arbitration

8.3.1, 15.3.2, **15.4**

## ARCHITECT

**4**

Architect, Definition of

**4.1.1**

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,  
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,  
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,  
4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2,  
9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,  
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,  
13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,  
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,  
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,  
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

### Award of Subcontracts and Other Contracts for Portions of the Work

**5.2**

### Basic Definitions

**1.1**

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,  
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

### Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

### Building Information Models Use and Reliance

**1.8**

Building Permit

3.7.1

### Capitalization

**1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Init.

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**Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval  
13.4.4

Certificates of Insurance  
9.10.2

**Change Orders**

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of  
7.2.1

**CHANGES IN THE WORK**

2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

**15.1.1**

Claims, Notice of  
1.6.2, 15.1.3

**CLAIMS AND DISPUTES**

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

Claims and Timely Assertion of Claims  
15.4.1

**Claims for Additional Cost**

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, 15.1.5

**Claims for Additional Time**

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, 15.1.6

Concealed or Unknown Conditions, Claims for  
3.7.4

**Claims for Damages**

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration  
15.4.1

**Cleaning Up**

3.15, 6.3

**Commencement of the Work, Conditions Relating to**

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, 15.1.5

Commencement of the Work, Definition of  
8.1.2

**Communications**

3.9.1, 4.2.4

**Completion, Conditions Relating to**

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

**COMPLETION, PAYMENTS AND**

9

**Completion, Substantial**

3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

**Compliance with Laws**

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

**Concealed or Unknown Conditions**

3.7.4, 4.2.8, 8.3.1, 10.3

**Conditions of the Contract**

1.1.1, 6.1.1, 6.1.4

**Consent, Written**

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

**Consolidation or Joinder**

15.4.4

**CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

1.1.4, 6

Construction Change Directive, Definition of  
7.3.1

**Construction Change Directives**

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

**Construction Schedules, Contractor's**

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

**Contingent Assignment of Subcontracts**

5.4, 14.2.2.2

**Continuing Contract Performance**

15.1.4

**Contract, Definition of**

1.1.2

**CONTRACT, TERMINATION OR SUSPENSION OF THE**

5.4.1.1, 5.4.2, 11.5, 14

**Contract Administration**

3.1.3, 4, 9.4, 9.5

**Contract Award and Execution, Conditions Relating to**

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of  
1.5.2, 2.3.6, 5.3

**Contract Documents, Definition of**

1.1.1

**Contract Sum**

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, 9.1, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, 15.1.5, 15.2.5

Contract Sum, Definition of  
9.1

**9.1****Contract Time**

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of  
8.1.1

8.1.1

**CONTRACTOR**

3

**Contractor, Definition of**

3.1, 6.1.2

**Contractor's Construction and Submittal Schedules**

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Init.

Contractor's Employees  
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,  
10.3, 11.3, 14.1, 14.2.1.1

### Contractor's Liability Insurance

#### 11.1

Contractor's Relationship with Separate Contractors  
and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7,  
9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,  
3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2,  
7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3,  
11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the  
Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

2.2.2, 9.7

Contractor's Right to Terminate the Contract

14.1

Contractor's Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2,  
9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,  
7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.3.6, 3.11

Copyrights

1.5, 3.17

Correction of Work

2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2, 12.3,  
15.1.3.1, 15.1.3.2, 15.2.1

Correlation and Intent of the Contract Documents

1.2

Cost, Definition of

7.3.4

Costs

2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,  
7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2,  
12.1.2, 12.2.1, 12.2.4, 13.4, 14

Cutting and Patching

3.14, 6.2.5

Damage to Construction of Owner or Separate  
Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2,  
11.3, 14.2.4, 15.1.7

Damages for Delay

6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

Date of Commencement of the Work, Definition of  
8.1.2

Date of Substantial Completion, Definition of  
8.1.3

Day, Definition of

8.1.4

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4,  
7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2,  
14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification

9.4.1, 9.5, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance,  
Rejection and Correction of

2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3,  
9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1,  
6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

Delays and Extensions of Time

3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7,  
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Digital Data Use and Transmission

1.7

Disputes

6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site

3.11

Drawings, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of

3.11

Effective Date of Insurance

8.2.2

Emergencies

10.4, 14.1.1.2, 15.1.5

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,  
10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3,  
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1,  
3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1,  
9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,  
10.4, 14.3, 15.1.6, 15.2.5

**Failure of Payment**  
9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work  
(See Defective or Nonconforming Work)

**Final Completion and Final Payment**  
4.2.1, 4.2.9, 9.8.2, 9.10, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's  
2.2.1, 13.2.2, 14.1.1.4

**GENERAL PROVISIONS**

**1**

**Governing Law**

**13.1**

Guarantees (See Warranty)

**Hazardous Materials and Substances**  
10.2.4, 10.3

Identification of Subcontractors and Suppliers  
5.2.1

**Indemnification**  
3.17, 3.18, 9.6.8, 9.10.2, 10.3.3, 11.3

**Information and Services Required of the Owner**  
2.1.2, 2.2, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,  
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,  
14.1.1.4, 14.1.4, 15.1.4

**Initial Decision**

**15.2**

**Initial Decision Maker, Definition of**  
1.1.8

Initial Decision Maker, Decisions  
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority  
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

**Injury or Damage to Person or Property**  
10.2.8, 10.4

Inspections  
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders  
1.1.1

Instructions to the Contractor  
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

**Instruments of Service, Definition of**  
1.1.7

Insurance  
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, 11

Insurance, Notice of Cancellation or Expiration  
11.1.4, 11.2.3

**Insurance, Contractor's Liability**

**11.1**

Insurance, Effective Date of  
8.2.2, 14.4.2

**Insurance, Owner's Liability**

**11.2**

**Insurance, Property**  
10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials  
9.3.2

**INSURANCE AND BONDS**

**11**

Insurance Companies, Consent to Partial Occupancy  
9.9.1

Insured loss, Adjustment and Settlement of  
11.5

Intent of the Contract Documents  
1.2.1, 4.2.7, 4.2.12, 4.2.13

**Interest**

**13.5**

**Interpretation**  
1.1.8, 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written  
4.2.11, 4.2.12

Judgment on Final Award  
15.4.2

**Labor and Materials, Equipment**  
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,  
10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes  
8.3.1

Laws and Regulations  
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,  
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,  
15.4

Liens  
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of  
12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability  
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,  
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,  
11.3, 12.2.5, 13.3.1

Limitations of Time  
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,  
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,  
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,  
15.1.2, 15.1.3, 15.1.5

**Materials, Hazardous**  
10.2.4, 10.3

Materials, Labor, Equipment and  
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,  
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and  
Procedures of Construction  
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien  
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

**Mediation**  
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1,  
15.4.1.1

**Minor Changes in the Work**  
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

Init.

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## MISCELLANEOUS PROVISIONS

13

### Modifications, Definition of

1.1.1

#### Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

### Mutual Responsibility

6.2

### Nonconforming Work, Acceptance of

9.6.6, 9.9.3, 12.3

Nonconforming Work, Rejection and Correction of  
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

### Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

### Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

### Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, 15.1.3, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

### Notice of Testing and Inspections

13.4.1, 13.4.2

### Observations, Contractor's

3.2, 3.7.4

### Occupancy

2.3.1, 9.6.6, 9.8

### Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

## OWNER

2

### Owner, Definition of

2.1.1

### Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

### Owner, Information and Services Required of the

2.1.2, 2.2, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

### Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

### Owner's Insurance

11.2

### Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

### Owner's Right to Carry Out the Work

2.5, 14.2.2

### Owner's Right to Clean Up

6.3

### Owner's Right to Perform Construction and to Award Separate Contracts

6.1

### Owner's Right to Stop the Work

2.4

### Owner's Right to Suspend the Work

14.3

### Owner's Right to Terminate the Contract

14.2, 14.4

### Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, 1.5, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

### Partial Occupancy or Use

9.6.6, 9.9

### Patching, Cutting and

3.14, 6.2.5

### Patents

3.17

### Payment, Applications for

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

### Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

### Payment, Failure of

9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

### Payment, Final

4.2.1, 4.2.9, 9.10, 12.3, 14.2.4, 14.4.3

### Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

### Payments, Progress

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

## PAYMENTS AND COMPLETION

9

### Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

### PCB

10.3.1

### Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

### Permits, Fees, Notices and Compliance with Laws

2.3.1, 3.7, 3.13, 7.3.4.4, 10.2.2

## PERSONS AND PROPERTY, PROTECTION OF

### 10 Polychlorinated Biphenyl

10.3.1

### Product Data, Definition of

3.12.2

### Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

### Progress and Completion

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.4

### Progress Payments

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Init.

**Project, Definition of**  
**1.1.4**  
**Project Representatives**  
**4.2.10**  
**Property Insurance**  
**10.2.5, 11.2**  
**Proposal Requirements**  
**1.1.1**  
**PROTECTION OF PERSONS AND PROPERTY**  
**10**  
**Regulations and Laws**  
**1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,**  
**10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4**  
**Rejection of Work**  
**4.2.6, 12.2.1**  
**Releases and Waivers of Liens**  
**9.3.1, 9.10.2**  
**Representations**  
**3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1**  
**Representatives**  
**2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1**  
**Responsibility for Those Performing the Work**  
**3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10**  
**Retainage**  
**9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3**  
**Review of Contract Documents and Field**  
**Conditions by Contractor**  
**3.2, 3.12.7, 6.1.3**  
**Review of Contractor's Submittals by Owner and**  
**Architect**  
**3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2**  
**Review of Shop Drawings, Product Data and Samples**  
**by Contractor**  
**3.12**  
**Rights and Remedies**  
**1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,**  
**6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,**  
**12.2.4, 13.3, 14, 15.4**  
**Royalties, Patents and Copyrights**  
**3.17**  
**Rules and Notices for Arbitration**  
**15.4.1**  
**Safety of Persons and Property**  
**10.2, 10.4**  
**Safety Precautions and Programs**  
**3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4**  
**Samples, Definition of**  
**3.12.3**  
**Samples, Shop Drawings, Product Data and**  
**3.11, 3.12, 4.2.7**  
**Samples at the Site, Documents and**  
**3.11**  
**Schedule of Values**  
**9.2, 9.3.1**  
**Schedules, Construction**  
**3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2**

**Separate Contracts and Contractors**  
**1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2**  
**Separate Contractors, Definition of**  
**6.1.1**  
**Shop Drawings, Definition of**  
**3.12.1**  
**Shop Drawings, Product Data and Samples**  
**3.11, 3.12, 4.2.7**  
**Site, Use of**  
**3.13, 6.1.1, 6.2.1**  
**Site Inspections**  
**3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4**  
**Site Visits, Architect's**  
**3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4**  
**Special Inspections and Testing**  
**4.2.6, 12.2.1, 13.4**  
**Specifications, Definition of**  
**1.1.6**  
**Specifications**  
**1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14**  
**Statute of Limitations**  
**15.1.2, 15.4.1.1**  
**Stopping the Work**  
**2.2.2, 2.4, 9.7, 10.3, 14.1**  
**Stored Materials**  
**6.2.1, 9.3.2, 10.2.1.2, 10.2.4**  
**Subcontractor, Definition of**  
**5.1.1**  
**SUBCONTRACTORS**  
**5**  
**Subcontractors, Work by**  
**1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,**  
**9.6.7**  
**Subcontractual Relations**  
**5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1**  
**Submittals**  
**3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,**  
**9.9.1, 9.10.2, 9.10.3**  
**Submittal Schedule**  
**3.10.2, 3.12.5, 4.2.7**  
**Subrogation, Waivers of**  
**6.1.1, 11.3**  
**Substances, Hazardous**  
**10.3**  
**Substantial Completion**  
**4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,**  
**15.1.2**  
**Substantial Completion, Definition of**  
**9.8.1**  
**Substitution of Subcontractors**  
**5.2.3, 5.2.4**  
**Substitution of Architect**  
**2.3.3**  
**Substitutions of Materials**  
**3.4.2, 3.5, 7.3.8**  
**Sub-subcontractor, Definition of**  
**5.1.2**

Init.



Subsurface Conditions  
3.7.4

**Successors and Assigns**  
13.2

**Superintendent**  
3.9, 10.2.6

**Supervision and Construction Procedures**  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

**Suppliers**  
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

**Surety**  
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

**Surety, Consent of**  
9.8.5, 9.10.2, 9.10.3

**Surveys**  
1.1.7, 2.3.4

**Suspension by the Owner for Convenience**  
14.3

**Suspension of the Work**  
3.7.5, 5.4.2, 14.3

**Suspension or Termination of the Contract**  
5.4.1.1, 14

**Taxes**  
3.6, 3.8.2.1, 7.3.4.4

**Termination by the Contractor**  
14.1, 15.1.7

**Termination by the Owner for Cause**  
5.4.1.1, 14.2, 15.1.7

**Termination by the Owner for Convenience**  
14.4

**Termination of the Architect**  
2.3.3

**Termination of the Contractor Employment**  
14.2.2

**TERMINATION OR SUSPENSION OF THE CONTRACT**  
14

**Tests and Inspections**  
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4

**TIME**  
8

**Time, Delays and Extensions of**  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

**Time Limits**  
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

**Time Limits on Claims**  
3.7.4, 10.2.8, 15.1.2, 15.1.3

**Title to Work**  
9.3.2, 9.3.3

**UNCOVERING AND CORRECTION OF WORK**  
12

**Uncovering of Work**  
12.1

**Unforeseen Conditions, Concealed or Unknown**  
3.7.4, 8.3.1, 10.3

**Unit Prices**  
7.3.3.2, 9.1.2

**Use of Documents**  
1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

**Use of Site**  
3.13, 6.1.1, 6.2.1

**Values, Schedule of**  
9.2, 9.3.1

**Waiver of Claims by the Architect**  
13.3.2

**Waiver of Claims by the Contractor**  
9.10.5, 13.3.2, 15.1.7

**Waiver of Claims by the Owner**  
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7

**Waiver of Consequential Damages**  
14.2.4, 15.1.7

**Waiver of Liens**  
9.3, 9.10.2, 9.10.4

**Waivers of Subrogation**  
6.1.1, 11.3

**Warranty**  
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

**Weather Delays**  
8.3, 15.1.6.2

**Work, Definition of**  
1.1.3

**Written Consent**  
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

**Written Interpretations**  
4.2.11, 4.2.12

**Written Orders**  
1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

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

#### **§ 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.

The Work referred to in these documents consists of the furnishing of all labor, materials and equipment for the complete installation of all work as specified herein and shown on the drawings, including delivery, unloading, uncrating, assembling, setting-in-place, leveling, adjustment, completely installing and cleaning up of any debris.

The Work shall be in strict accordance with the Drawings and Specifications.

The Contractor shall thoroughly investigate all local trade jurisdictional rulings and shall be held completely responsible for the settlement of any disputes arising from fabrication, installation, or completion of the Work under this Contract.

#### **§ 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.

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### § 1.1.8 Initial Decision Maker

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

### § 1.1.9 Site

The term Site refers to that portion of the property on which the Work is to be performed or which has been otherwise set aside for use by the Contractor.

### § 1.1.10 Punch List

The term Punch List means, collectively, unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment or decoration remaining to be performed, the non-completion of which would not materially affect the use of the Project, and which are capable of being completed within Thirty (30) days of Substantial Completion, subject to the availability of special order parts and materials.

### § 1.1.11 Float

Float-Float is a measurement of time indicating how late any activity or group of activities in a schedule can be completed without impacting the critical path and the scheduled end date of the Project. Float belongs to the Project and is not for exclusive use of the Contractor.

## § 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

§ 1.2.4 Reference to Standard Specifications of any technical society, organization, or association, or to codes of local or state authorities, shall mean the latest standard, code, specification, or tentative specification adopted and published at the date of taking the bid, unless specifically stated otherwise.

§ 1.2.5 The Contractor shall notify the Architect in writing of any inconsistency found between the Specifications and Drawings. The Architect will then advise the Contractor on whether the Specifications will control.

§ 1.2.6 The terms "this Contractor," "furnished under other sections," "included as part of other sections," "related work in other sections," or similar description of segregation shall not be interpreted to limit the responsibility of any particular party involved in the work. The limitations of any Subcontractor's work shall rest solely upon the agreement between the Contractor and the Subcontractor, regardless of where the work is called for in the Contract Documents.

## § 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.

§ 1.4.2 In the event of discrepancies or conflicts among or between the Contract Documents or observable conditions exist, the Contractor shall request an interpretation in writing from the Owner and Architect before proceeding with the Work. If the Contractor fails to request such interpretation from the Architect, it is presumed that the more stringent, better quality or higher quality requirement is included in the Work. The Contractor shall be responsible for the cost and installation of such requirement at no additional cost to the Owner. Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for correctness of such measurements. Any difference which may be found shall be submitted to the Architect for interpretation before proceeding with the Work as a condition precedent to any claim for an increase in the Contract Sum. If conflict among various provisions of the Contract Documents is found, and the quality or stringency of the conflicts are not in question, the terms shall be interpreted in the following order of priority:

1. Modifications to the Contract
2. The Contract
3. Special Conditions
4. General Conditions

Specifications shall control over Drawings, and details in drawings shall control over large-scale drawings.

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

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

## § 1.6 Notice

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

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

## § 1.7 Digital Data Use and Transmission

Drawings in electronic format will be available for Bidding. Digital data shall be available after award of Contract per AIA Document C106, 2013 Edition, and per specifications or Electronic Disclaimer Form required by the Architect and their consultants.

## § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk

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User Notes:

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and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### § 2.1 General

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

*(Paragraph deleted)*

### § 2.2 Evidence of the Owner's Financial Arrangements

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

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

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

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

### § 2.3 Information and Services Required of the Owner

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

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

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and 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 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 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 written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such cases an appropriate Change Order shall be issued deducting from payments then and thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and Compensation for the Architect's and Owner Representative's additional services made necessary by such default, neglect, or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**§ 2.6 Architect's Compensation for Services to Remedy Defective Work**

When the Architect's and Owner Representative's Additional services are required because of defective work, neglect, failure, deficiencies, or default by the Contractor, the Architect's and Owner Representative's compensation for such services shall be based on the Architect's and Owner Representative's invoice to the Owner. The Invoice, when approved by the Owner, along with other cost, damages and liabilities incurred by the Owner or the Architect, shall be the basis for adjust the Contract Sum, by Change Order, to compensate the Owner for the Architect's and Owner Representative's Additional Services.

**ARTICLE 3 CONTRACTOR**

**§ 3.1 General**

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

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

**§ 3.1.3** The Contractor shall not be relieved of 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 and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during bidding or proposal period.

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

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. Insofar as the Contract Documents have been prepared in accordance with applicable laws, statutes, building codes and regulations, the Contractor shall execute the work in accordance with their intent and with said laws, statutes, building codes and regulations. Refer to Section 014200 and other applicable portions of the Contract Documents for specific requirements.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to Architect, the Contractor shall thereby assume responsibility for performance and shall bear the attributable cost for correction.

**§ 3.2.5** If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

**§ 3.2.6** The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and the physical data and Site conditions observed.

**§ 3.2.7** If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violate in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all claims relating thereafter are specifically waived.

### **§ 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

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specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor 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.

#### **§ 3.4 Labor and Materials**

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

**§ 3.4.1.1** Products are generally specified by ASTM (American Society of Testing Materials) or other referenced standard, and/or by the manufacturer's name and model number or trade name. When specified only by reference standard, the Contractor may select any product meeting the standard by any manufacturer. When several products or manufacturers are specified in being equally acceptable, the Contractor has the option of using any product and manufacturer combination listed.

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

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Persons permitted to perform Work under Contractor or any Subcontractor or Sub-Subcontractor shall meet all employment eligibility, safety training, security or drug/alcohol testing requirements required by law or by Owner. Any person not complying with all such requirements shall be immediately removed from the Site.

#### **§ 3.5 Warranty**

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

**§ 3.5.2** The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

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**§3.5.3** The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

### **§ 3.6 Taxes**

**3.6.1** The Owner enjoys tax exempt status as a County. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Contractor for use on the Project. The Contractor shall use that Certificate to exempt any purchases made for the Work from taxes. Contractor will pass on all savings for the tax-exempt to the Owner. The Contractor agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.

**§ 3.6.2** The Contractor will require all Subcontractors and Bidders to provide cost information for materials separate from other costs for labor, profit, overhead, etc. to allow the Owner to verify that no taxes are paid on material procurement and that such savings shall be passed on to the Owner.

**§ 3.6.3** The Contractor will maintain all records, invoices, receipts, or other accounting data regarding material purchases and will allow, upon written request of the Owner and within a reasonable time frame after receipt of such request, the Owner to audit such records and verify tax savings. If an audit reveals taxes paid or savings not transferred to the Owner, the Contractor will be liable to the Owner for those amounts and the Owner may back-charge the Contractor for those amounts if a balance of funds due and payable remains at the time of such discovery.

- .1 The Contractor will require all Subcontractors of any tier maintain all records, invoices, receipts, or other accounting data regarding material purchases. The Contractor will collect such records with each application for payment it receives from its Subcontractors and shall maintain such records in the same manner and location as the Contractor's records.
- .2 The Contractor will ensure its Subcontractors and any lower-tier Subcontractors include these obligations in their contracts and bind themselves in the same manner as the Contractor is bound to the Owner.

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

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

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

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

**§ 3.7.3** When Contractor knows or reasonably should have known work to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **§ 3.7.4 Concealed or Unknown Conditions**

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

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

### § 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Superintendent must provide his or her email address, and cell phone number to the Owner and Architect, and must be available to be contacted during all business hours, and outside of business hours in the event of an emergency. The Superintendent must be fluent in all languages necessary to effectively communicate with Contractor's staff assigned to the Project, and with all Subcontractors, in order to supervise and direct the Work and assist emergency responders.

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

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

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work within Twenty-One (21) days of execution of the Contract. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and

Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Thereafter, the Contractor shall prepare and update the construction schedule on a monthly basis ("Current Construction Schedule), if not more frequently at the Contractor's discretion, to be submitted by the Owner with each Application for Payment.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval within Twenty-One (21) days of the execution of Contract. 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.

**§ 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. The contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

**§ 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

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approved by the Architect. The Contractor must correct at its cost, and without any adjustment to Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

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

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

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

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

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

### § 3.13 Use of Site

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.

§ 3.13.1 Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such facilities available to the Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

### § 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**

*(Paragraphs deleted)*

**§ 3.15.1** The Contractor on a daily basis shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. 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. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. Care shall be taken by all workers not to mark, soil, or otherwise deface any finish. In the event that any finish becomes defaced in any way by mechanics or workers, the Contractor or any of his Subcontractors shall clean and restore such surfaces to their original condition.

**§ 3.15.2** The Contractor must keep the Site and adjacent areas free from accumulation of waste materials or rubbish caused by the operations under the Contract on a daily basis, and must keep tools, construction equipment, machinery and surplus materials suitably stored when not in use. If the Contractor fails to do so in a manner reasonably satisfactory to the Owner or the Architect within Forty-Eight (48) hours after notice or as otherwise required by the Contract Documents, the Owner may clean the Site and back charge the Contractor for all costs associated with the cleaning. 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.

**§ 3.15.3** 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.

**§ 3.15.4** The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning.

### **§ 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** The Contractor shall defend, indemnify, and hold harmless the Owner, its elected or appointed officials, Architect, Owner's Representative, and their respective consultants, insurers, agents, and employees, from and against

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any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of or connected with, the Contract, or the work of any subcontract hereunder (the Contractor hereby assuming full responsibility for relations with Subcontractors), including but not limited to claims for personal injuries, death, or property damage (other than the Work itself), regardless of whether the loss to be indemnified was caused in part by an indemnified person.

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

§ 3.18.3 Notwithstanding Subparagraph 3.18.1 General Conditions, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, Owner's Representative and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees arising from or resulting from blasting activities at the site of the Work, irrespective of the degree of care utilized by the Contractor, or Subcontractor, or anyone directly or indirectly employed by them, in the course of performing those blasting activities.

#### ARTICLE 4 ARCHITECT

##### § 4.1 General

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

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

##### § 4.2 Administration of the Contract

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

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

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

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

#### § 4.2.4 Communications

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

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

§ 4.2.6 The Architect 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.

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§ 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.

§ 4.2.15 All Parties to this agreement believe the use of electronic communications is a beneficial method of communication. As such, all parties agree that any communication thru electronic means (Email, project web site, Procore, etc.) will be consider a valid form of communication as set forth in this agreement. All parties agree that electronic email communications will constitute notice and any person sent an email will be considered to have been duly served as set forth in this agreement.

## 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, within thirty (30) days 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. The Contractor shall update this list throughout the Project and keep Owner and Architect advised of any new Subcontractors employed.

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

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

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

### § 5.3 Subcontractual Relations

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



similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### **§ 5.4 Contingent Assignment of Subcontracts**

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

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

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

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

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

**§ 6.1.1** The 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. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

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

#### **§ 6.2 Mutual Responsibility**

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

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly

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

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

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

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

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

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

§ 7.1.4 For any changes in the Work requested by the Contractor involving more than a three (3) calendar day extension of time, the Contractor shall submit critical path schedules showing the original schedule and impact of the proposed change justifying the requested extension of time. The Owner may, at its option, refuse the extension of time and have the Contractor perform the work within the original schedule provided all reasonable costs for completing the work, including overtime and acceleration costs, are included in the Change Order.

§ 7.1.5 If a proposal for additional work is requested by the Owner from the Contractor which involves additional time, at the Owner's option, the Owner may extend the completion date of that portion of the work included in the change, without extending the Contract Time for the remainder of the work.

§ 7.1.6 Changes which involve credits to the Contract Sum shall include overhead, profit, general conditions, bond and insurance costs.

§ 7.1.7 For any adjustments to the Contract sum based on other than the unit price method, overhead, profit and general conditions combined shall be calculated at the following percentages of the cost attributable to the change in the work.

- .1 For the Contract for Work performed by the Contractor's own forces, ten (10) percent of the cost.
- .2 For the Contractor, for Work performed by the Contractor's Subcontractors, five (5) percent of the amount due the Subcontractor.

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- .3 For each Subcontractor or Sub-subcontractor involved for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten (10) percent of the cost.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractor's, five (5) percent of the amount due the Sub-subcontractor.
- .5 Costs to which overhead, profit, and general conditions is to be applied shall be determined in accordance with Sub-subparagraphs 7.3.6.1 through 7.3.6.5.
- .6 When both additions and credit are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any.
- .7 In order to facilitate checking of quotations for extras or credits, all proposals shall be accompanied by:
  - (1) a complete itemization of costs including labor, materials;
  - (2) Subcontractor's, Sub-subcontractor's and material suppliers for their portions of the Work itemized to include labor, material;
  - (3) labor costs shall indicate hourly wage and fringe benefits, labor hours shall be provided for each phase of the work;
  - (4) material costs shall include unit costs and units required where applicable.

**§ 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.

**§ 7.2.1.1** The General Contractor shall review all proposals for change and conformance with the request for change and with the Contract Documents; process the proposals and make its recommendation in writing to the Architect/Engineer.

**§ 7.2.2 Change Proposals**

The Contractor must submit change proposals covering a contemplated Change Order within ten (10) days after the request of the Owner or the Architect or within ten (10) days of the event giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making change proposals. Change proposals will define or confirm in detail the Work that is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in the Contract Sum or the Contract Time. Any proposed adjustment must include detailed documentation, including but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, and additional bond cost. Change proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor to proceed with the Work involved in the Change Proposal in accordance with this Section 7.2.2 without accepting the Change Proposal in its entirety. See Exhibit D, entitled Modifications/Explanations or the Change Order Fee, which shall govern and apply to Change Orders.

**§ 7.2.3** If the Owner determines that a change proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

**§ 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, (after the scope has been previously approved in writing by the Owner), 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.

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

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

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

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect 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;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

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

**§ 7.3.7** 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.

**§ 7.3.8** 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.

**§ 7.3.9** 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.

*(Paragraph deleted)*

**§ 7.4 Minor Changes in the Work**

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

**ARTICLE 8 TIME**

**§ 8.1 Definitions**

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

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

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

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

**§ 8.2 Progress and Completion**

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

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

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. If Contractor's work shall fall behind schedule for reasons that are not excused under the terms of the Contract, Contractor shall add additional workers or shifts, and/or work overtime as necessary to maintain the Construction Schedule.

**§ 8.2.4** The Contractor must conform to the most recently approved Construction Schedule. The Contractor must complete the indicated work or achieve the required percentage of completion, as applicable, with any interim completion dates established in the most recently approved Construction Schedule.

**§ 8.2.5** The Contractor must maintain at the Site, available to the Owner and the Architect for their reference during the progress of the Work, a copy of the approved Construction Schedule and any approved revisions thereto. The Contractor must keep current records of and mark on a copy of the approved Construction Schedule the actual commencement date, progress, and completion date of each scheduled activity indicated on the Construction Schedule.

**§ 8.2.6** The Contractor represents that its bid includes all costs, overhead and profit which may be incurred throughout the Contract Time and the period between Substantial and Final Completion. Accordingly, the Contractor may not make any claim for delay damages based in whole or in part on the premise that the Contractor would have completed the Work prior to the expiration of the Contract Time but for any claimed delay.

**§ 8.2.7** If the Contractor's progress is not maintained in accordance with the approved Construction Schedule, or the Owner determines that the Contractor is not diligently proceeding with the Work or has evidence reasonably indicating that the Contractor will not be able to conform to the most recently approved Construction Schedule, the Contractor must, promptly and at no additional cost to the Owner, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and Notify the Owner.

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**§ 8.2.8** The Owner reserves the right to issue a written directive to accelerate the Work that may be subject to an appropriate adjustment, if any, in the Contract Sum. If the Owner requires an acceleration of the Construction Schedule and no adjustment is made in the contract Sum, or if the Contractor disagrees with any adjustment made, the Contractor must file a claim as provided in Article 15 or the same will be deemed to be conclusively waived.

**§ 8.3 Delays (Not the Fault of the Contractor) and Extensions of Time**

**§ 8.3.1** Excusable delays are delays in the progress of the Work which at the time of the delays were critical path activities shown on the most recently approved Construction Schedule and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Time, which caused by conditions that could not reasonably be anticipated by, are beyond the control of, and are without the fault or negligence of the Owner, as set forth in Section 8.3.2, the Contractor, or anyone for whose acts the Contractor is responsible. Excusable delays do not include delays do not include delays caused in whole or in part by any Subcontractors, Sub-subcontractors or suppliers. Excusable delays may justify an extension of the Contract Time, but there shall be not compensation whatsoever for excusable delays. Excusable delays may, but do not necessarily, include:

- .1 Weather delays as further defined in Section 8.3.6;
- .2 Acts of Government or regulatory agencies and officials (Other than the Owner in its capacity as Owner;)
- .3 Catastrophic events such as fire, flood and unavoidable casualties; and
- .4 Strikes or labor disputes.

*(Paragraphs deleted)*

**§ 8.3.2** Compensable delays are limited to delays in the progress of the Work which at the time of the delays were critical path as shown on the most recently approved Construction Schedule and which prevent Contractor from achieving Substantial Completion before the expiration of the Contract Time, which are caused solely and exclusively by acts or omissions of the Owner (except actions taken by the Owner acting as a regulatory authority to protect the public health or safety or to conform to law).

**§ 8.3.3** Unexcused delays are delays in Work which at the time of the delays were critical path activities as shown on the most recently approved Construction Schedule and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract time and which are not excusable delays or compensable delays. No increase in the Contract Sum or extension of the Contract Time will be made for an unexcused delay.

**§ 8.3.4** The Contractor must provide written notice of any actual or prospective delay promptly, and in no event later than ten (10) days after the occurrence of the event giving risk to such delay. The notice must be given to the Owner and Architect within the specified time. In the case of a Continuing delay, the Contractor must provide an initial notice and a further notice at each progress meeting throughout the duration of the delay. The notice must contain all of the specific information specified in Section 8.3.5. The Contractor's failure to provide the written notice containing the information specified in Section 8.3.5 within ten (10) days prescribed above will be conclusively deemed a waiver or any claim for delay arising from such occurrence.

**§ 8.3.5** The Contractor's notice must identify those portions of the Construction Schedule affected by the delay and must include an estimate of the cost and probable effect of the delay, if any, on the progress of the Work. Supporting documentation must include, but is not limited to:

- .1 a written detailed statement of the reasons and causes for the delay;
- .2 inclusive dates of the delay;
- .3 specific trades and portions of the Work affected by the delay;
- .4 status of Work affected before commencement of the delay;
- .5 effect of the delay on available Float;

.6 a critical path method (CPM) analysis demonstrating that the delay has affected an activity then on the critical path at the time of the occurrence of the delay as shown on the most recently approved Construction Schedule; and

.7 if the Contractor claims that the delay is an excusable delay or compensable delay, evidence that the delay was unforeseeable, beyond the Contractor's control, and without the fault or negligence of the Contractor or the negligence of anyone for whose acts the Contractor is responsible, including any Subcontractor, Sub-subcontractor or supplier; and in the case of a compensable delay, was caused solely and exclusively by the acts or omissions of the Owner (excepting actions taken by the Owner to protect the public health or safety or to conform to law) or anyone for whose acts the Owner is responsible, and which are unreasonable under the circumstances involved and not reasonably within the contemplation of the parties.

**§ 8.3.6** In order for the Contractor to be entitled to an extension of the Contract Time for unusually severe weather, the following conditions must be satisfied:

- .1 The weather experienced at the Site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month;
- .2 The unusually severe weather must delay Work which at the time of the unusually severe weather was a critical path activity as shown on the most recently approved Construction Schedule and which prevents the Contractor from achieving Substantial Completion before expiration of the Contract Time. The delay must be beyond the control and without the fault or negligence of the Contractor. For example, the impacted critical activity must not have occurred during unusually severe weather due to previous unexcused delays; and
- .3 The Contractor must have provided written notice of the weather-related delay complying with Sections 8.3.4 and 8.3.5 above.

This contract must achieve the substantial completion dates identified in Section 3.3 of the AIA101-2017. It is expected that within the overall contract duration, this Contractor must include an allowance of ten (10) work days for delays due to weather.

Upon acknowledgement of the Notice to Proceed and continuing throughout the Contract, the Contractor must record on the daily superintendent report the occurrence of adverse weather and resultant impact to normally scheduled Work. Actual adverse weather delay days must prevent Work on critical path activities for more than fifty (50) percent of the Contractor's scheduled workday. The number of actual adverse weather delays must include Contractor's scheduled workdays impacted by actual adverse weather (even if the adverse weather occurred in the previous month), be calculated chronologically from the first to the last day each month and be recorded as full days. If the Contractor has complied with Sections 8.3.4 and 8.3.5 and the provisions of this Section 8.3.6 and the number of actual adverse weather delay workdays exceeds the number of days anticipated above and have adversely affected critical path weather-dependent activities, the Contractor is entitled to a Modification of the Contract Time but not the Contract Sum.

**§ 8.3.7** To be considered as the basis for an excusable delay, strikes or labor disputes must be documented by data evidencing (i) the trades directly and indirectly involved in or affected by the strike or labor dispute, (ii) reasons for the strike or labor dispute, (iii) the onset and duration of the strike or labor dispute, and (iv) the measures taken by the Contractor to avoid or overcome the effects of any delay.

**§ 8.3.8** Upon receipt of a notice from the Contractor of the occurrence of a delay complying with Sections 8.3.4 and 8.3.5 (and if applicable 8.3.6 and 8.3.7), the Owner will review the most recently approved Construction Schedule to determine (i) whether the delay is in fact an excusable or compensable delay, and (ii) whether any adverse effects of the delay can be overcome by an adjustment in the Construction Schedule, including the application of any unused Float available in the schedule. The Owner may require the Contractor to submit a more detailed Construction Schedule than previously required in order to permit the Owner to evaluate the delay. Based on such review, the

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Contractor must, if required by the Owner, submit for the Owner's approval a revised Construction Schedule that minimizes the adverse effects of the delay.

**§ 8.3.9** No extension of the Contract Time or increase in the Contract Sum will be allowed for any delay or part thereof occurring more than ten (10) days before written notice of the delay is provided by the Contractor. No extension of the Contract Time or increase in the Contract Sum will be made to the extent that performance is, was or would have been suspended, delayed, or interrupted by another cause for which the Contractor is responsible. No increase in the Contract Sum will be made to the extent performance was or would have been suspended, delayed or interrupted by another cause for which the Owner is not solely and exclusively responsible.

**§ 8.3.10** The Contractor will not receive any compensation for profit, additional bond cost, overhead (which includes extended office overhead and site-specific overhead and general conditions), or any other cost or compensation or any other damages of any kind or nature whatsoever whether incurred by the Contractor, its Subcontractor or suppliers for delay, all of which are irrevocably waived by Contractor where the delay results from performance of additional Work (Change Order or Construction Directive) beyond the Work required by the Contract Documents and for which the Contractor is paid for the additional Work.

**§ 8.3.11** The Contractor acknowledges and agrees that the profit, additional bond cost and overhead (which includes extended office overhead and site-specific overhead and general conditions) if any, incurred by the Contractor in performing work beyond the Work required by the Contract Documents and any and all other costs, compensation or damages due Contractor (including any of its Subcontractors or suppliers), is included in, and payable to the Contractor as part of the Change Order or Construction Directive. Contractor waives any and all other damages and cost of any nature or kind whatsoever including claims for local and cumulative impacts as a result of such Change Order or Construction Directive Work and any and all other claims of any type or nature whatsoever including any claim for loss of productivity or loss of efficiency. The Contractor will be compensated for compensable delays only for actual and direct damages resulting from such compensable delays. Actual direct damages are limited to site specific general conditions and do not include any indirect costs such as home office overhead. The Contractor will be compensated for such actual and direct damages for compensable delays not attributable to performance of Change Order. Work for which the Contractor is not otherwise compensated in an amount not to exceed the lesser of (i) a daily rate computed by dividing eight percent (8%) of the original Contract Sum by the original Contract Time or (ii) a daily rate computed by dividing the Contractor's profit, bond cost and site-specific overhead (but not home office overhead) for the original Contract Sum by the original Contract Time. The Contractor for itself and its Subcontractors and suppliers, irrevocably waives any and all other compensation and delay damages as a result of any compensable delays, including without limitations any claims for any indirect cost and any claims for loss of productivity or loss of efficiency.

**§ 8.3.12** In the event the Owner denies the Contractor's request for a change in the Contract Time or, in the case of a compensable delay, a change in the Contract Sum, the Contractor may, within ten (10) days after such denial, submit a Claim as provided in Article 15. Submissions made prior to the denial must be resubmitted after the denial. Any Claim on account of denial of a change that is not made within such ten (10) days of the denial is deemed waived.

#### **§ 8.3.13 Delay Damages**

- .1 By executing a Change Order or Contract Amendment, the Contractor represents that the Contractor is not entitled to an increase in the Contract Sum or an extension of the Contract Time beyond that specified in the Change Order or Contract Amendment for the Work performed or to be performed under the Change Order. The Contractor is not entitled to an increase in the Contract Sum or extension of the Contract Time as a result of the issuance by the Owner of Construction Directive unless the Contractor asserts a claim as required by this Article 8 and Article 15;
- .2 No charges or claims for damages may be made by the Contractor or paid to the Contractor for any delay, disruption, inefficiency, interference or hindrance from any cause whatsoever, whether foreseeable or not, including (i) acts or omissions by the Owner, its agents, employees or consultants, (ii) Contract Documents that are negligently prepared or contain inaccurate statements, or (iii) force majeure and circumstances beyond the Contractor's control. The sole remedy for delays, disruptions or hindrances will be non-compensable time extensions for completion of the Work;



- .3 The provisions of the Section 8.3.13.1 and Section 8.3.13.2 do not apply to claims that meet all of the following conditions: (i) the claim arises under the Contract; (ii) the claim is limited to actual and direct damages (i.e. profit, additional bond costs (if any) and overhead (only site-specific overhead and not including home office overhead)) incurred as a result of a delay in completing the Project which the Contractor acknowledges are fully compensated for by payment of the adjustment amount specified in Section 8.3.11; (iii) the Contract establishes a time limit for achieving Substantial Completion and the claim is for critical path delays that prevent achievement of Substantial Completion of the Contract within that time limit; (iv) the delay for which damages are claimed is caused solely and exclusively by the Owner (except when acting as a regulatory authority) or anyone for whom they are responsible; (v) the delay is not caused by actions taken by the Owner to protect the public health or safety or to conform to law; and (vi) the Contractor has fully complied with Sections 8.3.4 and 8.3.5; and
- .4 A time extension may be granted only for an excusable delay that is beyond the Contractor's control and occurs without the Contractor's fault or negligence. No time extension will be granted in the absence of a written claim for the time extension complying with Sections 8.3.4 and 8.3.5 (and if applicable, 8.3.6 and 8.3.7).

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

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

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. 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.

### § 9.3 Applications for Payment

§ 9.3.1 The Contractor must submit to the Architect itemized Applications for Payment for Work completed on a monthly basis in accordance with a schedule approved by the Owner. Each Application for Payment must be consistent with the approved Schedule of Values. In order to expedite the review and approval of Applications for Payment, the Contractor may submit to and review with the Architect and Owner a draft Application for Payment at a progress meeting prior to submitting a formal Application for Payment.

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

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

§ 9.3.2 The form of Application for Payment must be AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet (latest edition), or such other form as may be prescribed by the Owner. The application must be notarized and supported by sufficient data to demonstrate the Contractor's right to

payment and compliance with the payment provisions of the Contract to the satisfaction of the Owner and Architect, such as copies of requisitions from Subcontractors and material suppliers, partial lien waivers, releases and other documents. Each Application for Payment must reflect approved Contract Modifications and the Contract retainage provided for in the Contract Documents.

§ 9.3.3 Applications for Payment may include materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. The Owner has no obligation or responsibility to pay for materials stored off the Site. If specifically approved in writing in advance by the Owner, an Application for Payment may include materials and equipment stored off the Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Site is conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to protect the Owner's interests. Payment for materials and equipment stored off the Site will, in addition, be conditioned upon the Contractor's provision of applicable insurance, storage and transportation to the Site. Contractor shall indemnify and hold harmless from any liens, claims, security interests or encumbrances filed by the Contractor, Subcontractors, or anyone claiming by, through or under the Contractor or Subcontractor for items covered by payments made by the Owner to the Contractor.

§ 9.3.4 Under applicable provisions of Illinois law, payments received by the Contractor are held in trust for Subcontractors and suppliers who have furnished labor and materials covered by an Application for Payment. Accordingly, Applications for Payment may not include requests for payment of amounts for Work performed by a Subcontractor or Supplier that the Contractor does not intend to pay for said work.

§ 9.3.5 Until the conditions set forth in this Section have been satisfied by Contractor, the amount of each monthly Application for Payment must include the value of each line item as indicated on the approved Schedule of Values, to the extent completed, less Contract retainage of ten percent (10%). When the contract is 50% complete, retainage withheld shall be reduced so that no more than 5% is held. After the contract is 50% complete, no more than 5% of the amount of any subsequent payments made under the contract may be held as retainage. The retainage will not be paid to the Contractor until thirty (30) days after all of the following conditions have been satisfied: (A) the Contractor has fully performed the Contract; (B) the Contractor has completed all Punch List items to the satisfaction of the Owner and the Architect; (C) the Contractor has delivered to the Owner all Project close-out documents in duplicate, including (1) all maintenance and operating manuals; (2) marked sets of as-built drawings; (3) all guarantees and warranties required under the Contract Documents; (4) a list of names, addresses, and telephone numbers for all subcontractors and others providing guarantees and warranties; and (D) the applicable governmental authorities have issued to the Owner the final use and occupancy permit for the Project.

§ 9.3.6 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. By submitting an Application for Payment, the Contractor further warrants that all Work for which payments have previously been received from the Owner are free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities having provided labor, materials and equipment relating to the Work.

§ 9.3.7 Before the Contractor receives a progress payment, the Contractor must certify in writing that, in accordance with contractual arrangements, Subcontractors and suppliers:

- .1 have been paid from the proceeds of previous progress payments; and
- .2 will be paid in a timely manner from the proceeds of the progress payment currently due.

In the event the Contractor has not paid or does not pay as certified, such failure constitutes a ground for termination under Section 14.2 of the Contract. Contractor shall submit Applications for Payment to Architect on a monthly basis or as otherwise specified in the Contract Documents. Once the Architect submits a completed Application for Payment with its Certificate of Payment to the Owner, the Owner within twenty-one (21) days after its receipt of a Request for Payment from the Architect, shall pay the approved amount contained in the Request for Payment to the Contractor.

§ 9.3.8 Each Application for Payment, including all partial and final requests for payment, shall be accompanied by the following, all in form and substance satisfactory to the Owner;

- .1 **Sworn Statement for Contractor and Subcontractor to Owner:** A Duly executed and acknowledged sworn statement showing all Subcontractors with whom the Contractor has entered

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into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor in the request progress payment and the amount to be paid to the Contractor from such payment.

- a. The form shall be completed by each Contractor, together with similar sworn statements from all Subcontractors and, where appropriate from Sub-subcontractors and Suppliers.
- b. Prior to commencement of the contract work, the Contractor and all Subcontractors shall submit affidavits showing the name and address and other information required for all parties with whom each will or has entered into agreement.
- c. Each time a pay request is made, the Contractor's Sworn Statement shall be updated using the same form.

2. **Waivers of Lien to Date.** Duly executed waivers of lien to date establishing payment or satisfaction of all such obligations shall be completed by each Subcontractor and supplier, as well as by each Prime Contractor.

- a. The waivers of lien to date shall be required to be submitted beginning with the second pay request. Each subcontractor who submits a waiver of lien by completing the top half of the form must also complete the Contractor's Affidavit on the bottom half of the form showing all Sub-subcontractors.
- b. Similarly, all Sub-subcontractors shall submit a waiver of lien in the amount shown on the subcontractor's affidavit and, if materials of Sub-subcontractors were not obtained from inventory, the Sub-subcontractors must also show their suppliers on the Contractor's affidavit. If any Subcontractor or Sub-subcontractor has no subs, the Contractor's Affidavit shall be completed and the word "None" inserted under the word "Names" on the form.
- c. Amounts stated in the Waiver of Lien form shall be **cumulative**, in that the waiver shall state all amounts paid to date of the last pay request for each Sub for the entire project.

3. **Final Waiver of Lien.** Duly executed final waivers of lien shall be completed by each Contractor and all Subcontractors and suppliers prior to the last payment being made to the Contractor.

4. **Each Blank** of each of the required documents shall be correctly filled in with complete information. If no dollar amounts or information apply, "\$0.00" or "None" shall be entered at the appropriate locations on the forms.

#### § 9.4 Certificates for Payment

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

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

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

**§ 9.5.3** 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.

*(Paragraph deleted)*

## **§ 9.6 Progress Payments**

**§ 9.6.1** Within Thirty (30) days of receipt by the Architect of the Application for Payment, the Owner shall make payment of the amount certified. The Architect may decline to approve any Application for Payment and the Owner shall not be required to make any Progress Payments or Final Payments to the Contractor if the Contractor is in violation of any term or condition of this Agreement, the General Conditions of the Contract (AIA Document A201), or the Supplementary Conditions, or if the Contractor fails to timely provide any information reasonably requested by Owner.

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

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

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

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

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors 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.

§ 9.6.9 No construction contract may permit the withholding of retainage from any payment in excess of the amounts permitted in this Section. A construction contract may provide for the withholding of retainage of up to 10% of any payment made prior to the completion of 50% of the contract. When a contract is 50% complete, retainage withheld shall be reduced so that no more than 5% is held. After the contract is 50% complete, no more than 5% of the amount of any subsequent payments made under the contract may be held as retainage

#### § 9.7 Failure of Payment

If the Owner does not pay the Contractor within Sixty (60) days after the Contractor submits an Application for Payment to the Architect, the Contractor may file a claim in accordance with Article 15 of this Contract.

#### § 9.8 Substantial Completion

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

§ 9.8.2 When the Contractor considers that the Work is substantially complete and that items remaining to be completed or corrected can be accomplished within another thirty (30) days, subject to the availability of special-order parts and materials, the Contractor must give written notice to the Owner and the Architect and request an inspection of the Work as provided in Section 9.8.3. The Contractor's notice and request for an inspection must be accompanied by a comprehensive Punch List describing all items to be completed or corrected before final Completion and the submittals required by Section 9.8.2. The Contractor must proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the Contractor's responsibility to complete all Work in accordance with the Contract Documents.

§ 9.8.2.1 In addition to the Punch List, the Contractor must submit the following with its request for a determination of Substantial Completion:

- .1 final test reports as required by the Contract and certificates of inspection and approval required for use and occupancy;
- .2 Fire Marshall's report;
- .3 approvals from, and transfer documents for, all utilities;
- .4 Warranties and Guarantees as provided in this Contract;
- .5 final, approved operating and maintenance manuals;

- .6 all documents and verification of training required by the Contract; and
- .7 Schedule to complete the Punch List and value of Work not yet complete.

§ 9.8.3 Upon receipt of the Punch List, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete and whether remaining items can be completed or corrected within thirty (30) days, subject to the availability of special-order parts and materials. The Owner may make a similar inspection. If such inspection discloses any item, whether or not included on the Punch List, which, in the opinion of the Owner or the Architect, (i) must be completed or corrected before the Work can be occupied or used for its intended purpose, or (ii) cannot be completed or corrected within thirty (30) days, subject to the availability of special-order parts and materials, the Architect will so advise the Contractor, and the Contractor must promptly complete or correct such item.

§ 9.8.4 Following the inspection and completion or correction of Work required by the Owner or the Architect before issuance of a Certificate of Substantial Completion, the Contractor must notify the Owner and Architect and request another inspection by the Owner and the Architect to determine Substantial Completion. The Contractor must submit a revised Punch List with such notice. The Architect will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is substantially complete. In such case, the Contractor must bear the cost of any additional services of the Owner or the Architect until the Work is determined to be Substantially Complete.

§ 9.8.5 When the Owner and the Architect concur that the Work is Substantially Complete and that Work remaining to be completed or corrected can be accomplished within a period of thirty (30) days, subject to the availability of special-order parts and materials, the Architect will prepare a Certificate of Substantial Completion and a revised Punch List. The Certificate of Substantial Completion will fix the Date of Substantial Completion and the time periods within which the Contractor must finish all items on the Punch List accompanying the Certificate.

§ 9.8.6 The Certificate of Substantial Completion and accompanying Punch List must be submitted to the Owner and Contractor for execution, which will constitute their written acceptance of responsibilities assigned to them in such Certificate.

§ 9.8.7 To the extent provided in the Contract Documents or in the Certificate of Substantial Completion, the Owner, upon execution of the Certificate, will assume responsibility for security, operation, safety, maintenance, heat, utilities, damage to the Work (other than damage caused by the Contractor) and insurance.

§ 9.8.8 Warranties required by the Contract Documents will commence on the Date of Substantial Completion of the Work unless otherwise provided in the Certificate of Substantial Completion or the Contract Documents.

§ 9.8.9 Upon execution of the Certificate of Substantial Completion, the Contractor will deliver custody and control of such Work to the Owner. The Owner will thereafter provide the Contractor reasonable access to such Work to permit the Contractor to fulfill the correction, completion and other responsibilities remaining under the Contract and the Certificate of Substantial Completion.

§ 9.8.10 Unless otherwise provided in the Certificate of Substantial Completion, the Contractor must complete or correct all items included in the final Punch List within thirty (30) days, subject to the availability of special-order parts and materials, after the Date of Substantial Completion.

§ 9.8.11 At the time of Substantial Completion, in addition to removing rubbish and leaving the building "broom clean," the Contractor must replace any broken or damaged materials, remove stains, spots, marks and dirt from decorated Work, clean all fixtures, vacuum all carpets and wet mop all other floors, replace HVAC filters, clean HVAC coils, and comply with such additional requirements, if any, which may be specified in 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,

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heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

#### § 9.10 Final Completion and Final Payment

§ 9.10.1 When the Contractor has completed or corrected all items on the final Punch List and considers that the Work is complete and ready for final acceptance, the Contractor must give written notice to the Owner and the Architect and request a final inspection of the Work as provided in Section 9.10.2. The Contractor's notice and request for a final inspection must be accompanied by a final Application for Payment and the Submittals required by Section 9.10.3.

§ 9.10.2 Upon receipt of the Contractor's notice and request for final inspection, the Owner and the Architect will promptly make such inspection and, when the Owner and the Architect concur that the Work has been fully completed and is acceptable under the Contract Documents, the Architect will issue a Certificate of Final Completion to the Owner. The Contractor's notice and request for final inspection constitutes a representation by the Contractor to the Owner that the Work has been completed in full and in strict accordance with the terms and Documents. The Architect will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is finally complete. In such case the Contractor must bear the cost of any additional services of the Owner or the Architect until the Work is determined to be finally complete.

§ 9.10.3 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, submitted on AIA Document G706, Affidavit of Payment of Debts and Claims (latest edition) or such other form as may be prescribed by the Owner;
- .2 a release or waiver of liens on behalf of the Contractor and a similar release or waiver on behalf of each Subcontractor and supplier, accompanied by AIA Document G706A, Affidavit of Release of Liens (latest edition) or such other form as may be prescribed by the Owner;
- .3 a certificate evidencing that the Contractor's liability insurance and Performance Bond remain in effect during the one-year correction period following Substantial Completion as set forth in Section 12.2.2.1 and 12.2.2.2;
- .4 a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .5 consent of surety to final payment, submitted on AIA Document G707 (latest edition) or other form prescribed by the Owner;
- .6 other data required by the Owner establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be prescribed by the Owner;
- .7 a certified building location survey and as-built site plan in the form and number required by the Contract Documents;
- .8 all warranties and bonds required by the Contract Documents;
- .9 Record Documents as provided in Section 3.11 and return of Contract Documents as provided therein; and
- .10 attic stock items as required by the Contract Documents; and
- .11 as applicable, documentation of approval by the AHJ/Sewer District of all Storm Water Management (SWM) work as to allow closeout of the SWM Permit. AHJ/Sewer District approval

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will be based on satisfying all Permit requirements including the submission of acceptable as-built SWM drawings and other required SWM documents.

**§ 9.10.4**

*(Paragraphs deleted)*

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.

*(Paragraph deleted)*

**§ 9.11 CONTRACTOR'S ACKNOWLEDGEMENT AND CERTIFICATION**

**§ 9.11.1** With each pay application, the Contractor shall provide Owner with a statement under oath certifying that Contractor has paid all subcontractors the sums due and owing to Subcontractors as evidenced by prior Applications for Payment. Contractor shall not be entitled to receive any further payments pursuant to the Agreement unless and until Contractor is in compliance with the terms of this paragraph. Contractor acknowledges the right of Owner to advise subcontractors and sub-subcontractors that Owner has made a Progress Payment or has made Final Payment to the Contractor.

**§ 9.12 LIQUIDATED DAMAGES**

**§ 9.12.1** The Contractor and the Contractor's surety, if any, shall be liable for and shall pay the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay following the established contract completion date until the Work is substantially complete. Such sum shall be deducted from the contract amount by contract change order or directive prior to the final payment.

**§9.12.2 LIQUIDATED DAMAGES:** Time is of the essence. If the Contractor fails to achieve Substantial Completion of the Contractor's Work within the period of (510) five hundred ten calendar days from issuance of the Notice to Proceed (as such Contract Time may be adjusted by time extensions otherwise permitted by the Contract Documents), the Contractor shall pay, and the Owner will assess, Liquidated Damages in the amount of \$2,500.00 per day for each calendar day until Substantial Completion of the Contractor's Work is achieved. The Owner may deduct any such Liquidated Damages from any amount due or payable to the Contractor.

**Final Completion:** In the event that the Contractor fails to timely complete all punch list items and all requirements necessary to achieve Final Completion of the Contractor's Work within 30 calendar days following Substantial Completion, the Contractor shall pay, and the Owner will assess, Liquidated Damages in the amount of \$500.00 per day for each calendar day until Final Completion of the Contractor's Work is achieved. The Owner may deduct any such damages from amounts otherwise due the Contractor at Final Completion.

[ \_\_\_\_ \* Contractual duration to be proposed by bidders on Bid Form, and incorporated into Contract as accepted by the Owner prior to contract award.]

**§9.12.3** Reference also Article 4.5 of the AIA101-2017.

**ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

**§ 10.1 Safety Precautions and Programs**

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

**§ 10.2 Safety of Persons and Property**

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

- .1 All persons at the Site and other persons who may be affected by the Work or other operations of the Contractor;
- .2 The Work and materials and equipment to be incorporated therein or otherwise utilized in the performance of the Contract, whether in storage on or off the Site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

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- 3 other property at the Site or adjacent thereto and not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor must implement and maintain compliance with, as required by the Contract Documents, applicable laws and regulations and orders of public authorities having jurisdiction (without limitation OSHA and the State of Illinois), manufacturers' instructions or recommendations, existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including issuing appropriate notices, distributing material safety data sheets and other hazard communication information, providing protective clothing and equipment, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

§ 10.2.4 The Contractor must not load nor permit any part of any structure at the Site to be loaded or subjected to stresses or pressures so as to endanger its safety or that of adjacent structures or property.

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

§ 10.2.6 If the Contractor suffers injury or damage to person or property because of an act or omission of the Owner, or of any of the Owner's employees or agents, or of others for whose acts it is contended that the Owner is liable, written notice of such injury or damage, whether or not insured, must be given to the Owner within a reasonable time not exceeding ten (10) days after the onset or occurrence of such damage or injury or such shorter time as may be required by the Occupational Safety Hazards Administration (OSHA). The notice must provide sufficient detail to enable the Owner to investigate the matter. If notice is not received by the Owner within the time specified, any claim arising from the occurrence will be deemed to be conclusively waived, except to the extent of any applicable insurance (excluding self-insurance) coverage covering such occurrence. The provisions of this Section may not be used by the Contractor in lieu of the requirements of Article 7 when the Contractor is seeking an adjustment in the Contract Sum and are in addition to the requirements of Article 8 when the Contractor is seeking an adjustment in the Contract Time.

§ 10.2.7 The Contractor must promptly remedy, at its sole cost and expense, damage and loss 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, unless otherwise instructed in writing by the Owner. This obligation is in addition to, and not in limitation of, the Contractor's obligations for indemnification under Section 3.18 and the Contractor's responsibility to repair and or replace that portion of the Work and any materials and equipment to be incorporated therein which are damaged as a result of criminal mischief as specified in Section 10.2.10.

*(Paragraphs deleted)*

§ 10.2.7.1 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death or serious personal injury or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and Architect/Engineer.

§ 10.2.7.2 Attention is invited to the regulations issued by the Secretary of Labor pursuant to Section 107 of the Contract Work Hours and Safety Standards Act (40U.S.C. 333 entitled "Safety and Health Regulations for Construction" (29 DFR part 1926). The Contractor shall be required to comply with those regulations to the extent that any resulting contract involves construction.

§ 10.2.8 The Contractor is responsible for taking all reasonable and necessary precautions to secure and protect the Site, the Work, materials and equipment to be incorporated therein, and any tools or equipment of the Contractor necessary or beneficial to the performance of the Work from damage due to vandalism, theft, or other criminal mischief. The Contractor must repair and/or replace that portion of the work and any materials or equipment to be

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incorporated therein and any tools or equipment of the Contractor necessary or beneficial to performance of the Work which are damaged or stolen due to vandalism, theft or any other criminal mischief at its expense whether or not covered by insurance. No extension of the Contract Time or increase in the Contract Sum will be granted to the Contractor as a consequence of any delay, impacts or inefficiencies resulting from any act of vandalism, theft or other criminal mischief whether or not caused or contributed to by the Contractor's negligence.

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

§ 10.2.10 If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party as soon as possible. The notice shall provide sufficient detail to enable the other party to investigate the matter.

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

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

§ 10.2.13 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, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

§ 10.2.15 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.

**§ 10.2.16 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 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 report the condition to the Owner and Architect in writing within 24 hours of discovery.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract

Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

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

§ 10.3.7 The Work shall be asbestos free. The Contractor, if requested, shall provide certification which attests to same. Reference in the technical specifications to manufacturers, model numbers, equipment, material, article or process shall be regarded as establishing a standard of quality and/or function. The Contractor shall submit a request for substitution on any item which cannot be certified to be asbestos free.

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor must take all necessary action, without the necessity or any special instruction or authorization from the Owner or Architect, to prevent threatened damage, injury, or loss. The Contractor must promptly, but in all events within twenty-four (24) hours of the emergency, report such action in writing to the Owner and Architect. If the Contractor incurs additional costs on account of or is delayed by such emergency, the Contractor may request a change in the Contract Sum or Contract Time to account for such additional costs or delay in accord with Articles 7, 8 and 15. The Contractor must file any such request within ten (10) days of the emergency or it is deemed waived. Any adjustment in the Contract Sum or Contract Time shall be limited to the extent that the emergency work is not attributable to the fault or neglect of the Contractor or otherwise the responsibility of the Contractor under the Contract Documents.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 Contractor's Liability Insurance

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a

Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

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

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

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

## § 11.2 Owner's Liability Insurance

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual Liability Insurance.

*(Paragraphs deleted)*

## § 11.3 Property Insurance

§ 11.3.1 The Contractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form as required in the executed AIA Document A101-2017, Standard Form of Agreement Between Owner and Contractor. Such coverage shall be in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be

covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

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

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

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

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

#### § 11.3.3 **BOILER AND MACHINERY INSURANCE**

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

#### § 11.3.4 **Waivers of Subrogation**

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

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

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

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

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

*(Paragraphs deleted)*

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

#### §11.5 Adjustment and Settlement of Insured Loss

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

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

#### § 11.6 PERFORMANCE BOND AND PAYMENT BOND

§ 11.6.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to 100 percent of the Contract Sum.

§ 11.6.1.1 The Contractor shall furnish the required bonds as stipulated in the Instructions to Bidders.

§ 11.6.1.2 The Contractor shall require the attorney-in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

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

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

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

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

### § 12.2 Correction of Work

#### § 12.2.1 Before Substantial Completion

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

#### § 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

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

§ 12.2.6 All warranties required by the Contract Documents shall commence on the date of Substantial Completion of the work or designated portions thereof, or for work first completed after Substantial Completion, on the date of its acceptance, unless some other commencement date is specifically referenced elsewhere in the contract documents for

a specific warranty. The Contractor shall be required to secure any extended warranties or special riders to standard warranties which are required to comply with these requirements.

### § 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, and construed in accordance with, the laws of the State of Illinois without regard to its conflict of law's provisions. Any litigation shall be conducted in state district court. Mandatory and exclusive venue for any disputes shall be in Franklin County, Illinois.

### § 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.

*(Paragraphs deleted)*

### § 13.3 Written Notice

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

### § 13.4 Rights and Remedies

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

§ 13.4.2 No action or failure to act by the Owner, Architect, 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.

§ 13.4.3 No provisions contained in the Contract Documents shall create or give to third parties any claim or right of action against the Owner or the Contractor except as specifically provided herein.

*(Paragraph deleted)*

§ 13.3.4 The Owner and the Architect reserve the right to accept or reject any substitutions bid upon, provided such action is taken in sufficient time so as not to delay progress of the work or incur additional expense to the Contractor. If substitutions are not specifically accepted in writing, materials specified as "standard" shall be used in construction of this project.

*(Paragraph deleted)*

§ 13.3.5 **COMMERCIAL AND FEDERAL STANDARDS**, Any material specified by reference to the number, symbol or title of specific standards, such as Commercial Standards, Federal Specifications, trade association standards, or similar standards, shall comply with requirements in latest revision thereof and any amendment or supplement thereto in effect in date of this Project Manual, except as limited to type, class or grade, or modified in such reference by a given date. The standards related to, except as modified in the Specifications, shall have full force and effects as though printed in the Specifications



*(Paragraph deleted)*

**§ 13.5 Tests and Inspections**

*(Paragraph deleted)*

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

*(Paragraphs deleted)*

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

**§ 13.5.3** 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.

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

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

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

**§ 13.6 Interest**

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

**§ 13.6 Equal Employment Opportunity**

**§ 13.6.1** The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The Contractor shall take affirmative action to ensure that applicants are employed, and that applicants are treated during employment, without regard to that applicant's race, religion, color, sex, national origin, or age. Such action shall include, but not be limited to, employment, upgrading, demotion, transfer, recruitment, recruitment advertisement, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the requirements of these non-discrimination provisions.

**§ 13.6.2** The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, or age.

§ 13.6.3 The Contractor shall include all of this Paragraph 13.8 in every Subcontract or Purchase Order, and shall require each Subcontractor and Material and Equipment Supplier to include this Paragraph 13.8 in each of their subcontracts and Purchase Orders, so that such provisions will be binding upon each Subcontractor, Sub-subcontractor, and Material and Equipment Supplier.

§ 13.6.4 In the event of the Contractor's noncompliance with any portion of this Paragraph 13.8, the Owner may cancel, terminate, or suspend this Contract.

#### § 13.7 SEXUAL HARASSMENT

§ 13.7.1 The Contractor acknowledges that this Contract is subject to and governed by the rules and regulations of the Illinois Human Rights Act (the "Human Rights Act"), including the mandatory provisions that each contractor have in place written sexual harassment policies that shall include, at minimum the following information:

- i. the illegality of sexual harassment;
- ii. the definition of sexual harassment under state law;
- iii. a description of sexual harassment, utilizing examples;
- iv. the vendor's internal complaint process including penalties;
- v. the legal recourse, investigate and complaint process available through the Department and the Commission; and
- vi. protection from retaliation as provided by section 6-102 of said Act and that it has a written sexual harassment policy in place in full compliance with Section 105 (A) (4) of the Human Rights Act 775 ILLCSA 5/2-105 (A)(4).

#### § 13.8 DRUG FREE WORKPLACE

§ 13.8.1 The Contractor certifies by the execution of this Contract that the Contractor will provide a drug-free work place in compliance with the Illinois Drug-Free Workplace Act 30 ILCS 580/1 et seq., including provisions of providing notifications, imposing sanctions, providing assistance with counseling and complying with all other requirements of said Act.

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 Termination by the Contractor

##### § 14.1.1

*(Paragraphs deleted)*

##### No Right To Stop Work for Non-Payment

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10) days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

*(Paragraphs deleted)*

#### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 Fails to supply adequate properly skilled workers or proper materials;
- .2 Fails to make payment to Subcontractors or Suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 Fails to comply with any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .4 Fails to perform the Work in accordance with the Contract Documents or otherwise breaches any provision of the Contract Documents;
- .5 Anticipatorily breaches or repudiates the Contract;

- .6 Fails to make satisfactory progress in the prosecution of the Work required by the Contract; or
- .7 Endangers the performance of this Contract.

§ 14.2.2 The Owner may terminate the Contract, in whole or in part, whenever the Owner determines that sufficient grounds for termination exist as provided in Subsection 14.2.1. The Owner will provide the Contractor with a written notice to cure the default. If the default is not cured, the termination for default is effective on the date specified in the Owner's written notice. However, if the Owner determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the Owner may terminate the Contract immediately upon issuing oral or written notice to the Contractor without any prior notice or *(Paragraph deleted)* opportunity to cure. In addition to any other remedies provided by law or the Contract, the Contractor must compensate the Owner for additional costs that foreseeably would be incurred by the Owner, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

§ 14.2.3 Upon receipt of written notice from the Owner of termination, the Contractor must:

- .1 cease operations as directed by the Owner in the notice and, if required by the Owner and County, participate in an inspection of the Work with the Owner, County and the Architect to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of any stored materials and equipment and completed Work;
- .3 unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
- .4 except as directed by the Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders.

§ 14.2.4 Following written notice from the Owner of termination, the Owner may:

- .1 take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
- .2 accept assignment of subcontracts and purchase orders, and
- .3 complete the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.5 Upon termination for cause, the Contractor must take those actions described in Section 14.2.3, and the Owner may take those actions described in Section 14.2.4, subject to the prior rights of the Contractor's Surety.

§ 14.2.6 When the Owner terminates the Contract for cause, the Contractor is not entitled to receive further payment until the Work is completed and the costs of completion have been established.

§ 14.2.7 If the unpaid balance of the Contract Sum less amounts which the Owner is entitled to offset from the unpaid Contract balance including actual or Liquidated Damages, exceeds the costs of completing the Work, including compensation for the Owner's and the Architect's services made necessary thereby, such excess will be paid to the Contractor or Surety, as directed by the Surety. If such costs exceed the unpaid Contract balance, the Contractor must pay the difference to the Owner upon written demand. This obligation for payment survives termination of the Contract.

§ 14.2.8 In completing the Work following termination for cause, the Owner is not required to solicit competitive bids or to award completion work to the lowest bidder, but may obtain such completion work and related services on the basis of sole source procurement and negotiated compensation.

**§14.2.9** If the Contractor files for protection, or a petition is filed against it, under the Bankruptcy laws, and Contractor wishes to affirm the Contract, Contractor shall immediately file with the Bankruptcy Court a motion to affirm the Contract and shall provide satisfactory evidence to Owner and to the Court of its ability to cure all present defaults and its ability to timely and successfully complete the Work. If Contractor does not make such an immediate filing, Contractor accepts that Owner shall petition the Bankruptcy Court to lift the Automatic Stay and permit Owner to terminate 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. No adjustment shall be made to the extent

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

**§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract or any portion thereof or of the Work for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of written notice from the Owner of termination, the Contractor must:

- .1 Cease operations as directed by the Owner in the notice and, if required by the Owner, participate in an inspection of the Work with the Owner and the Architect/Engineer to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 Complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of any stored materials and equipment and completed Work;
- .3 Unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
- .4 Except as directed by the Owner, terminate all existing subcontracts and purchase orders related to the Work and enter into no further subcontracts or purchase orders therefor.

**§ 14.4.3** Following written notice from the Owner of termination, the Owner may:

- .1 Take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
- .2 Accept assignment of subcontracts and purchase orders; and
- .3 Complete the Work by whatever reasonable method the Owner may deem expedient.

**§ 14.4.4** In case of termination for the Owner's convenience, the Contractor will be entitled to compensation only for the following items:

- .1 Payment for acceptable Work performed up to the date of termination;
- .2 The costs of preservation and protection of the Work if requested to do so by the Owner;
- .3 The cost of terminating the following contracts including:
  - (i.) Purchased materials but only if not returnable and provided to the Owner, or the restocking or return charge, if any, if returnable at the Owner's written election;
  - (ii.) Equipment rental contracts if not terminable at no cost but not to exceed an amount equal to thirty (30) days rental;
- .4 Documented transportation costs associated with removing Contractor-owned equipment;
- .5 Documented demobilization and close-out costs

The Contractor will not be compensated for the cost of terminating subcontracts, which must be terminable at no cost to the Owner if the Contract is terminated. The Contractor will not be compensated for the cost of any idled employees

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unless the employee is under a written employment contract entitling the employee to continued employment after termination of the Contract and the employee cannot be assigned to other work provided that in all events the Contractor's costs must be limited to thirty (30) days of employment costs from the date of the notice of termination. The Contractor is not entitled to any other costs or compensation (including lost or expected profit, uncompensated overhead or related expenses, or the cost of preparing and documenting its compensable expenses under this Subsection 14.4.4 as a consequence of the Owner's termination of the Contract for convenience. The Contractor conclusively and irrevocably waives its right to any other compensation or damages (compensatory or punitive) arising from termination of the Contract. If the Owner and the Contractor are unable to agree upon the amounts specified in this subsection, the Contractor may submit a Claim as provided in Article 15. The Claim must be limited to resolution of the amounts specified in Subsections 14.4.4.1, 14.4.4.2, 14.4.4.3 and 14.4.4.4 of this subsection 14.4.4. No other cost, damages, or expenses may be claimed or paid to the Contractor or considered as part of the Claim, the same being hereby conclusively and irrevocably waived by the Contractor. Any such Claim must be delivered to the Owner within thirty (30) days of the termination of the Contract and must contain a written statement setting forth the specific reasons and supporting calculations and documentation as to the amounts the Contractor claims to be entitled to under this Subsection as a result of the termination of the Contract.

§ 14.4.5 The Contractor's obligations surviving final payment under the Contract, including without limitation those with respect to insurance, indemnification, and correction of Work that has been completed at the time of termination, remains effective notwithstanding termination for convenience of 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, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law.

#### § 15.1.3 Notice of Claims

§ 15.1.3.1 Notice of circumstances that could give rise to a Claim must be given to the other party as soon as possible, to enable that party to take action as appropriate to lessen the impact of the potential Claim. The party recognizing a potential claim shall also explore all options and generate suggestions for how to avoid or overcome the impact of the circumstances. If damage cannot be avoided, Claims by either the Owner or Contractor must be initiated by written notice by mail or electronically to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

*(Paragraph deleted)*

#### § 15.1.4 Continuing Contract Performance

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

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

**§ 15.1.5 Claims for Additional Cost**

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

**§ 15.1.6 Claims for Additional Time**

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

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

*(Paragraphs deleted)*

**§ 15.2 Initial Decision**

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

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

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

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

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to Dispute Resolution pursuant to Section 6.2 of the executed AIA Document A101-2017, Standard Form of Agreement Between Owner and Contractor.

**§ 15.2.6** 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.

Init.

*(Paragraph deleted)*

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

*(Paragraph deleted)*

**§ 15.3 Mediation**

§ 15.3.1 The parties shall endeavor to resolve by mediation any Claims, dispute, or other matter in question or arising out of or related to the Contract. The parties shall share the mediator's fee and any filing fees equally. The parties will bear their own attorneys' fees, expert witnesses' fees, costs and expenses in the mediation. The mediator shall be an attorney selected by the parties from the United States Arbitration and Mediation (USA&M), and the mediation shall be held at USA&M's offices in St. Louis, Missouri, at a time and date to be decided, unless another mediator or location mutually agreed upon. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.

§ 15.3.2 If the parties do not resolve the disputes through meditation pursuant to Section 15.3.1, the method of binding dispute resolution shall be litigation in the Circuit Court for Franklin County, Illinois.

*(Paragraphs deleted)*

**ARTICLE 16 REGULATIONS**

**§ 16.1 Contractor's Responsibilities**

§ 16.1.1 The Contractor shall assume all responsibility and costs in complying with Federal, State and Local regulations for Equal Opportunity Employment, Anti-Discrimination, Safety and other Regulations.

# Additions and Deletions Report for

AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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## PAGE 1

New County Courthouse for The County of Franklin, Illinois  
100 Public Square  
Benton, IL 62812

...

*(Name, legal status and address)*  
The County of Franklin, Illinois  
Campbell Building  
901 Public Square  
Benton, Illinois 62812

...

White & Borgognoni Architects, P.C.  
212 North Illinois Avenue  
Carbondale, IL 62901  
**PAGE 10**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.~~ The Contract Documents include the INVITATION TO BID, INSTRUCTIONS TO BIDDERS and ADDENDA.

...

The Work referred to in these documents consists of the furnishing of all labor, materials and equipment for the complete installation of all work as specified herein and shown on the drawings, including delivery, unloading, uncrating, assembling, setting-in-place, leveling, adjustment, completely installing and cleaning up of any debris.

The Work shall be in strict accordance with the Drawings and Specifications.

The Contractor shall thoroughly investigate all local trade jurisdictional rulings and shall be held completely responsible for the settlement of any disputes arising from fabrication, installation, or completion of the Work under this Contract.



**§ 1.1.9 Site**

The term Site refers to that portion of the property on which the Work is to be performed or which has been otherwise set aside for use by the Contractor.

**§ 1.1.10 Punch List**

The term Punch List means, collectively, unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment or decoration remaining to be performed, the non-completion of which would not materially affect the use of the Project, and which are capable of being completed within Thirty (30) days of Substantial Completion, subject to the availability of special order parts and materials.

**§ 1.1.11 Float**

Float-Float is a measurement of time indicating how late any activity or group of activities in a schedule can be completed without impacting the critical path and the scheduled end date of the Project. Float belongs to the Project and is not for exclusive use of the Contractor.

§ 1.2.4 Reference to Standard Specifications of any technical society, organization, or association, or to codes of local or state authorities, shall mean the latest standard, code, specification, or tentative specification adopted and published at the date of taking the bid, unless specifically stated otherwise.

§ 1.2.5 The Contractor shall notify the Architect in writing of any inconsistency found between the Specifications and Drawings. The Architect will then advise the Contractor on whether the Specifications will control.

§ 1.2.6 The terms "this Contractor," "furnished under other sections," "included as part of other sections," "related work in other sections," or similar description of segregation shall not be interpreted to limit the responsibility of any particular party involved in the work. The limitations of any Subcontractor's work shall rest solely upon the agreement between the Contractor and the Subcontractor, regardless of where the work is called for in the Contract Documents.

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.

§ 1.4.2 In the event of discrepancies or conflicts among or between the Contract Documents or observable conditions exist, the Contractor shall request an interpretation in writing from the Owner and Architect before proceeding with the Work. If the Contractor fails to request such interpretation from the Architect, it is presumed that the more stringent, better quality or higher quality requirement is included in the Work. The Contractor shall be responsible for the cost and installation of such requirement at no additional cost to the Owner. Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for correctness of such measurements. Any difference which may be found shall be submitted to the Architect for interpretation before proceeding with the Work as a condition precedent to any claim for an increase in the Contract Sum. If conflict among various provisions of the Contract Documents is found, and the quality or stringency of the conflicts are not in question, the terms shall be interpreted in the following order of priority:

- .1 Modifications to the Contract
- .2 The Contract
- .3 Special Conditions
- .4 General Conditions

Specifications shall control over Drawings, and details in drawings shall control over large-scale drawings.

...

~~§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective 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, drawings, specifications, and other instruments of service are owned by the County. 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 Architect's or Architect's consultants' Owner's reserved rights.~~

...

~~The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. Drawings in electronic format will be available for Bidding. Digital data shall be available after award of Contract per AIA Document C106, 2013 Edition, and per specifications or Electronic Disclaimer Form required by the Architect and their consultants.~~

PAGE 13

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

PAGE 14

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~~ 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,~~ 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.~~ Section 6.1.3.

...

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

## § 2.6 Architect's Compensation for Services to Remedy Defective Work

When the Architect's and Owner Representative's Additional services are required because of defective work, neglect, failure, deficiencies, or default by the Contractor, the Architect's and Owner Representative's compensation

for such services shall be based on the Architect's and Owner Representative's invoice to the Owner. The Invoice, when approved by the Owner, along with other cost, damages and liabilities incurred by the Owner or the Architect, shall be the basis for adjust the Contract Sum, by Change Order, to compensate the Owner for the Architect's and Owner Representative's Additional Services.

...

**§ 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. Documents and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during bidding or proposal period.

PAGE 15

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. Insofar as the Contract Documents have been prepared in accordance with applicable laws, statutes, building codes and regulations, the Contractor shall execute the work in accordance with their intent and with said laws, statutes, building codes and regulations. Refer to Section 014200 and other applicable portions of the Contract Documents for specific requirements.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to Architect, the Contractor shall thereby assume responsibility for performance and shall bear the attributable cost for correction.

**§ 3.2.5** If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

**§ 3.2.6** The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and the physical data and Site conditions observed.

**§ 3.2.7** If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violate in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all claims relating thereafter are specifically waived.

PAGE 16

**§ 3.4.1.1** Products are generally specified by ASTM (American Society of Testing Materials) or other referenced standard, and/or by the manufacturer's name and model number or trade name. When specified only by reference

standard, the Contractor may select any product meeting the standard by any manufacturer. When several products or manufacturers are specified in being equally acceptable, the Contractor has the option of using any product and manufacturer combination listed.

§ 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. Persons permitted to perform Work under Contractor or any Subcontractor or Sub-Subcontractor shall meet all employment eligibility, safety training, security or drug/alcohol testing requirements required by law or by Owner. Any person not complying with all such requirements shall be immediately removed from the Site.

§ 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. The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

§3.5.3 The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

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.  
3.6.1 The Owner enjoys tax exempt status as a County. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Contractor for use on the Project. The Contractor shall use that Certificate to exempt any purchases made for the Work from taxes. Contractor will pass on all savings for the tax- exempt to the Owner. The Contractor agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.

§ 3.6.2 The Contractor will require all Subcontractors and Bidders to provide cost information for materials separate from other costs for labor, profit, overhead, etc. to allow the Owner to verify that no taxes are paid on material procurement and that such savings shall be passed on to the Owner.

§ 3.6.3 The Contractor will maintain all records, invoices, receipts, or other accounting data regarding material purchases and will allow, upon written request of the Owner and within a reasonable time frame after receipt of such request, the Owner to audit such records and verify tax savings. If an audit reveals taxes paid or savings not transferred to the Owner, the Contractor will be liable to the Owner for those amounts and the Owner may back-charge the Contractor for those amounts if a balance of funds due and payable remains at the time of such discovery.

- .1 The Contractor will require all Subcontractors of any tier maintain all records, invoices, receipts, or other accounting data regarding material purchases. The Contractor will collect such records with each application for payment it receives from its Subcontractors and shall maintain such records in the same manner and location as the Contractor's records.
- .2 The Contractor will ensure its Subcontractors and any lower-tier Subcontractors include these obligations in their contracts and bind themselves in the same manner as the Contractor is bound to the Owner.

§ 3.6.4 The Contractor shall pay sales, consumer, use and similar taxes including unemployment compensation 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.

PAGE 17

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

PAGE 18

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Superintendent must provide his or her email address, and cell phone number to the Owner and Architect, and must be available to be contacted during all business hours, and outside of business hours in the event of an emergency. The Superintendent must be fluent in all languages necessary to effectively communicate with Contractor's staff assigned to the Project, and with all Subcontractors, in order to supervise and direct the Work and assist emergency responders.

...

§ 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~~ Work within Twenty-One (21) days of execution of the Contract. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work ~~and Project and Project,~~ shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Thereafter, the Contractor shall prepare and update the construction schedule on a monthly basis ("Current Construction Schedule), if not more frequently at the Contractor's discretion, to be submitted by the Owner with each Application for Payment.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's ~~approval~~ approval within Twenty-One (21) days of the execution of Contract. 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.

PAGE 19

§ 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. The contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

...

§ 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. The Contractor must correct at its cost, and without any adjustment to Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

PAGE 20

§ 3.13.1 Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such facilities available to the Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

PAGE 21

~~§ 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.~~

§ 3.15.1 The Contractor on a daily basis shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. 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. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. Care shall be taken by all workers not to mark, soil, or otherwise deface any finish. In the event that any finish becomes defaced in any way by mechanics or workers, the Contractor or any of his Subcontractors shall clean and restore such surfaces to their original condition.

§ 3.15.2 The Contractor must keep the Site and adjacent areas free from accumulation of waste materials or rubbish caused by the operations under the Contract on a daily basis, and must keep tools, construction equipment, machinery and surplus materials suitably stored when not in use. If the Contractor fails to do so in a manner reasonably satisfactory to the Owner or the Architect within Forty-Eight (48) hours after notice or as otherwise required by the Contract Documents, the Owner may clean the Site and back charge the Contractor for all costs associated with the cleaning. 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.

§ 3.15.3 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.

§ 3.15.4 The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning.

...

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a

~~party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. The Contractor shall defend, indemnify, and hold harmless the Owner, its elected or appointed officials, Architect, Owner's Representative, and their respective consultants, insurers, agents, and employees, from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of or connected with, the Contract, or the work of any subcontract hereunder (the Contractor hereby assuming full responsibility for relations with Subcontractors), including but not limited to claims for personal injuries, death, or property damage (other than the Work itself), regardless of whether the loss to be indemnified was caused in part by an indemnified person.~~

PAGE 22

§ 3.18.3 Notwithstanding Subparagraph 3.18.1 General Conditions, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, Owner's Representative and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees arising from or resulting from blasting activities at the site of the Work, irrespective of the degree of care utilized by the Contractor, or Subcontractor, or anyone directly or indirectly employed by them, in the course of performing those blasting activities.

...

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

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

§ 4.2.15 All Parties to this agreement believe the use of electronic communications is a beneficial method of communication. As such, all parties agree that any communication thru electronic means (Email, project web site, Procure, etc.) will be consider a valid form of communication as set forth in this agreement. All parties agree that electronic email communications will constitute notice and any person sent an email will be considered to have been duly served as set forth in this agreement.

...

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable within thirty (30) days 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. The Contractor shall update this list throughout the Project and keep Owner and Architect advised of any new Subcontractors employed.

PAGE 25

§ 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. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

PAGE 26

§ 7.1.4 For any changes in the Work requested by the Contractor involving more than a three (3) calendar day extension of time, the Contractor shall submit critical path schedules showing the original schedule and impact of the proposed change justifying the requested extension of time. The Owner may, at its option, refuse the extension of time and have the Contractor perform the work within the original schedule provided all reasonable costs for completing the work, including overtime and acceleration costs, are included in the Change Order.

§ 7.1.5 If a proposal for additional work is requested by the Owner from the Contractor which involves additional time, at the Owner's option, the Owner may extend the completion date of that portion of the work included in the change, without extending the Contract Time for the remainder of the work.

§ 7.1.6 Changes which involve credits to the Contract Sum shall include overhead, profit, general conditions, bond and insurance costs.

§ 7.1.7 For any adjustments to the Contract sum based on other than the unit price method, overhead, profit and general conditions combined shall be calculated at the following percentages of the cost attributable to the change in the work.

- .1 For the Contract for Work performed by the Contractor's own forces, ten (10) percent of the cost.
- .2 For the Contractor, for Work performed by the Contractor's Subcontractors, five (5) percent of the amount due the Subcontractor.
- .3 For each Subcontractor or Sub-subcontractor involved for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten (10) percent of the cost.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractor's, five (5) percent of the amount due the Sub-subcontractor.
- .5 Costs to which overhead, profit, and general conditions is to be applied shall be determined in accordance with Sub-subparagraphs 7.3.6.1 through 7.3.6.5.
- .6 When both additions and credit are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any.
- .7 In order to facilitate checking of quotations for extras or credits, all proposals shall be accompanied by:
  - (1) a complete itemization of costs including labor, materials;
  - (2) Subcontractor's, Sub-subcontractor's and material suppliers for their portions of the Work itemized to include labor, material;
  - (3) labor costs shall indicate hourly wage and fringe benefits, labor hours shall be provided for each phase of the work;
  - (4) material costs shall include unit costs and units required where applicable.

PAGE 27

§ 7.2.1.1 The General Contractor shall review all proposals for change and conformance with the request for change and with the Contract Documents; process the proposals and make its recommendation in writing to the Architect/Engineer.

#### § 7.2.2 Change Proposals

The Contractor must submit change proposals covering a contemplated Change Order within ten (10) days after the request of the Owner or the Architect or within ten (10) days of the event giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making change proposals. Change proposals will define or confirm in detail the Work that is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in the Contract Sum or the Contract Time. Any proposed adjustment must include detailed documentation, including but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, and additional bond cost. Change proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor to proceed with the Work involved in the Change Proposal in accordance with this Section 7.2.2 without accepting the Change



Proposal in its entirety. See Exhibit D, entitled Modifications/Explanations or the Change Order Fee, which shall govern and apply to Change Orders.

§ 7.2.3 If the Owner determines that a change proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, (after the scope has been previously approved in writing by the Owner), 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.

PAGE 28

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

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

§ 7.3.7 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. 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.

§ 7.3.8 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. 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.

§ 7.3.9 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. When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be

effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.10 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.

PAGE 29

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. If Contractor's work shall fall behind schedule for reasons that are not excused under the terms of the Contract, Contractor shall add additional workers or shifts, and/or work overtime as necessary to maintain the Construction Schedule.

§ 8.2.4 The Contractor must conform to the most recently approved Construction Schedule. The Contractor must complete the indicated work or achieve the required percentage of completion, as applicable, with any interim completion dates established in the most recently approved Construction Schedule.

§ 8.2.5 The Contractor must maintain at the Site, available to the Owner and the Architect for their reference during the progress of the Work, a copy of the approved Construction Schedule and any approved revisions thereto. The Contractor must keep current records of and mark on a copy of the approved Construction Schedule the actual commencement date, progress, and completion date of each scheduled activity indicated on the Construction Schedule.

§ 8.2.6 The Contractor represents that its bid includes all costs, overhead and profit which may be incurred throughout the Contract Time and the period between Substantial and Final Completion. Accordingly, the Contractor may not make any claim for delay damages based in whole or in part on the premise that the Contractor would have completed the Work prior to the expiration of the Contract Time but for any claimed delay.

§ 8.2.7 If the Contractor's progress is not maintained in accordance with the approved Construction Schedule, or the Owner determines that the Contractor is not diligently proceeding with the Work or has evidence reasonably indicating that the Contractor will not be able to conform to the most recently approved Construction Schedule, the Contractor must, promptly and at no additional cost to the Owner, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and Notify the Owner.

§ 8.2.8 The Owner reserves the right to issue a written directive to accelerate the Work that may be subject to an appropriate adjustment, if any, in the Contract Sum. If the Owner requires an acceleration of the Construction Schedule and no adjustment is made in the contract Sum, or if the Contractor disagrees with any adjustment made, the Contractor must file a claim as provided in Article 15 or the same will be deemed to be conclusively waived.

### **§ 8.3 Delays (Not the Fault of the Contractor) and Extensions of Time**

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine. Excusable delays are delays in the progress of the Work which at the time of the delays were critical path activities shown on the most recently approved Construction Schedule and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Time, which caused by conditions that could not reasonably be anticipated by, are beyond the control of, and are without the fault or negligence of the Owner, as set forth in Section 8.3.2, the Contractor, or anyone for whose acts the Contractor is responsible. Excusable delays do not include delays do not include delays caused in whole or in part by any Subcontractors, Sub-subcontractors or

suppliers. Excusable delays may justify an extension of the Contract Time, but there shall be not compensation whatsoever for excusable delays. Excusable delays may, but do not necessarily, include:

- .1 Weather delays as further defined in Section 8.3.6;
- .2 Acts of Government or regulatory agencies and officials (Other than the Owner in its capacity as Owner;)
- .3 Catastrophic events such as fire, flood and unavoidable casualties; and
- .4 Strikes or labor disputes.

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

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

§ 8.3.2 Compensable delays are limited to delays in the progress of the Work which at the time of the delays were critical path as shown on the most recently approved Construction Schedule and which prevent Contractor from achieving Substantial Completion before the expiration of the Contract Time, which are caused solely and exclusively by acts or omissions of the Owner (except actions taken by the Owner acting as a regulatory authority to protect the public health or safety or to conform to law).

§ 8.3.3 Unexcused delays are delays in Work which at the time of the delays were critical path activities as shown on the most recently approved Construction Schedule and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract time and which are not excusable delays or compensable delays. No increase in the Contract Sum or extension of the Contract Time will be made for an unexcused delay.

§ 8.3.4 The Contractor must provide written notice of any actual or prospective delay promptly, and in no event later than ten (10) days after the occurrence of the event giving risk to such delay. The notice must be given to the Owner and Architect within the specified time. In the case of a Continuing delay, the Contractor must provide an initial notice and a further notice at each progress meeting throughout the duration of the delay. The notice must contain all of the specific information specified in Section 8.3.5. The Contractor's failure to provide the written notice containing the information specified in Section 8.3.5 within ten (10) days prescribed above will be conclusively deemed a waiver or any claim for delay arising from such occurrence.

§ 8.3.5 The Contractor's notice must identify those portions of the Construction Schedule affected by the delay and must include an estimate of the cost and probable effect of the delay, if any, on the progress of the Work. Supporting documentation must include, but is not limited to:

- .1 a written detailed statement of the reasons and causes for the delay;
- .2 inclusive dates of the delay;
- .3 specific trades and portions of the Work affected by the delay;
- .4 status of Work affected before commencement of the delay;
- .5 effect of the delay on available Float;
- .6 a critical path method (CPM) analysis demonstrating that the delay has affected an activity then on the critical path at the time of the occurrence of the delay as shown on the most recently approved Construction Schedule; and
- .7 if the Contractor claims that the delay is an excusable delay or compensable delay, evidence that the delay was unforeseeable, beyond the Contractor's control, and without the fault or negligence of the Contractor or the negligence of anyone for whose acts the Contractor is responsible, including any Subcontractor, Sub-subcontractor or supplier; and in the case of a compensable delay, was caused solely and exclusively by the acts or omissions of the Owner (excepting actions taken by the Owner to protect the public health or safety or to conform to law) or anyone for whose acts the

Owner is responsible, and which are unreasonable under the circumstances involved and not reasonably within the contemplation of the parties.

§ 8.3.6 In order for the Contractor to be entitled to an extension of the Contract Time for unusually severe weather, the following conditions must be satisfied:

- .1 The weather experienced at the Site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month;
- .2 The unusually severe weather must delay Work which at the time of the unusually severe weather was a critical path activity as shown on the most recently approved Construction Schedule and which prevents the Contractor from achieving Substantial Completion before expiration of the Contract Time. The delay must be beyond the control and without the fault or negligence of the Contractor. For example, the impacted critical activity must not have occurred during unusually severe weather due to previous unexcused delays; and
- .3 The Contractor must have provided written notice of the weather-related delay complying with Sections 8.3.4 and 8.3.5 above.

This contract must achieve the substantial completion dates identified in Section 3.3 of the AIA101-2017. It is expected that within the overall contract duration, this Contractor must include an allowance of ten (10) work days for delays due to weather.

Upon acknowledgement of the Notice to Proceed and continuing throughout the Contract, the Contractor must record on the daily superintendent report the occurrence of adverse weather and resultant impact to normally scheduled Work. Actual adverse weather delay days must prevent Work on critical path activities for more than fifty (50) percent of the Contractor's scheduled workday. The number of actual adverse weather delays must include Contractor's scheduled workdays impacted by actual adverse weather (even if the adverse weather occurred in the previous month), be calculated chronologically from the first to the last day each month and be recorded as full days. If the Contractor has complied with Sections 8.3.4 and 8.3.5 and the provisions of this Section 8.3.6 and the number of actual adverse weather delay workdays exceeds the number of days anticipated above and have adversely affected critical path weather-dependent activities, the Contractor is entitled to a Modification of the Contract Time but not the Contract Sum.

§ 8.3.7 To be considered as the basis for an excusable delay, strikes or labor disputes must be documented by data evidencing (i) the trades directly and indirectly involved in or affected by the strike or labor dispute, (ii) reasons for the strike or labor dispute, (iii) the onset and duration of the strike or labor dispute, and (iv) the measures taken by the Contractor to avoid or overcome the effects of any delay.

§ 8.3.8 Upon receipt of a notice from the Contractor of the occurrence of a delay complying with Sections 8.3.4 and 8.3.5 (and if applicable 8.3.6 and 8.3.7), the Owner will review the most recently approved Construction Schedule to determine (i) whether the delay is in fact an excusable or compensable delay, and (ii) whether any adverse effects of the delay can be overcome by an adjustment in the Construction Schedule, including the application of any unused Float available in the schedule. The Owner may require the Contractor to submit a more detailed Construction Schedule than previously required in order to permit the Owner to evaluate the delay. Based on such review, the Contractor must, if required by the Owner, submit for the Owner's approval a revised Construction Schedule that minimizes the adverse effects of the delay.

§ 8.3.9 No extension of the Contract Time or increase in the Contract Sum will be allowed for any delay or part thereof occurring more than ten (10) days before written notice of the delay is provided by the Contractor. No extension of the Contract Time or increase in the Contract Sum will be made to the extent that performance is, was or would have been suspended, delayed, or interrupted by another cause for which the Contractor is responsible. No increase in the Contract Sum will be made to the extent performance was or would have been suspended, delayed or interrupted by another cause for which the Owner is not solely and exclusively responsible.

§ 8.3.10 The Contractor will not receive any compensation for profit, additional bond cost, overhead (which includes extended office overhead and site-specific overhead and general conditions), or any other cost or compensation or any other damages of any kind or nature whatsoever whether incurred by the Contractor, its Subcontractor or suppliers for delay, all of which are irrevocably waived by Contractor where the delay results from performance of additional Work (Change Order or Construction Directive) beyond the Work required by the Contract Documents and for which the Contractor is paid for the additional Work.

§ 8.3.11 The Contractor acknowledges and agrees that the profit, additional bond cost and overhead (which includes extended office overhead and site-specific overhead and general conditions) if any, incurred by the Contractor in performing work beyond the Work required by the Contract Documents and any and all other costs, compensation or damages due Contractor (including any of its Subcontractors or suppliers), is included in, and payable to the Contractor as part of the Change Order or Construction Directive. Contractor waives any and all other damages and cost of any nature or kind whatsoever including claims for local and cumulative impacts as a result of such Change Order or Construction Directive Work and any and all other claims of any type or nature whatsoever including any claim for loss of productivity or loss of efficiency. The Contractor will be compensated for compensable delays only for actual and direct damages resulting from such compensable delays. Actual direct damages are limited to site specific general conditions and do not include any indirect costs such as home office overhead. The Contractor will be compensated for such actual and direct damages for compensable delays not attributable to performance of Change Order. Work for which the Contractor is not otherwise compensated in an amount not to exceed the lesser of (i) a daily rate computed by dividing eight percent (8%) of the original Contract Sum by the original Contract Time or (ii) a daily rate computed by dividing the Contractor's profit, bond cost and site-specific overhead (but not home office overhead) for the original Contract Sum by the original Contract Time. The Contractor for itself and its Subcontractors and suppliers, irrevocably waives any and all other compensation and delay damages as a result of any compensable delays, including without limitations any claims for any indirect cost and any claims for loss of productivity or loss of efficiency.

§ 8.3.12 In the event the Owner denies the Contractor's request for a change in the Contract Time or, in the case of a compensable delay, a change in the Contract Sum, the Contractor may, within ten (10) days after such denial, submit a Claim as provided in Article 15. Submissions made prior to the denial must be resubmitted after the denial. Any Claim on account of denial of a change that is not made within such ten (10) days of the denial is deemed waived.

#### § 8.3.13 Delay Damages

- .1 By executing a Change Order or Contract Amendment, the Contractor represents that the Contractor is not entitled to an increase in the Contract Sum or an extension of the Contract Time beyond that specified in the Change Order or Contract Amendment for the Work performed or to be performed under the Change Order. The Contractor is not entitled to an increase in the Contract Sum or extension of the Contract Time as a result of the issuance by the Owner of Construction Directive unless the Contractor asserts a claim as required by this Article 8 and Article 15;
- .2 No charges or claims for damages may be made by the Contractor or paid to the Contractor for any delay, disruption, inefficiency, interference or hindrance from any cause whatsoever, whether foreseeable or not, including (i) acts or omissions by the Owner, its agents, employees or consultants, (ii) Contract Documents that are negligently prepared or contain inaccurate statements, or (iii) force majeure and circumstances beyond the Contractor's control. The sole remedy for delays, disruptions or hindrances will be non-compensable time extensions for completion of the Work;
- .3 The provisions of the Section 8.3.13.1 and Section 8.3.13.2 do not apply to claims that meet all of the following conditions: (i) the claim arises under the Contract; (ii) the claim is limited to actual and direct damages (i.e. profit, additional bond costs (if any) and overhead (only site-specific overhead and not including home office overhead)) incurred as a result of a delay in completing the Project which the Contractor acknowledges are fully compensated for by payment of the adjustment amount specified in Section 8.3.11; (iii) the Contract establishes a time limit for achieving Substantial Completion and the claim is for critical path delays that prevent achievement of Substantial Completion of the Contract within that time limit; (iv) the delay for which damages are claimed is caused solely and exclusively by the Owner (except when acting as a regulatory authority) or anyone for whom they are responsible; (v) the delay is not caused by actions taken by

the Owner to protect the public health or safety or to conform to law; and (vi) the Contractor has fully complied with Sections 8.3.4 and 8.3.5; and

4 A time extension may be granted only for an excusable delay that is beyond the Contractor's control and occurs without the Contractor's fault or negligence. No time extension will be granted in the absence of a written claim for the time extension complying with Sections 8.3.4 and 8.3.5 (and if applicable, 8.3.6 and 8.3.7).

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

PAGE 33

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. The Contractor must submit to the Architect itemized Applications for Payment for Work completed on a monthly basis in accordance with a schedule approved by the Owner. Each Application for Payment must be consistent with the approved Schedule of Values. In order to expedite the review and approval of Applications for Payment, the Contractor may submit to and review with the Architect and Owner a draft Application for Payment at a progress meeting prior to submitting a formal Application for Payment.

§ 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. The form of Application for Payment must be AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet (latest edition), or such other form as may be prescribed by the Owner. The application must be notarized and supported by sufficient data to demonstrate the Contractor's right to payment and compliance with the payment provisions of the Contract to the satisfaction of the Owner and Architect, such as copies of requisitions from Subcontractors and material suppliers, partial lien waivers, releases and other documents. Each Application for Payment must reflect approved Contract Modifications and the Contract retainage provided for in the Contract Documents.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. Applications for Payment may include materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. The Owner has no obligation or responsibility to pay for materials stored off the Site. If specifically approved in writing in advance by the Owner, an Application for Payment may include materials and equipment stored off the Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Site is conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to protect the Owner's interests. Payment for materials and equipment stored off the Site will, in addition, be conditioned upon the Contractor's provision of applicable insurance, storage and transportation to the Site. Contractor shall indemnify and hold harmless from any liens, claims, security interests or encumbrances filed by the Contractor, Subcontractors, or anyone claiming by, through or under the Contractor or Subcontractor for items covered by payments made by the Owner to the Contractor.

§ 9.3.4 Under applicable provisions of Illinois law, payments received by the Contractor are held in trust for Subcontractors and suppliers who have furnished labor and materials covered by an Application for Payment. Accordingly, Applications for Payment may not include requests for payment of amounts for Work performed by a Subcontractor or Supplier that the Contractor does not intend to pay for said work.

§ 9.3.5 Until the conditions set forth in this Section have been satisfied by Contractor, the amount of each monthly Application for Payment must include the value of each line item as indicated on the approved Schedule of Values, to the extent completed, less Contract retainage of ten percent (10%). When the contract is 50% complete, retainage withheld shall be reduced so that no more than 5% is held. After the contract is 50% complete, no more than 5% of the amount of any subsequent payments made under the contract may be held as retainage. The retainage will not be paid to the Contractor until thirty (30) days after all of the following conditions have been satisfied: (A) the Contractor has fully performed the Contract; (B) the Contractor has completed all Punch List items to the satisfaction of the Owner and the Architect; (C) the Contractor has delivered to the Owner all Project close-out documents in duplicate, including (1) all maintenance and operating manuals; (2) marked sets of as-built drawings; (3) all guarantees and warranties required under the Contract Documents; (4) a list of names, addresses, and telephone numbers for all subcontractors and others providing guarantees and warranties; and (D) the applicable governmental authorities have issued to the Owner the final use and occupancy permit for the Project.

§ 9.3.6 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. By submitting an Application for Payment, the Contractor further warrants that all Work for which payments have previously been received from the Owner are free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities having provided labor, materials and equipment relating to the Work.

§ 9.3.7 Before the Contractor receives a progress payment, the Contractor must certify in writing that, in accordance with contractual arrangements, Subcontractors and suppliers:

- .1 have been paid from the proceeds of previous progress payments; and
- .2 will be paid in a timely manner from the proceeds of the progress payment currently due.

In the event the Contractor has not paid or does not pay as certified, such failure constitutes a ground for termination under Section 14.2 of the Contract. Contractor shall submit Applications for Payment to Architect on a monthly basis or as otherwise specified in the Contract Documents. Once the Architect submits a completed Application for Payment with its Certificate of Payment to the Owner, the Owner within twenty-one (21) days after its receipt of a Request for Payment from the Architect, shall pay the approved amount contained in the Request for Payment to the Contractor.

§ 9.3.8 Each Application for Payment, including all partial and final requests for payment, shall be accompanied by the following, all in form and substance satisfactory to the Owner:

- .1 **Sworn Statement for Contractor and Subcontractor to Owner:** A Duly executed and acknowledged sworn statement showing all Subcontractors with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor in the request progress payment and the amount to be paid to the Contractor from such payment.
  - a. The form shall be completed by each Contractor, together with similar sworn statements from all Subcontractors and, where appropriate from Sub-subcontractors and Suppliers.
  - b. Prior to commencement of the contract work, the Contractor and all Subcontractors shall submit affidavits showing the name and address and other information required for all parties with whom each will or has entered into agreement.
  - c. Each time a pay request is made, the Contractor's Sworn Statement shall be updated using the same form.
- .2 **Waivers of Lien to Date.** Duly executed waivers of lien to date establishing payment or satisfaction of all such obligations shall be completed by each Subcontractor and supplier, as well as by each Prime Contractor.

- a. The waivers of lien to date shall be required to be submitted beginning with the second pay request. Each subcontractor who submits a waiver of lien by completing the top half of the form must also complete the Contractor's Affidavit on the bottom half of the form showing all Sub-subcontractors.
  - b. Similarly, all Sub-subcontractors shall submit a waiver of lien in the amount shown on the subcontractor's affidavit and, if materials of Sub-subcontractors were not obtained from inventory, the Sub-subcontractors must also show their suppliers on the Contractor's affidavit. If any Subcontractor or Sub-subcontractor has no subs, the Contractor's Affidavit shall be completed and the word "None" inserted under the word "Names" on the form.
  - c. Amounts stated in the Waiver of Lien form shall be cumulative, in that the waiver shall state all amounts paid to date of the last pay request for each Sub for the entire project.
3. **Final Waiver of Lien.** Duly executed final waivers of lien shall be completed by each Contractor and all Subcontractors and suppliers prior to the last payment being made to the Contractor.
  4. **Each Blank** of each of the required documents shall be correctly filled in with complete information. If no dollar amounts or information apply, "\$0.00" or "None" shall be entered at the appropriate locations on the forms.

PAGE 36

§ 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. The reasons for withholding certification are removed, certification will be made for amounts previously withheld.

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

§ 9.5.4 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.

§ 9.6.1 After the Architect has issued a Certificate Within Thirty (30) days of receipt by the Architect of the Application for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect of the amount certified. The Architect may decline to approve any Application for Payment and the Owner shall not be required to make any Progress Payments or Final Payments to the Contractor if the Contractor is in violation of any term or condition of this Agreement, the General Conditions of the Contract (AIA Document A201), or the Supplementary Conditions, or if the Contractor fails to timely provide any information reasonably requested by Owner.

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§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers' amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner 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. The Contractor will obtain performances and payment bonds in an amount reasonably acceptable to Owner.

PAGE 37



§ 9.6.9 No construction contract may permit the withholding of retainage from any payment in excess of the amounts permitted in this Section. A construction contract may provide for the withholding of retainage of up to 10% of any payment made prior to the completion of 50% of the contract. When a contract is 50% complete, retainage withheld shall be reduced so that no more than 5% is held. After the contract is 50% complete, no more than 5% of the amount of any subsequent payments made under the contract may be held as retainage

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. Sixty (60) days after the Contractor submits an Application for Payment to the Architect, the Contractor may file a claim in accordance with Article 15 of this Contract.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of Work is substantially complete and that items remaining to be completed or corrected can be accomplished within another thirty (30) days, subject to the availability of special-order parts and materials, the Contractor must give written notice to the Owner and the Architect and request an inspection of the Work as provided in Section 9.8.3. The Contractor's notice and request for an inspection must be accompanied by a comprehensive Punch List describing all items to be completed or corrected prior to final payment, before final Completion and the submittals required by Section 9.8.2. The Contractor must proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor-Contractor's responsibility to complete all Work in accordance with the Contract Documents.

§ 9.8.2.1 In addition to the Punch List, the Contractor must submit the following with its request for a determination of Substantial Completion:

- .1 final test reports as required by the Contract and certificates of inspection and approval required for use and occupancy;
- .2 Fire Marshall's report;
- .3 approvals from, and transfer documents for, all utilities;
- .4 Warranties and Guarantees as provided in this Contract;
- .5 final, approved operating and maintenance manuals;
- .6 all documents and verification of training required by the Contract; and
- .7 Schedule to complete the Punch List and value of Work not yet complete.

§ 9.8.3 Upon receipt of the Contractor's list, Punch List, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's complete and whether remaining items can be completed or corrected within thirty (30) days, subject to the availability of special-order parts and materials. The Owner may make a similar inspection. If such 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. Punch List, which, in the opinion of the Owner or the Architect, (i) must be completed or corrected before the Work can be occupied or used for its intended purpose, or (ii) cannot be completed or corrected within thirty (30) days, subject to the availability of special-order parts and materials, the Architect will so advise the Contractor, and the Contractor must promptly complete or correct such item.

§ 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. Following the inspection and completion or correction of Work required by the Owner or the Architect before issuance of a Certificate of Substantial Completion, the Contractor must notify the Owner and Architect and request another inspection by the Owner and the Architect to determine Substantial Completion. The Contractor must submit a revised Punch List with such notice. The Architect will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is substantially complete. In such case, the Contractor must bear the cost of any additional services of the Owner or the Architect until the Work is determined to be Substantially Complete.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. When the Owner and the Architect concur that the Work is Substantially Complete and that Work remaining to be completed or corrected can be accomplished within a period of thirty (30) days, subject to the availability of special-order parts and materials, the Architect will prepare a Certificate of Substantial Completion and a revised Punch List. The Certificate of Substantial Completion will fix the Date of Substantial Completion and the time periods within which the Contractor must finish all items on the Punch List accompanying the Certificate.

§ 9.8.6 The Certificate of Substantial Completion and accompanying Punch List must be submitted to the Owner and Contractor for execution, which will constitute their written acceptance of responsibilities assigned to them in such Certificate.

§ 9.8.7 To the extent provided in the Contract Documents or in the Certificate of Substantial Completion, the Owner, upon execution of the Certificate, will assume responsibility for security, operation, safety, maintenance, heat, utilities, damage to the Work (other than damage caused by the Contractor) and insurance.

§ 9.8.8 Warranties required by the Contract Documents will commence on the Date of Substantial Completion of the Work unless otherwise provided in the Certificate of Substantial Completion or the Contract Documents.

§ 9.8.9 Upon execution of the Certificate of Substantial Completion, the Contractor will deliver custody and control of such Work to the Owner. The Owner will thereafter provide the Contractor reasonable access to such Work to permit the Contractor to fulfill the correction, completion and other responsibilities remaining under the Contract and the Certificate of Substantial Completion.

§ 9.8.10 Unless otherwise provided in the Certificate of Substantial Completion, the Contractor must complete or correct all items included in the final Punch List within thirty (30) days, subject to the availability of special-order parts and materials, after the Date of Substantial Completion.

§ 9.8.11 At the time of Substantial Completion, in addition to removing rubbish and leaving the building "broom clean," the Contractor must replace any broken or damaged materials, remove stains, spots, marks and dirt from decorated Work, clean all fixtures, vacuum all carpets and wet mop all other floors, replace HVAC filters, clean HVAC coils, and comply with such additional requirements, if any, which may be specified in the Contract Documents.

PAGE 39

§ 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. When the Contractor has completed or corrected all items on the final Punch List and considers that the Work is complete and ready for final acceptance, the Contractor must give written notice to the Owner and the Architect and request a final inspection of the Work as provided in Section 9.10.2. The Contractor's notice and request for a final inspection must be accompanied by a final Application for Payment and the Submittals required by Section 9.10.3.

§ 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. Upon receipt of the Contractor's notice and request for final inspection, the Owner and the Architect will promptly make such inspection and, when the Owner and the Architect concur that the Work has been fully completed and is acceptable under the Contract Documents, the Architect will issue a Certificate of Final Completion to the Owner. The Contractor's notice and request for final inspection constitutes a representation by the Contractor to the Owner that the Work has been completed in full and in strict accordance with the terms and Documents. The Architect will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is finally complete. In such case the Contractor must bear the cost of any additional services of the Owner or the Architect until the Work is determined to be finally complete.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims. 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, submitted on AIA Document G706, Affidavit of Payment of Debts and Claims (latest edition) or such other form as may be prescribed by the Owner;
- .2 a release or waiver of liens on behalf of the Contractor and a similar release or waiver on behalf of each Subcontractor and supplier, accompanied by AIA Document G706A, Affidavit of Release of Liens (latest edition) or such other form as may be prescribed by the Owner;
- .3 a certificate evidencing that the Contractor's liability insurance and Performance Bond remain in effect during the one-year correction period following Substantial Completion as set forth in Section 12.2.2.1 and 12.2.2.2;
- .4 a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .5 consent of surety to final payment, submitted on AIA Document G707 (latest edition) or other form prescribed by the Owner;
- .6 other data required by the Owner establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be prescribed by the Owner;

- .7 a certified building location survey and as-built site plan in the form and number required by the Contract Documents;
- .8 all warranties and bonds required by the Contract Documents;
- .9 Record Documents as provided in Section 3.11 and return of Contract Documents as provided therein; and
- .10 attic stock items as required by the Contract Documents; and
- .11 as applicable, documentation of approval by the AHJ/Sewer District of all Storm Water Management (SWM) work as to allow closeout of the SWM Permit. AHJ/Sewer District approval will be based on satisfying all Permit requirements including the submission of acceptable as-built SWM drawings and other required SWM documents.

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

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment. Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

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

**§ 9.11 CONTRACTOR'S ACKNOWLEDGEMENT AND CERTIFICATION**

§ 9.11.1 With each pay application, the Contractor shall provide Owner with a statement under oath certifying that Contractor has paid all subcontractors the sums due and owing to Subcontractors as evidenced by prior Applications for Payment. Contractor shall not be entitled to receive any further payments pursuant to the Agreement unless and until Contractor is in compliance with the terms of this paragraph. Contractor acknowledges the right of Owner to advise subcontractors and sub-subcontractors that Owner has made a Progress Payment or has made Final Payment to the Contractor.

**§ 9.12 LIQUIDATED DAMAGES**

§ 9.12.1 The Contractor and the Contractor's surety, if any, shall be liable for and shall pay the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay following the established contract completion date until the Work is substantially complete. Such sum shall be deducted from the contract amount by contract change order or directive prior to the final payment.

§9.12.2 LIQUIDATED DAMAGES: Time is of the essence. If the Contractor fails to achieve Substantial Completion of the Contractor's Work within the period of (510) five hundred ten calendar days from issuance of the Notice to Proceed (as such Contract Time may be adjusted by time extensions otherwise permitted by the Contract Documents), the Contractor shall pay, and the Owner will assess, Liquidated Damages in the amount of \$2,500.00 per day for each calendar day until Substantial Completion of the Contractor's Work is achieved. The Owner may deduct any such Liquidated Damages from any amount due or payable to the Contractor.

Final Completion: In the event that the Contractor fails to timely complete all punch list items and all requirements necessary to achieve Final Completion of the Contractor's Work within 30 calendar days following Substantial Completion, the Contractor shall pay, and the Owner will assess, Liquidated Damages in the amount of \$500.00 per day for each calendar day until Final Completion of the Contractor's Work is achieved. The Owner may deduct any such damages from amounts otherwise due the Contractor at Final Completion.

[ \* Contractual duration to be proposed by bidders on Bid Form, and incorporated into Contract as accepted by the Owner prior to contract award.]

§9.12.3 Reference also Article 4.5 of the AIA101-2017.

PAGE 40

- 1 ~~employees on the Work~~ All persons at the Site and other persons who may be affected thereby, by the Work or other operations of the Contractor;
- 2 ~~the~~ The Work and materials and equipment to be incorporated therein, therein or otherwise utilized in the performance of the Contract, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; Site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- 3 ~~other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation,~~ Site or adjacent thereto and 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, must implement and maintain compliance with, as required by the Contract Documents, applicable laws and regulations and orders of public authorities having jurisdiction (without limitation OSHA and the State of Illinois), manufacturers' instructions or recommendations, existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including issuing appropriate notices, distributing material safety data sheets and other hazard communication information, providing protective clothing and equipment, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.~~

§ 10.2.3 ~~The Contractor shall implement, erect, 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; hazards, promulgating safety regulations; regulations and notifying the owners and users of adjacent sites and utilities of the safeguards-utilities.~~

§ 10.2.4 ~~When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor must not load nor permit any part of any structure at the Site to be loaded or subjected to stresses or pressures so as to endanger its safety or that of adjacent structures or property.~~

§ 10.2.5 ~~The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18. When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.~~

§ 10.2.6 ~~The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect. If the Contractor suffers injury or damage to person or property because of an act or omission of the Owner, or of any of the Owner's employees or agents, or of others for whose acts it is contended that the Owner is liable, written notice of such injury or damage, whether or not insured, must be given to the Owner within a reasonable time not exceeding ten (10) days after the onset or occurrence of such damage or injury or such shorter time as may be required by the Occupational Safety Hazards Administration (OSHA). The notice must provide sufficient detail to enable the Owner to investigate the matter. If notice is not received by the Owner within the time specified, any claim arising from the occurrence will be deemed to be conclusively waived, except to the extent of any applicable insurance (excluding self-insurance) coverage covering such occurrence. The provisions of this Section may not be used by the Contractor in lieu of the requirements of Article 7 when the Contractor is seeking an adjustment in the Contract Sum and are in addition to the requirements of Article 8 when the Contractor is seeking an adjustment in the Contract Time.~~

§ 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. It must promptly remedy, at its sole cost and expense, damage and loss 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, unless otherwise instructed in writing by the Owner. This obligation is in addition to, and not in limitation of, the Contractor's obligations for indemnification under Section 3.18 and the Contractor's responsibility to repair and or replace that portion of the Work and any materials and equipment to be incorporated therein which are damaged as a result of criminal mischief as specified in Section 10.2.10.

§ 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.

§ 10.2.7.1 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death or serious personal injury or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and Architect/Engineer.

§ 10.2.7.2 Attention is invited to the regulations issued by the Secretary of Labor pursuant to Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333 entitled "Safety and Health Regulations for Construction" (29 CFR part 1926). The Contractor shall be required to comply with those regulations to the extent that any resulting contract involves construction.

§ 10.2.8 The Contractor is responsible for taking all reasonable and necessary precautions to secure and protect the Site, the Work, materials and equipment to be incorporated therein, and any tools or equipment of the Contractor necessary or beneficial to the performance of the Work from damage due to vandalism, theft, or other criminal mischief. The Contractor must repair and/or replace that portion of the work and any materials or equipment to be incorporated therein and any tools or equipment of the Contractor necessary or beneficial to performance of the Work which are damaged or stolen due to vandalism, theft or any other criminal mischief at its expense whether or not covered by insurance. No extension of the Contract Time or increase in the Contract Sum will be granted to the Contractor as a consequence of any delay, impacts or inefficiencies resulting from any act of vandalism, theft or other criminal mischief whether or not caused or contributed to by the Contractor's negligence.

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

§ 10.2.10 If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party as soon as possible. The notice shall provide sufficient detail to enable the other party to investigate the matter.

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

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

§ 10.2.13 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, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone

directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

§ 10.2.15 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.

**§ 10.2.16 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.

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and ~~notify the Owner and Architect of the condition~~ report the condition to the Owner and Architect in writing within 24 hours of discovery.

PAGE 43

§ 10.3.5 The Contractor shall ~~reimburse~~ indemnify 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, Section 10.3.1~~, Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

...

§ 10.3.7 The Work shall be asbestos free. The Contractor, if requested, shall provide certification which attests to same. Reference in the technical specifications to manufacturers, model numbers, equipment, material, article or process shall be regarded as establishing a standard of quality and/or function. The Contractor shall submit a request for substitution on any item which cannot be certified to be asbestos free.

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, ~~must~~ take all necessary action, without the necessity or any special instruction or authorization from the Owner or Architect, 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.~~ The Contractor must promptly, but in all events within twenty-four (24) hours of the emergency, report such action in writing to the Owner and Architect. If the Contractor incurs additional costs on account of or is delayed by such emergency, the Contractor may request a change in the Contract Sum or Contract Time to account for such additional costs or delay in accord with Articles 7, 8 and 15. The Contractor must file any such request within ten (10) days of the emergency or it is deemed waived. Any adjustment in the Contract Sum or Contract Time shall be limited to the extent that the emergency work is not attributable to the fault or neglect of the Contractor or otherwise the responsibility of the Contractor under the Contract Documents.

...

**§ 11.1 Contractor's Liability 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 Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The

~~Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:~~

- ~~.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;~~
- ~~.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;~~
- ~~.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;~~
- ~~.4 Claims for damages insured by usual personal injury liability coverage;~~
- ~~.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;~~
- ~~.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;~~
- ~~.7 Claims for bodily injury or property damage arising out of completed operations; and~~
- ~~.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.~~

~~§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. Insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract.~~

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

PAGE 44

#### ~~§ 11.2 Owner's Insurance~~

##### ~~§ 11.2 Owner's Liability Insurance~~

~~§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner shall be responsible for purchasing and maintaining the Owner's usual Liability Insurance.~~

~~§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon~~



receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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

### **§ 11.3 Waivers of Subrogation Property Insurance**

**§ 11.3.1** The Contractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form as required in the executed AIA Document A101-2017, Standard Form of Agreement Between Owner and Contractor. Such coverage shall be in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

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

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

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

**§ 11.3.2 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual

cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3.3 BOILER AND MACHINERY INSURANCE**

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

### **§ 11.3.4 Waivers of Subrogation**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate Contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents, agents and employees, for damages caused by fire, fire or other causes of loss, loss to the extent those losses are covered by property insurance required by the Agreement obtained pursuant to this Section 11.3 or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. Work. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) and whether or not the person or entity had an insurable interest in the damaged property the property damaged.

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

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

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

~~§ 11.3.2-11.4.2~~ If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives the Owner shall waive all rights in accordance with the terms of Section 11.3.1 Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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

~~The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The~~

~~Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~

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

PAGE 46

#### **§ 11.6 PERFORMANCE BOND AND PAYMENT BOND**

§ 11.6.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to 100 percent of the Contract Sum.

§ 11.6.1.1 The Contractor shall furnish the required bonds as stipulated in the Instructions to Bidders.

§ 11.6.1.2 The Contractor shall require the attorney-in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

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

PAGE 47

§ 12.2.6 All warranties required by the Contract Documents shall commence on the date of Substantial Completion of the work or designated portions thereof, or for work first completed after Substantial Completion, on the date of its acceptance, unless some other commencement date is specifically referenced elsewhere in the contract documents for a specific warranty. The Contractor shall be required to secure any extended warranties or special riders to standard warranties which are required to comply with these requirements.

PAGE 48

~~The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4 by, and construed in accordance with, the laws of the State of Illinois without regard to its conflict of law's provisions. Any litigation shall be conducted in state district court. Mandatory and exclusive venue for any disputes shall be in Franklin County, Illinois.~~

...

§ 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, 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.

...

#### **§ 13.3 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.

#### § 13.3 Written Notice

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

#### § 13.4 Tests and Inspections Rights and Remedies

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

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

§ 13.4.3 No provisions contained in the Contract Documents shall create or give to third parties any claim or right of action against the Owner or the Contractor except as specifically provided herein.

§ 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.

§ 13.3.4 The Owner and the Architect reserve the right to accept or reject any substitutions bid upon, provided such action is taken in sufficient time so as not to delay progress of the work or incur additional expense to the Contractor. If substitutions are not specifically accepted in writing, materials specified as "standard" shall be used in construction of this project.

§ 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.

§ 13.3.5 COMMERCIAL AND FEDERAL STANDARDS, Any material specified by reference to the number, symbol or title of specific standards, such as Commercial Standards, Federal Specifications, trade association standards, or similar standards, shall comply with requirements in latest revision thereof and any amendment or supplement thereto in effect in date of this Project Manual, except as limited to type, class or grade, or modified in such reference by a given date. The standards related to, except as modified in the Specifications, shall have full force and effects as though printed in the Specifications

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

### § 13.5 Tests and Inspections

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

§ 13.5.1 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 (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor

### § 13.5 Interest

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

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

§ 13.5.3 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.

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

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

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

### § 13.6 Interest

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

### § 13.6 Equal Employment Opportunity

§ 13.6.1 The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The Contractor shall take affirmative action to ensure that applicants are employed, and that applicants are treated during employment, without regard to that applicant's race, religion, color, sex, national origin, or age. Such action shall include, but not be limited to, employment, upgrading, demotion, transfer, recruitment, recruitment advertisement, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the requirements of these non-discrimination provisions.

§ 13.6.2 The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, or age.

§ 13.6.3 The Contractor shall include all of this Paragraph 13.8 in every Subcontract or Purchase Order, and shall require each Subcontractor and Material and Equipment Supplier to include this Paragraph 13.8 in each of their subcontracts and Purchase Orders, so that such provisions will be binding upon each Subcontractor, Sub-subcontractor, and Material and Equipment Supplier.

§ 13.6.4 In the event of the Contractor's noncompliance with any portion of this Paragraph 13.8, the Owner may cancel, terminate, or suspend this Contract.

### § 13.7 SEXUAL HARASSMENT

§ 13.7.1 The Contractor acknowledges that this Contract is subject to and governed by the rules and regulations of the Illinois Human Rights Act (the "Human Rights Act"), including the mandatory provisions that each contractor have in place written sexual harassment policies that shall include, at minimum the following information:

- i. the illegality of sexual harassment;
- ii. the definition of sexual harassment under state law;
- iii. a description of sexual harassment, utilizing examples;
- iv. the vendor's internal complaint process including penalties;
- v. the legal recourse, investigate and complaint process available through the Department and the Commission; and
- vi. protection from retaliation as provided by section 6-102 of said Act and that it has a written sexual harassment policy in place in full compliance with Section 105 (A) (4) of the Human Rights Act 775 ILCSA 5/2-105 (A)(4).

### § 13.8 DRUG FREE WORKPLACE

§ 13.8.1 The Contractor certifies by the execution of this Contract that the Contractor will provide a drug-free work place in compliance with the Illinois Drug-Free Workplace Act 30 ILCS 580/1 et seq., including provisions of providing notifications, imposing sanctions, providing assistance with counseling and complying with all other requirements of said Act.

PAGE 50

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2. **No Right To Stop Work for Non-Payment**

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10)

days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

~~§ 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.~~

- ~~.1 repeatedly refuses or fails to supply enough~~ Fails to supply adequate properly skilled workers or proper materials;
- ~~.2 fails~~ Fails to make payment to Subcontractors or suppliers or Suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers; Suppliers;
- ~~.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or~~ Fails to comply with any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- ~~.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.~~ Fails to perform the Work in accordance with the Contract Documents or otherwise breaches any provision of the Contract Documents;
- ~~.5 Anticipatorily breaches or repudiates the Contract;~~
- ~~.6 Fails to make satisfactory progress in the prosecution of the Work required by the Contract; or~~
- ~~.7 Endangers the performance of this Contract.~~

~~§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety: The Owner may terminate the Contract, in whole or in part, whenever the Owner determines that sufficient grounds for termination exist as provided in Subsection 14.2.1. The Owner will provide the Contractor with a written notice to cure the default. If the default is not cured, the termination for default is effective on the date specified in the Owner's written notice. However, if the Owner determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the Owner may~~

- ~~.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; terminate the Contract immediately upon issuing oral or written notice to the Contractor without any prior notice or~~
- ~~.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 opportunity to cure. In addition to any other remedies provided by law or the Contract, the Contractor must compensate the Owner for additional costs that foreseeably would be incurred by the Owner, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.~~

**§ 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. Upon receipt of written notice from the Owner of termination, the Contractor must:

- .1 cease operations as directed by the Owner in the notice and, if required by the Owner and County, participate in an inspection of the Work with the Owner, County and the Architect to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of any stored materials and equipment and completed Work;
- .3 unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
- .4 except as directed by the Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders.

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

- .1 take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
- .2 accept assignment of subcontracts and purchase orders, and
- .3 complete the Work by whatever reasonable method the Owner may deem expedient.

**§ 14.2.5** Upon termination for cause, the Contractor must take those actions described in Section 14.2.3, and the Owner may take those actions described in Section 14.2.4, subject to the prior rights of the Contractor's Surety.

**§ 14.2.6** When the Owner terminates the Contract for cause, the Contractor is not entitled to receive further payment until the Work is completed and the costs of completion have been established.

**§ 14.2.7** If the unpaid balance of the Contract Sum less amounts which the Owner is entitled to offset from the unpaid Contract balance including actual or Liquidated Damages, exceeds the costs of completing the Work, including compensation for the Owner's and the Architect's services made necessary thereby, such excess will be paid to the Contractor or Surety, as directed by the Surety. If such costs exceed the unpaid Contract balance, the Contractor must pay the difference to the Owner upon written demand. This obligation for payment survives termination of the Contract.

**§ 14.2.8** In completing the Work following termination for cause, the Owner is not required to solicit competitive bids or to award completion work to the lowest bidder, but may obtain such completion work and related services on the basis of sole source procurement and negotiated compensation.

**§ 14.2.9** If the Contractor files for protection, or a petition is filed against it, under the Bankruptcy laws, and Contractor wishes to affirm the Contract, Contractor shall immediately file with the Bankruptcy Court a motion to affirm the Contract and shall provide satisfactory evidence to Owner and to the Court of its ability to cure all present defaults and its ability to timely and successfully complete the Work. If Contractor does not make such an immediate filing, Contractor accepts that Owner shall petition the Bankruptcy Court to lift the Automatic Stay and permit Owner to terminate the Contract.

**PAGE 52**



§ 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 Section 14.3.1.No adjustment shall be made to the extent~~

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

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

- .1 Cease operations as directed by the Owner in the notice;
- .2 the notice and, if required by the Owner, participate in an inspection of the Work with the Owner and the Architect/Engineer to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;.2 Complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and any stored materials and equipment and completed Work;
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, Unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
- .4 Except as directed by the Owner, terminate all existing subcontracts and purchase orders related to the Work and enter into no further subcontracts and purchase orders or purchase orders therefor.

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

- .1 Take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
- .2 Accept assignment of subcontracts and purchase orders; and
- .3 Complete the Work by whatever reasonable method the Owner may deem expedient.

§ 14.4.4 In case of termination for the Owner's convenience, the Contractor will be entitled to compensation only for the following items:

- .1 Payment for acceptable Work performed up to the date of termination;
- .2 The costs of preservation and protection of the Work if requested to do so by the Owner;
- .3 The cost of terminating the following contracts including:  
(i.) Purchased materials but only if not returnable and provided to the Owner, or the restocking or return charge, if any, if returnable at the Owner's written election;  
(ii.) Equipment rental contracts if not terminable at no cost but not to exceed an amount equal to thirty (30) days rental;
- .4 Documented transportation costs associated with removing Contractor-owned equipment;
- .5 Documented demobilization and close-out costs

The Contractor will not be compensated for the cost of terminating subcontracts, which must be terminable at no cost to the Owner if the Contract is terminated. The Contractor will not be compensated for the cost of any idled employees unless the employee is under a written employment contract entitling the employee to continued employment after termination of the Contract and the employee cannot be assigned to other work provided that in all events the Contractor's costs must be limited to thirty (30) days of employment costs from the date of the notice of termination. The Contractor is not entitled to any other costs or compensation (including lost or expected profit, uncompensated overhead or related expenses, or the cost of preparing and documenting its compensable expenses under this Subsection 14.4.4 as a consequence of the Owner's termination of the Contract for convenience. The Contractor conclusively and irrevocably waives its right to any other compensation or damages (compensatory or

punitive) arising from termination of the Contract. If the Owner and the Contractor are unable to agree upon the amounts specified in this subsection, the Contractor may submit a Claim as provided in Article 15. The Claim must be limited to resolution of the amounts specified in Subsections 14.4.4.1, 14.4.4.2, 14.4.4.3 and 14.4.4.4 of this subsection 14.4.4. No other cost, damages, or expenses may be claimed or paid to the Contractor or considered as part of the Claim, the same being hereby conclusively and irrevocably waived by the Contractor. Any such Claim must be delivered to the Owner within thirty (30) days of the termination of the Contract and must contain a written statement setting forth the specific reasons and supporting calculations and documentation as to the amounts the Contractor claims to be entitled to under this Subsection as a result of the termination of the Contract.

§ 14.4.5 The Contractor's obligations surviving final payment under the Contract, including without limitation those with respect to insurance, indemnification, and correction of Work that has been completed at the time of termination, remains effective notwithstanding termination for convenience of the Owner.

PAGE 53

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

...

§ 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. Notice of circumstances that could give rise to a Claim must be given to the other party as soon as possible, to enable that party to take action as appropriate to lessen the impact of the potential Claim. The party recognizing a potential claim shall also explore all options and generate suggestions for how to avoid or overcome the impact of the circumstances. If damage cannot be avoided, Claims by either the Owner or Contractor must be initiated by written notice by mail or electronically to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall must be initiated within 21 ten (10) days after occurrence of the event giving rise to such Claim or within 21 ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

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

PAGE 54

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

...

~~§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~ Dispute Resolution pursuant to Section 6.2 of the executed AIA Document A101-2017, Standard Form of Agreement Between Owner and Contractor.

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

~~§ 15.2.6.1 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. If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

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

~~§ 15.3.1 Claims, disputes, or other matters in controversy. The parties shall endeavor to resolve by mediation any Claims, dispute, or other matter in question or arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution. Contract. The parties shall share the mediator's fee and any filing fees equally. The parties will bear their own attorneys' fees, expert witnesses' fees, costs and expenses in the mediation. The mediator shall be an attorney selected by the parties from the United States Arbitration and Mediation (USA&M), and the mediation shall be held at USA&M's offices in St. Louis, Missouri, at a time and date to be decided, unless another mediator or location mutually agreed upon. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.~~

~~§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. If the parties do not resolve the disputes~~

through meditation pursuant to Section 15.3.1, the method of binding dispute resolution shall be litigation in the Circuit Court for Franklin County, Illinois.

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

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

#### ~~§ 15.4 Arbitration~~

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

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

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

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

#### ~~§ 15.4.4 Consolidation or Joinder~~

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

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

### **ARTICLE 16 REGULATIONS**

#### **§ 16.1 Contractor's Responsibilities**

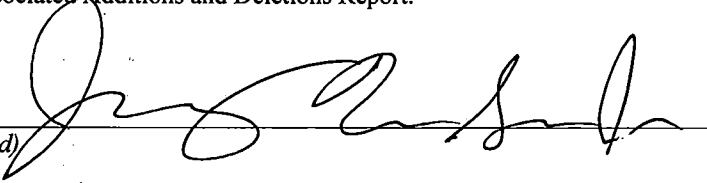
**§ 16.1.1** The Contractor shall assume all responsibility and costs in complying with Federal, State and Local regulations for Equal Opportunity Employment, Anti-Discrimination, Safety and other Regulations. ~~§ 15.4.4.3~~ The Owner and Contractor grant to any person or entity made a party to an arbitration 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.

## Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:19:29 ET on 08/19/2020 under Order No. 8675038688 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)



(Title)

JOE SWIETZER, ADVISOR PM

(Dated)

08/19/2020